
City Administrator Report to Mayor & City Council

2017-07-06, Edition No. 273

WEEKLY UPDATE:

- Blue Zones: This is an update on the status of the Muscatine Blue Zones initiative. Our license for the Blue Zones initiative is set to expire at the end of August. The Healthways Blue Zones team came to Muscatine some time ago and made a proposal to us that would have enabled us to remain licensed. The program as presented came with a significant price tag and would not have been sustainable. Communications with Healthways today (this week) informs us they are working on a multi-option proposal for Iowa communities. We should expect to hear more from them in September. In the meantime our license remains valid. Greg Jenkins, Greater Muscatine Chamber of Commerce and Industry.
- Hotel: We have been working with the State and the Hotel to ensure they are set up to begin receiving IRD grant funds (State portion of sales and hotel/motel thing the IRD District). The grant began 7/1/17 and in addition to the hotel properties, it includes any new business in the district that opens up after 7/1/17.
- Communications: Kevin Jenison started full time as Communications Manager as of July 1st. Kevin has been doing a great job and we look forward to more to come!
- MFPRSI: The Board of Trustees adopted revisions to the System's administrative rules at its June 29, 2017 Board meeting, pursuant to Iowa Code Chapter 411. Please find attached a complete set of the rules for your utilization. The first attachment is a redlined version of the System's administrative rules in .PDF file format and the second attachment is a set without redlines indicated in .PDF file format.
- Fireworks: June 1, 2017 to July 6, 2017
 - Police:
 - 8 arrests (cited and released) (1 juvenile)
 - 217 Calls for service
 - 140 were GOA/UTL (gone on arrival or unable to locate)
 - 4 unfounded
 - 65 warnings
 - Fire (Brief summary of issues)
 - Many complaints regarding noise, hours, days – big increase when 'legal' to use
 - Four online complaints referred from B&Z
 - Concerns voiced about damage to property – scorches, holes in siding, damaged items in back yards (trampolines)
 - Debris spread all over (had some firecrackers in my back yard...)
 - Sky lantern use – several complaints
 - Tents selling underage; PD did check and caught one, many other underage bought from that tent
 - Lack of ability to enforce – SFM offered help but couldn't enforce
 - Unable to pull SFM license – 31 day process, 90 with appeal
 - Questions on authority – can Authority Having Jurisdiction (AHJ) cite for

- NFPA infractions or not due to state law stating locals can't restrict sales?
- Ability to pull local permit and shut down tents
- Confusion on flyer, not handed out regularly... (enforcement question)
- 90% of complaints and 100% of underage sales due to one tent
- 10 permits, 11 inspections (and 10 re-inspects) performed for SFM
- FD visits on daily (almost) basis to all tents
- Off hours, Saturday, Sunday inspections performed
- Approximately 90 site visits
- Authority Having Jurisdiction (AHJ) needs enforcement power
- State needs to set sales hours – none listed, could have been 24/7?
- Tent operator request to have a 'fake ID' class from PD and what to do with fakes
- Need to develop guidelines for tent operators (i.e. exposed fuses, sky lanterns, etc.)
- Additional Information: Locally we had three burn patients.

ADMINISTRATIVE RULES
OF THE
MUNICIPAL FIRE AND POLICE RETIREMENT SYSTEM OF IOWA

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CHAPTER 1

ORGANIZATION AND OPERATION

1.1 Definitions. The terms used in these Rules have the meanings set forth in Chapter 3 hereof.

1.2 Purpose of rules. This Chapter describes the organization and operation of the System created pursuant to Chapter 411 of the Code of Iowa.

1.3 Waiver. The purpose of these rules is to facilitate the transaction of business before the System and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise provided by law, may be waived by the System to prevent undue hardship to a party to a proceeding.

1.4 Organization. The System consists of the Board and the office of the Director.

1.4(1) *Board.* The Board consists of nine voting and four non-voting members. The Board is the policy-making body for the System.

1.4(2) *Board responsibilities.* The Board has the following responsibilities:

(a) The Board has general responsibility for the establishment and proper operation of the System.

(b) The Board is responsible for effecting the transition from the individual city systems to the statewide system. To accomplish this transaction, the Board shall adopt a transition plan and other appropriate transition documents it deems necessary. The transition plan, or other transition documents, shall include provisions to facilitate continuity in the transition, and a recommendation for equitable process for determining earnable compensation changes.

(c) The Board shall designate two persons who will sign the Director's vouchers for payments from the fire and police retirement fund.

(d) The Board may select master custodian banks to provide custody of assets of the retirement system.

(e) The Board shall engage actuarial and other services as are required to transact System business, and approve compensation for services.

(f) The Board may designate a legal advisor to represent the system.

(g) The Board must designate a single medical provider network as the medical board for the System.

(h) The eight appointed voting members of the Board shall elect the ninth voting board member.

(i) The Board shall adopt rules for the establishment and administration of the System and the fund, and for the transaction of its business.

(j) The Board shall keep data necessary for actuarial valuation of the fund, and for checking the

experience of the System.

(k) The Board shall keep a record of all Board proceedings. The record will be open to public inspection.

(l) The Board shall submit an annual report to the Governor, the General Assembly and the city council of each participating city concerning the financial condition of the System, its current and future liabilities, and its actuarial valuation. Effective with the fiscal year beginning July 1, 2008, pursuant to Iowa Code section 97D.5, the annual report shall include the following additional information, determined using the entry age normal actuarial cost method based on a level percent of payroll basis with a thirty-year amortization period for unfunded liabilities: (1) the actuarially required contribution rate and (2) the normal cost rate.

(m) The Board is responsible for the management of the fund. The Board shall establish the fund's investment policy on an annual basis. Fund assets are then invested by the Director in accordance with the investment policy.

(n) The Board shall ensure that the contributions required under Iowa Code Section 411.8 are certified to the proper city official.

(o) The Board shall establish the System's budget.

(p) The Board must establish the rate of interest that will accrue on withdrawn contributions.

(q) The Board shall submit a certified audit report prepared by a certified public accountant to the auditor of state annually.

(r) The Board shall adopt an actuarial method, actuarial assumptions, including an interest rate assumption, and mortality and other tables necessary to conduct the annual actuarial valuation of the system. The Board shall do so based on the actuarial investigation to be conducted by the system's actuary once in each five-year period.

1.4(3) *The Office of the Director.* The Director is appointed by the Board and serves at its pleasure. The Director is the Chief Operating Officer and Administrator of the System. The Director is also the custodian of Board records. The Director is the custodian of the fire and police retirement fund. The Director invests system funds in accordance with the investment policy established by the Board. The Director employs and directs the staff of the System, executes contracts on behalf of the System and makes expenditures, reports, and investigations as necessary to carry out the powers and duties created in Chapter 411. The Director shall establish and maintain internal policy manuals on behalf of the System.

1.4(4) *Committees.* The Chair of the Board may designate or establish committees to carry out the duties of the Board. The Chair of the Board appoints the members of the Committee.

1.4(5) *Office location and hours.* The office of the System is at 7155 Lake Drive, Suite 201, West Des Moines, Iowa 50266; telephone (515) 254-9200 or (888) 254-9200. Office hours are from 8:00 a.m. to 4:30 p.m. Monday through Friday. Offices are closed on Saturday and Sunday and on certain national holidays.

1.5 Meetings, Agenda, Communication.

1.5(1) Time of meetings. The Board shall meet at least quarterly. The Chair may call special meetings.

1.5(2) Place and conduct of meetings. Meetings are generally held at a location designated by the Director. Meetings will be conducted in accordance with Robert's Rules of Order, unless otherwise provided in these rules.

1.5(3) Notification of meetings. The Director shall provide public notice of all meeting dates, locations and a tentative agenda. Notice of the meetings is given by posting the tentative agenda and by distribution to any person who has filed a request for notice with the System. The agenda lists the specific time, date, place and topics to be discussed at the meeting.

1.5(4) Posting of agenda. The tentative agenda for each meeting will be posted at the System's offices, normally at least seven (7) days prior to the meeting. The agenda will be posted at least twenty-four (24) hours prior to the meeting, unless for good cause such notice is impossible or impracticable, in which case as much notice as is reasonably possible is given. When it is determined that an emergency meeting is required, the nature of the emergency shall be stated in the minutes.

1.5(5) Distribution of agenda. The agenda will be mailed to anyone who files a request with the Director. The request should state whether the agenda is for a particular meeting or all meetings of the Board.

1.5(6) Amendment to agenda. Any amendment to the agenda after posting and distribution under subrules 1.5(4) and 1.5(5) will be posted, but will not be mailed. The amended agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The Board may adopt amendments to the agenda at the meeting only if good cause exists requiring expeditious discussion or action on such matters. The reason and circumstances necessitating such agenda amendments, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

1.5(7) Electronic meetings. The Board may conduct a meeting by electronic means as provided for in Iowa Code Section 21.8.

1.5(8) Communications. All communications to the Board shall be addressed to the Director of the System at 7155 Lake Drive, Suite 201, West Des Moines, Iowa 50266; telephone (515) 254-9200 or (888) 254-9200. Other papers required to be filed with the Board shall be filed in the office of the Director, within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt at the office of the Director.

1.6 Attendance and Participation by the Public.

1.6(1) Attendance. All meetings are open to the public. The Board may exclude the public from portions of the meeting in accordance with Iowa Code Section 21.5.

1.6(2) Items on agenda. Presentations to the Board may be made at the discretion of the Chair.

1.6(3) Items not on agenda. Because Iowa Code Section 21.4 requires the Board to give notice of its agenda, the Board discourages persons from raising matters not on the agenda. Persons who wish to address the Board on a matter not on the agenda should file a request with the Director.

1.6(4) Meeting decorum. The Chair may limit participation as necessary for the orderly conduct of agency business.

1.6(5) Use of cameras and recording devices. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The Chair may order the use of these devices discontinued if they cause interference and may exclude those persons who fail to comply with that order.

1.7 Quorum and Voting Requirement.

1.7(1) Quorum. A majority of the voting members of the Board constitutes a quorum for the transaction of business.

1.7(2) Voting. The concurrence of a majority of the voting members of the Board is required to determine any matter before the Board for action, except for a vote to close a meeting which requires the concurrence of two-thirds of the members of the Board present.

1.8 Minutes, Recording of Meetings.

1.8(1) Minutes. The Director shall keep minutes of each meeting. Minutes shall be reviewed and approved by the Board, and retained permanently by the Director at the business office.

1.8(2) Recordings. The Director shall record by mechanized means each meeting, and shall retain the recording for at least one (1) year. Recordings of closed sessions shall be sealed and retained at least one year.

1.9 Officer and Duties.

1.9(1) Officer. The Officer of the Board is the Chair.

1.9(2) Duties. The Chair shall preside at meetings and shall exercise the powers conferred upon the Chair.

1.10 Election and Succession of Chair.

1.10(1) The Chair.

a. Once elected, the Chair shall serve until the earlier of the end of the Chair's current term on the Board or until removed from office for stated cause by a majority vote of the Board. An election will be held upon the expiration of the term or the removal of the then-serving Chair. The Chair may serve for multiple terms of service on the Board.

b. Effective for terms beginning on or after May 1, 2013, the Board shall elect a Chair from among its own members once every two years. The term of the Chair shall begin on May 1 and shall end on April 30 of the second subsequent year. The Chair shall serve until the earlier of that date, the date his or her term on the Board expires, or until removed from office for stated cause by a majority vote of the Board. An election will be held at the last Board meeting prior to the expiration of the term, or upon the removal of the then-serving Chair. The Chair may serve for multiple terms of service on the Board.

1.10(2) The Vice-Chair.

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Reflects amendments through [10/10/13 06/29/17](#)

a. The Vice-Chair shall preside in the absence of the Chair. Once elected, the Vice-Chair shall serve until the earlier of the end of the Vice-Chair's current term on the Board or until removed from office for stated cause by a majority vote of the Board. An election will be held upon the expiration of the term or the removal of the then-serving Vice-Chair. The Vice-Chair may serve for multiple terms of service on the Board.

b. Effective for terms beginning on or after May 1, 2013, the Board shall elect a Vice Chair from among its own members once every two years. The term of the Vice Chair shall begin on May 1 and shall end on April 30 of the second subsequent year. The Vice Chair shall serve until the earlier of that date, the date his or her term on the Board expires, or until removed from office for stated cause by a majority vote of the Board. An election will be held at the last Board meeting prior to the expiration of the term, or upon the removal of the then-serving Vice Chair. The Vice Chair may serve for multiple terms of service on the Board.

1.11 Appointment of the Citizen Member.

Pursuant to section 411.36(d), the citizen member of the Board shall be appointed by the other members of the Board. Upon the existence of a vacancy in the position of citizen member or at the expiration of the incumbent's term, the Board shall make said appointment following consultation with the governing bodies of the Iowa Association of Professional Firefighters, the Iowa State Police Association and the Iowa League of Cities, and posting of the vacancy on the System's website. The Board may, in its discretion, use additional means to provide notice of such a vacancy to interested individuals. An incumbent citizen member may be reappointed by the Board.

1.12 Gender Balance.

The Board as a whole shall maintain gender balance in a manner consistent with Iowa Code section 69.16A.

1.13 Forms and Information. Persons wishing to obtain forms or information about benefits under the System shall address requests to:

Executive Director
Municipal Fire & Police Retirement System of Iowa
7155 Lake Drive, Suite 201
West Des Moines, Iowa 50266

These rules are intended to implement Iowa Code sections 411.5, 411.36 and 411.37.

CHAPTER 2

RECORDS

2.1 Definitions. As used in this chapter:

2.1(1) *Confidential record* in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the system is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

2.1(2) *Open record* in these rules means a record other than a confidential record.

2.1(3) *Record* in these rules means the whole or a part of a "public record" as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the system.

2.1(4) *Personal information* means information pertaining to or about an individual in a record which identifies the individual and which is contained in a record system. The name and city affiliation of a member are not "personal information" for purposes of this chapter.

2.1(5) *Record system* in these rules means any group of records under the control of the system from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol or other unique retriever assigned to an individual.

2.2 Request for access to records.

2.2(1) *Location of record.* A request for access to a record should be directed to the director.

2.2(2) *Office Records.* Open records shall be made available during all customary office hours.

2.2(3) *Request for access.* Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

2.2(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the system shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The system shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The system may deny access to the record by members of the public only on the grounds that it is

a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 2.3 and other applicable provisions of law.

2.2(5) Security of record. No person may, without permission from the system, search or remove any record from system files. Examination and copying of system records shall be supervised by the system or a designee of the system. Records shall be protected from damage and disorganization.

2.2(6) Copying. A reasonable number of copies of an open record may be made in the system's office.

2.2(7) Fees.

a. *When charged.* The system may charge fees in connection with the examination or copying of records. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. *Copying and postage costs.* Price schedules for published materials and for photocopies of records supplied by the system shall be prominently posted in system offices. Copies of records may be made by or for members of the public on photocopy machines at cost as determined and posted in system offices by the system. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. *Supervisory fee.* An hourly fee may be charged for actual expenses in supervising the examination and copying of requested records when the supervision time required is in excess of 15 minutes. The system shall prominently post the hourly fees to be charged for supervision of records during examination and copying.

2.3 Confidentiality of Records.

2.3(1) *Personal information.* Records established and maintained by the system containing personal information are not public records under Iowa Code chapter 22. Only the name and city affiliation of the individual who is the subject of these records can be disclosed.

2.3(2) *Investment information.* Records containing financial or commercial information that relates to the investment of system funds are not public records under Iowa Code chapter 22 if disclosure of such information could result in a loss to the system or to the provider of the information.

2.4 Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the system may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the system to release specified confidential records under certain circumstances or to particular persons. In requesting the system to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 2.2.

2.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity to secure access to the record.

2.4(2) Requests. The system may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or

affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

2.4(3) Notice to subject of record and opportunity to obtain injunction. After the system receives a request for access to a confidential record, and before the system releases such a record, the system may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent that such a delay is practicable and in the public interest, the system may give the subject of the confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

2.4(4) Request denied. When the system denies a request for access to a confidential record, the system shall promptly notify the requester. If the requester indicates to the system that a written notification of the denial is desired, the system shall promptly provide such a notification that is signed by the system and that includes:

- a. The name and title or position of the system responsible for the denial; and
- b. A citation to the provision of law vesting authority in the system to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

2.4(5) Request granted. When the system grants a request for access to a confidential record to a particular person, the system shall notify that person and indicate any lawful restrictions imposed by the system on that person's examination and copying of the record.

2.5 Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and shall identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identify. Appearance of counsel before the system on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the system to disclose records about that person to the person's attorney.

2.6 Disclosure without the consent of the subject.

2.6(1) Open records are routinely disclosed without the consent of the subject.

2.6(2) If the system is prohibited from disclosing part of a document from inspection, that part will not be disclosed and the remainder will be made available for inspection.

2.6(3) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a. For a routine use as defined in rule 2.7.
- b. To a recipient who has provided the system with advance written assurance that the record will

be used solely as a statistical research or reporting record; provided, that, the record is transferred in a form that does not identify the subject.

c. To a government system or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government system or instrumentality has submitted a written request to the system specifying the record desired and the law enforcement activity for which the record is sought.

d. To a person pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. Disclosures in the course of employee disciplinary proceedings.

f. In response to a court order or subpoena.

2.7 Routine use.

2.7(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.7(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to the officers, employees, and agents of the system who have a need for the record in the performance of their duties. The system may, upon request of any officer or employee, or on the system's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the public upon request. The system may upon request, or on the system's own initiative, determine what constitutes legitimate need to use a record.

d. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

2.8 Applicability. This chapter does not:

1. Require the system to index or retrieve records which contain information about persons by that person's name or other personal identifier.

2. Make available to the general public records, which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the system which are governed by the rules of another entity.

4. Make available records compiled by the system in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject person or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the system.

These rules are intended to implement Iowa Code section 411.5.

CHAPTER 3

DEFINITIONS AND CONSTRUCTION

3.1 Definitions

Wherever the following terms are used in these Rules, they shall have the meaning specified below, unless the context clearly requires a different meaning:

3.1(1) *Average Final Compensation* means the average Earnable Compensation of the member during the three years of service the member earned the member's highest salary as a police officer or fire fighter, or if the member had less than three years of service, then the average Earnable Compensation of the member's entire period of service. For years prior to January 1, 2003, a "year of service" for purposes of this definition is to be determined based on payroll periods. Provided, however, if the period so determined contains less than 365 days (or 366 days if such period encompasses February 29) days shall be added to the beginning or the end of such period so that the resulting "year of service" constitutes 365 (or 366, if applicable) consecutive days. The last payroll period shall constitute a complete payroll period for purposes of counting days whether or not the member was employed on the last day of that pay period.

Effective January 1, 2003, a year of service for purposes of this definition is to be determined based on calendar quarters. ~~Provided, however, at the request of the member at the time of application, the System shall obtain Earnable Compensation information from the employing city on the basis of payroll periods, and shall determine "year of service" on the basis of payroll periods. If the period so determined contains less than 365 days (or 366 days if such period encompasses February 29) days shall be added to the beginning or the end of such period so that the resulting "year of service" constitutes 365 (or 366, if applicable) consecutive days. The last payroll period shall constitute a complete payroll period for purposes of counting days whether or not the member was employed on the last day of that pay period.~~ The high three years of service need not be consecutive, and shall not be overlapping.

3.1(2) *Board* means the Board of Trustees of the Municipal Fire and Police Retirement System of Iowa.

3.1(3) *Director* means the Executive Director of the police and fire retirement system created under Chapter 411 of the Iowa Code.

3.1(4) *Fund* means the police and fire retirement fund created under Chapter 411 of the Iowa Code.

3.1(5) *Earnable compensation or compensation earnable* means all compensation which a member receives for services rendered as a police officer or fire fighter in the course of employment with a participating city, except for the following specified categories of compensation, which are not included:

(a) Overtime. Pay for services in excess of forty hours in any week for police officers, or fifty-six hours in any week for fire fighters.

(b) Meal or travel expenses. Any advance or reimbursement for expenditures for meals or travel.

(c) Uniform allowances. Any payment toward the cost of purchase, upkeep or replacement of uniforms.

(d) Fringe benefits. For purposes of this definition includes, but is not limited to, employer-paid premiums for all types of insurance, other health or dental benefits, recreational facilities, tuition reimbursements, moving expense reimbursement and any benefit provided in-kind rather than in cash. Also includes cash payments in lieu of health insurance coverage and any other benefit classified as a fringe benefit by the Internal Revenue Service and not otherwise addressed under the statute or these rules.

(e) Severance pay. Any payment beyond the wages the member is otherwise entitled to receive which is paid due to the member's termination of employment.

(f) Accumulated sick or vacation pay. Any amount received on or after the member's date of retirement or termination of employment as payment for unused accrued sick leave or unused accrued vacation. Payments in the nature of sick leave or vacation pay are subject to this rule regardless of the terminology used to describe them. In the event the member terminates employment with a participating city and is subsequently employed by another participating city, the date of termination of employment with the first city shall be deemed to be no later than the date of commencement of employment with the second city.

(g) Special Rule for Deferred Compensation. Contributions to a plan of deferred compensation are included in Earnable Compensation to the extent that the member has the option to receive such amounts as wages. Amounts a member has elected to voluntarily defer from wages to a plan of deferred compensation are thus included in Earnable Compensation.

3.1(6) *Minor child* means a Child (as defined in § 411.1(7)) who is unmarried and under the age of eighteen.

3.1(7) *System* means the Municipal Fire and Police Retirement System of Iowa ("MFPSI") established under Iowa Code Chapter 411.

3.1(8) "Vested member" means a member who has become eligible to receive monthly retirement benefits upon the member's retirement as the result of either age or years of service. A member must meet one of the following requirements to be vested:

(a) Complete at least four years of service or

(b) Attain the age of fifty-five while performing membership service.

A vested member who achieved vested status based on attainment of age 55 who has less than four years of service shall, upon termination of service and application to the System, receive a service retirement allowance equal to 1/22 of the retirement allowance the member would have received based on 22 years of service, multiplied by the number of years of service credited to the member.

3.2 *Construction.* In the construction of these rules, the masculine shall include the feminine or neuter and the singular, the plural, or vice versa, in all cases where such meanings would be appropriate.

These rules are intended to implement Iowa Code section 411.1.

CHAPTER 4

RULEMAKING

4.1 Commencing rulemaking. The System shall give notice of its intention to adopt, amend or repeal a rule by publishing the text of the proposed change, or a summary of the issues and subject matter to be considered and the time, place and manner in which interested persons may comment upon the proposal, in a mailing to all interested persons and organizations on its mailing list. In the event the text is too voluminous for publication, the notification shall state the subject matter of the proposed rule, a summary of changes from the existing rule, if any, and the location and telephone number where interested persons may obtain the actual text. The notice shall also include the name and address of a person to whom interested persons may present written views and arguments, and the deadline by which these submissions may be submitted. This person shall be responsible for the review and summarization of all submissions.

4.2 Oral presentations. When requested in writing by twenty-five (25) interested persons or by an association having not less than twenty-five (25) members, an opportunity for an oral presentation shall be scheduled. The request must be presented at the System's office within twenty days of the publication of the Notice of Intended Action and must identify the proposed rule subject to the request by subject matter and date of publication.

4.2(1) Notice. When so requested under the provisions of rule 4.1 or at the discretion of the Board, the System shall schedule an opportunity for oral presentations by publishing a notice of the opportunity in the same manner provided in rule 4.1, above. The notice shall refer to the subject matter and publication date of the proposed rule, and shall give the public not less than twenty (20) days notice of the date, time and place of the meeting. Additional notice shall be mailed to all persons who have requested the opportunity for an oral presentation.

4.2(2) Conduct of meetings. The Director or his designee shall serve as the presiding officer at the meetings. At the commencement of the meeting the presiding officer shall request any person wishing to make an oral presentation to advise the presiding officer of his name, address and affiliation.

a. At the commencement of the meeting the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority and the reasons for the proposed rule. When necessary in the interests of time, the presiding officer may limit individual presentations as necessary to ensure that all persons who have requested an opportunity to speak may do so.

b. To facilitate the exchange of information, if time permits, the presiding officer may open the floor to questions or general discussion.

c. Persons who disrupt or obstruct the meeting either by their behavior or by the use of a camera or recording device shall be requested to cease. The presiding officer shall exclude any person who fails to comply with the request.

d. The presiding officer shall, when practical, receive all relevant physical and documentary evidence presented by witnesses. All evidence becomes the property of the System.

e. A record shall be prepared consisting of the minutes or verbatim record and all evidence submitted. The presiding officer shall then prepare a summary of the content of all comments received at the meeting.

4.3 Conferences or consultation. In addition to the required rulemaking procedures, the Director or his designee may, in his discretion, obtain viewpoints or advice concerning proposed rulemaking through informal conferences or consultations.

4.4 Adoption. Not less than thirty-five days after the publication of notice, the proposed rule may be adopted in final form, and, if so adopted, shall be made effective immediately unless a later date is specified in the rule.

4.5 Statement of reasons. If so requested by any interested person, and upon adoption of any proposed rule, the Director shall prepare a statement of principal reasons for and against the proposed rule. The statement shall set forth the reasons for overruling the considerations urged against the rule.

4.6 Petition for rulemaking. A petition for rulemaking shall be filed in the office of the Municipal Fire and Police Retirement System of Iowa, 7155 Lake Drive, Suite 201, West Des Moines, Iowa 50266; telephone (515) 254-9200 or (888) 254-9200. The petition shall either be mailed certified, return receipt requested, or delivered in person. An additional copy may be provided if the petitioner wishes to retain a file-stamped copy of the petition. The petition shall be either typewritten or legibly printed in ink and must substantially conform to the following form:

MUNICIPAL FIRE AND POLICE
RETIREMENT SYSTEM OF IOWA

7155 Lake Drive, Suite 201
West Des Moines, Iowa 50266

Petition by _____(Name) _____
to (Amend, Adopt or Repeal) _____
Rules Relating to (state) _____
subject matter) _____

) PETITION FOR RULEMAKING
)

(petition must state in separate, numbered paragraphs)

1. Petitioner's name, address and telephone number.
2. The nature of petitioner's interest in the matter.
3. The text or substance of any requested rule adoption, amendment or repeal including the text and citation for any current rule in effect.
4. The reasons for seeking the requested action, including any statute, rule, data, evidence or arguments which are relevant to the request. Copies of any statute, rule, evidence etc. should be attached to the petition.

Petitioner's signature

4.7 Procedure after petition is filed.

4.7(1) *Inspection by the Director.* Upon filing of the petition the Director or his designee shall inspect the petition to ensure substantial compliance with the recommended form. If the petition does not contain the text or substance of the proposed amendment or any reasons for the proposed amendment or fails to include copies of any cited statute, rule or evidence, the System may reject the petition and return it to the petitioner along with the reasons for the rejection. Petitioner may then correct the reasons for rejection and refile the petition.

4.7(2) *System action.* Within ninety days of the filing of a petition the System shall either grant the petition and commence rulemaking, or deny the petition and notify the petitioner in writing of the grounds for the denial.

4.8 Exemptions from rulemaking procedures.

To the extent the Board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the Board may adopt that rule without publishing advance notice under Rule 4.1 and without providing for written or oral public submissions prior to its adoption. "Good cause" for purposes of this Rule 4.8 is limited to situations where the rule in question confers a benefit or removes a restriction on the public or some segment thereof, or those involving imminent peril to the public health, safety or welfare. The Board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this rule.

These rules are intended to implement Iowa Code section 411.5.

CHAPTER 5

POLICY STATEMENTS

5.1 Scope. When, in the exercise of its discretion, the Board deems it appropriate to respond to requests for policy statements within the scope of its jurisdiction under Chapter 411 of the Code, the Board will issue policy statements pursuant to the procedures set forth in this rule.

5.2 Request for Board Policy Statement. Any person may file a request with the System for a policy statement of the Board at the System's office. The request must be typewritten or legibly handwritten and must provide the following information:

5.2(1) A clear and concise statement of all relevant facts on which the request is based.

5.2(2) A citation and the relevant language of the specific statute, rule, policy, decision, or order, whose applicability is questioned, and any other relevant law.

5.2(3) The questions the person wants answered, stated clearly and concisely.

5.2(4) The answers to the questions desired by the person and a summary of the reasons urged by the person in support of those answers.

5.2(5) The reasons for requesting the statement and disclosure of the person's interest in the outcome.

5.2(6) A statement indicating whether the person is currently a party to another proceeding involving the questions at issue and whether, to the person's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

5.3 Evaluation and Issuance of Policy Statements.

5.3(1) If the Director determines that the request necessitates an immediate response, the Director shall prepare a response, after communications with the Chair of the Board and after obtaining such staff and professional support as may be necessary to respond to the request.

5.3(2) In all other cases, upon receipt of a request for policy statement, the Director will promptly perform a preliminary evaluation of the request and, based upon this preliminary evaluation, will, if necessary, obtain staff and professional support to assist in the evaluation.

5.3(3) After the evaluation of the request is complete, the Director will communicate the results of the evaluation to the Board, or, if applicable, to the appropriate committee thereof.

5.3(4) If the Board deems it appropriate to issue a policy statement, it will do so at a meeting of the Board as a whole. The requesting party will be given notice of the meeting and, when appropriate, an opportunity to be heard by the Board.

These rules are intended to implement Iowa Code sections 411.5 and 411.37.

CHAPTER 6

APPEALS

6.1 Scope and Definitions.

6.1(1) Scope. This Chapter applies when there is an adjudication of the law to particular facts in which the legal rights, duties or privileges of a party are determined.

6.1(2) Definitions. Except where otherwise specifically defined by law, for purposes of this Chapter, the following terms have the prescribed meanings:

(1) Committee means the Appeals Committee of the Board.

(2) Issuance means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified therein.

(3) Party means each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

(4) Applicant means the party that initially applied for benefits from the System. The Applicant may be either the Member or the City.

6.2 Time Requirements.

6.2(1) Time shall be computed as provided in Iowa Code section 4.1.

6.2(2) For good cause, the Committee may extend or shorten the time to take any action. Except for good cause stated in the record, before extending or shortening the time to take any action, the Committee shall afford all parties an opportunity to be heard or to file written arguments.

6.3 Requests for a Hearing.

6.3(1) *Appeal.*

a. A party who wishes to appeal a decision by the System shall, within 30 days after notification was mailed to the party's last known address, file a request for a hearing. The employing city shall be deemed to be a party.

b. Requests for hearing shall be made in writing, and shall be signed and dated by the requesting party or the party's representative.

6.4 Notice Procedure.

6.4(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the proceeding. Notice shall be given at least thirty (30) days prior to the scheduled hearing. Delivery may be by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

- b. Certified mail, return receipt requested; or
- c. First class mail.
- d. Private carrier or delivery service.

6.4(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the date, time, place and nature of the hearing.
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted.
- e. Identification of all parties including the name, address and telephone number of the person who will appear on behalf of the System, of the Committee members expected to hear the appeal and of parties' counsel where known; and
- f. Reference to the procedural rules governing conduct of the hearing and to the relevant open meetings requirements.

6.4(3) Copies.

- a. Copies of the notice shall be sent to the following:
 - 1. Any attorney of record or other designated representative;
 - 2. The administrative officer of the employing city or his or her designee.
- b. The System shall furnish, with the notice and all copies thereof, copies of the non-privileged documents in its files which relate to the matter under appeal. Said documents shall be marked as System's exhibits and shall constitute a part of the record for purposes of the appeal.

6.5 Waiver of Procedures. Unless otherwise precluded by law, the parties in a proceeding may waive any provision of this chapter. However, the Committee, in its discretion, may refuse to give effect to such a waiver if it deems the waiver to be inconsistent with the public interest,

6.6 Telephone Proceedings. The Committee may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The Committee will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

6.7 Committee Selection and Disqualification.

6.7(1) The Appeals Committee shall be comprised of a three-member committee of the Board of Trustees and shall be appointed by the Executive Director.

6.7(2) The Committee must include at least one firefighter member if the Member party is a firefighter, or at least one police member if the Member party is a police officer.

6.7(3) The Committee shall select one of its members to chair the hearing.

6.7(4) A member of the Board shall disqualify himself or herself from the Committee, if, in the opinion of such member, he or she has personal knowledge of or an economic interest in the issues or the parties involved in the appeal which makes it impossible to render an impartial judgment.

6.7(5) The requirements of subrule 6.7(2), above, may be waived for good cause. Good cause shall include the unavailability of a firefighter or police officer member (as applicable) due to a disqualification pursuant to subrule 6.7(4), above, and shall also include administrative efficiency and the convenience of Board members.

6.8 Consolidation - Severance.

6.8(1) *Consolidation.* The Committee may consolidate any or all matters at issue in two or more proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

6.8(2) *Severance.* The Committee, for good cause shown, may order any proceedings or portions thereof severed.

6.9 Service and Filing of Documents.

6.9(1) *Service -- When Required.* Except where otherwise provided by law, every motion, document, or other paper filed in the proceeding shall be served upon each of the parties of record to the proceedings.

6.9(2) *Service -- How Made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order.

6.9(3) *Service of Medical Records and Reports.* Each party to an appeal relating to either accidental or ordinary disability benefits shall serve all medical records and reports concerning the member in the possession of the party upon each opposing party and shall file such records and reports with the System not more than ten (10) days following the later of the date of receipt or the date of filing of the appeal. (Provided, however, this rule does not apply to medical records or reports which are designated as System's exhibits and provided to the parties pursuant to Rule 6.4, above.) A notice shall accompany such records and reports identifying the records and reports served by the name of the practitioner or institution and date of the records and reports, and if served later than ten (10) days following the date of the appeal, stating the date when the records and reports were received by the party serving them. Medical records and reports which are not served by a party in accordance with this subrule may not be introduced by the party at the hearing. The requirements of this subrule may be waived for good cause, as determined by the Committee.

6.9(4) *Filing -- When Required.* After the notice of hearing, all motions, documents or other papers in the proceeding shall be filed with the System. All motions, documents or other papers that are

required to be served upon a party shall be filed simultaneously with the System.

6.9(5) *Filing -- When Made.* Except where otherwise provided by law, a document is deemed filed at the time it is received by the System.

6.10 Medical Evidence and Discovery. Any relevant record or report, including medical records and reports, served upon a party in compliance with these rules prior to any deadline established by these rules or by order of the Board for service of the records and reports shall be admissible as evidence at the hearing. Any party against which a medical record or report may be used shall have the right, at the party's own expense, to cross-examine by deposition the medical practitioner producing the record or report, and the deposition shall be admissible as evidence in the case. See Rule 6.20(2), however, with respect to depositions of members of the Medical Board.

6.11 Subpoenas.

6.11(1) *Issuance.*

a. A subpoena shall be issued by the Board at the request of a party. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least seven (7) days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

6.11(2) *Motion to Quash or Modify.* The Committee may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

6.12 Prehearing Procedure.

6.12(1) Each party shall file the following no later than fourteen (14) days before the scheduled hearing date:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there is good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing, along with eight (8) marked copies of said exhibits. Exhibits shall be marked as "Member's Exhibit ____" or "City's Exhibit ____" as appropriate. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there is good cause for the failure to include them. Documents which have been designated as System's exhibits pursuant to Rule 6.4, above, shall not be re-introduced by either party.

6.12(2) The Committee may order parties in the case to appear before the Committee for a conference, or to communicate with the Committee or its counsel and with each other in any manner as may be prescribed to consider, so far as is applicable to the particular case:

a. Agreeing to admissions of uncontested facts, documents or records, to avoid unnecessary

proof;

- b. Limiting the number of witnesses;
- c. Settling any facts of which the Committee is to be asked to take official notice;
- d. Stating and simplifying the factual and legal issues to be determined;
- e. Specifying all proposed exhibits and proof thereof;
- f. Setting or altering dates for completion of discovery or completion of medical evidence by each party;
- g. Specifying all witnesses expected to testify;
- h. Any other matter which may facilitate, expedite or simplify any appeal.

6.12(3) The Committee may enter an order reciting any action taken pursuant to the procedures described in this Rule 6.12 which will control the subsequent course of action relative to matters which it includes, unless modified to prevent manifest injustice.

6.13 Continuances. Unless otherwise provided, applications for continuances shall be made to the Committee.

6.13(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven (7) days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the Committee waives the requirement for a written request. However, a party making such an oral application must confirm that request by written application within five (5) days after the oral request unless that requirement is waived by the Committee. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

6.14 Withdrawals. A party requesting an appeal may withdraw that request prior to the hearing, subject to the approval of the Board. Unless otherwise provided, a withdrawal shall be with prejudice.

6.15 Intervention.

6.15(1) Motion. A request to intervene in a proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding.

6.15(2) When Filed. The request to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding, and shall be filed no later

than fourteen (14) days prior to the scheduled hearing date.

6.16 Hearing procedures.

6.16(1) The Committee presides at the hearing, and may rule on motions, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings. The hearing is de novo. The Applicant shall have the burden of proof, which shall be by a preponderance of the evidence.

6.16(2) All objections shall be timely made and stated on the record.

6.16(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.

6.16(4) The hearing will be held in open session, unless closed pursuant to Iowa Code chapter 21 or another provision of law.

6.16(5) Subject to terms and conditions prescribed by the Board, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.16(6) The Committee shall maintain the decorum of the hearing and may expel or refuse to admit anyone whose conduct is disorderly.

6.16(7) Witnesses may be sequestered during the hearing.

6.16(8) The Committee shall conduct the hearing in an informal manner. The Committee and its counsel may question parties and witnesses, discuss issues with the parties and their representatives and do all things necessary to bring the hearing to an expeditious and efficient close. The hearing will proceed generally as follows:

a. The chair of the Committee shall give an opening statement briefly describing the nature of the proceeding;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases, with the Applicant proceeding first, unless a different sequence is agreed to prior to the commencement of the hearing;

d. Each witness shall be sworn or affirmed by the Committee or the court reporter, and be subject to examination and cross-examination. The Committee may limit questioning in a manner consistent with law;

e. The parties and witnesses shall also be subject to examination by the Committee and the Committee's counsel. The Committee may do anything it deems necessary to ensure a full and fair consideration of the case, including suspending the hearing and continuing it at a later date if necessary to obtain material evidence.

f. When all parties and witnesses have been heard, the parties shall be given the opportunity to

present final arguments.

6.17 Evidence.

6.17(1) The Committee shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

6.17(2) Stipulation of facts is encouraged. The Committee may make a decision based on stipulated facts.

6.17(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the Committee determines that good cause justifies expansion of the issues. If the Committee decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to prepare on the additional issue.

6.17(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties.

6.17(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The Committee may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.17(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the Committee, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

6.18 Deliberations. The Committee may proceed with its deliberations immediately following the close of the evidence, subject to the right of any party to file a brief or other written argument within seven (7) days of the date of hearing. Deliberations shall be continued as necessary to allow for such a filing. Any party may waive its right to file a brief or other argument.

6.19 Default.

6.19(1) If a party fails to appear in a proceeding after proper service of notice, the Committee may, if no adjournment is granted, proceed with the hearing and render a decision in the absence of the party.

6.19(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the proceeding and has failed to appear after proper service.

6.20 Ex Parte Communication.

6.20(1) *Prohibited Communications.* Following issuance of the notice of hearing, there shall be

no communication, directly or indirectly, between any party or representative of any party in connection with any issue of fact or law in a case and any person assigned to render a proposed or final decision or to make findings of fact or conclusions of law except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other.

6.20(2) *Communication with Medical Board.*

a. In General. Following the issuance of the initial decision on a claim for ordinary or accidental disability benefits, all communications directly between the member or the employing city (or the representatives of either) and the Medical Board are prohibited. Any requests for information from the Medical Board shall be directed through the System. The System shall provide copies of any response received from the Medical Board to all parties.

b. Depositions. Depositions of members of the Medical Board shall be available only by arrangement with the System. Such depositions shall be admissible as evidence in the case, but the deponent remains the witness of the System, and communication with the deponent is permitted only during the deposition itself.

c. Committee. The Committee may direct written inquiries to the Medical Board on its own motion at any time. Copies of such inquiries and their responses shall be provided by the System to all parties, and shall become a part of the record. Opportunity for response shall also be provided to the parties.

6.20(3) *Disclosure of Prohibited Communications.* Any person who receives a communication prohibited by subrules 6.20(1) or (2) shall disclose that communication to all parties. A copy of any prohibited written communication or a summary of any prohibited oral communication shall be submitted for inclusion in the record.

6.20(4) *Sanctions.* The Committee may impose appropriate sanctions for violations of this rule.

6.21 *Recording Costs.* Upon request, the System shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

6.22 *Written Decision.* Following the deadline for filing a brief, the Committee shall render proposed Findings of Fact and Conclusions of Law, to be ratified by the Board of Trustees on consent motions at the next regularly scheduled Board meeting. The decision of the Committee shall become final upon ratification by the Board. Copies shall then be mailed to all parties or their representatives. A copy shall also be mailed to the administrative officer of the employing city.

6.23 *Review of Decisions.* Review of adverse hearing decisions is by the filing of a certiorari action in the District Court. The Court's review is limited to questions of law.

These rules are intended to implement Iowa Code section 411.5.

CHAPTER 7

CONTRIBUTIONS AND REPORTS

7.1 Contribution Dates. The combined employee-employer contribution to the fund must be received by the System from each City by the fifteenth (15th) day of the following month.

7.2 Contribution Reporting Form. A Contribution Reporting Form must be filed by each City with the City's contribution. Forms are available from the System. Each Contribution Reporting Form must include all members who had earnable compensation during the payroll period. A City may use an alternative to the Contribution Reporting Form only upon approval of the alternative form by the System. Beginning January 1, 2003 a Contribution Report must be filed quarterly by each City. Reports must be received by the System no later than the fifteenth (15th) day of the month following the calendar quarter to be reported. Each Contribution Report must include all members who had earnable compensation during the quarter. Reports must be filed electronically or by diskette in a format acceptable to the System. Noncompliance with the requirements of this rule will result in an administrative charge of \$100 to the City for each instance of noncompliance.

7.3 Accrual of Interest.

7.3(1) Interest on Late Contributions. Subject to subrule 7.3(2) below, contributions not received by the date specified in Rule 7.1 above shall accrue interest at the greater of the interest rate assumption adopted by the System or the rate of interest on the custodial bank's Short Term Investment Fund (STIF) account for the period in question. Interest may be waived by the Director, however, upon request prior to the due date by the City, if the contribution is late due to circumstances beyond the control of the City. Accrued interest shall be paid into the fund.

7.3(2) Automatic Waiver of Interest. Interest otherwise payable pursuant to subrule 7.3(1) above for a period not to exceed five days shall be waived by the system if all contributions due from the City for the preceding 6 months have been received timely by the system, as reflected in the records of the system. In the event the contribution is more than five days late but the requirements of this subrule are otherwise met, interest for the first five days of the late period shall be waived.

7.3(3) Back Pay. Amounts paid by a city to a member as back pay that would have constituted earnable compensation if paid when earned shall be allocated by the System as earnable compensation to the periods for which paid. Employer and employee contributions plus interest shall be paid to the System on such amounts. Said contributions and interest shall be calculated pursuant to § 411.11(2).

7.4 Checks. All checks received in payment of the employer-employee contribution and any interest thereon shall be made payable to the Municipal Fire and Police Retirement System of Iowa, and mailed, along with the completed report form provided for under Rule 7.2, above, to the System at the following address: 7155 Lake Drive, Suite 201, West Des Moines, Iowa 50266; telephone (515) 254-9200 or (888) 254-9200 or such alternative address as may be identified by the System.

7.5 Contribution Rates - Effective Date of Change.

7.5(1) City. The normal contribution rate, as determined annually by the actuary pursuant to § 411.8, shall be effective with the first payday in July of each year, unless a different effective date is specifically provided by statute, and shall apply to the entire pay period covered by that payroll.

7.5(2) Member. The members' contribution rate, as set forth in § 411.8, shall be effective with the first payday in July of each year, unless a different effective date is specifically provided by statute, and shall apply to the entire pay period covered by that payroll.

These rules are intended to implement Iowa Code sections 411.8, 411.11, 411.12 and 411.38.

Subrule 7.3(2) was adopted by the Board on July 14, 1995, and was effective immediately. The subrule was adopted without notice or comment pursuant to Rule 4.8. The Board found that public notice and participation were unnecessary, since the subrule confers a benefit on the affected cities.

CHAPTER 8

SERVICE RETIREMENT BENEFITS

8.1 Applications for Service Retirement Benefits.

8.1(1) Filing. Applications for benefits shall be submitted to the employing department by the member and shall be filed with the System by said department within five (5) working days of receipt.

8.1(2) Forms. Applications shall be on forms provided by the System. Any written request for benefits will be accepted, but subsequent completion of the designated forms shall be required.

8.1(3) Required Information--Applicant. The applicant shall submit proof of age with the application. Proof of age may also be required for the applicant's spouse or contingent beneficiary, as directed by the System. Proof of age shall be in the form of a birth certificate or church record recorded before age five. If neither of these records exists, the applicant shall submit one or more other documents or records acceptable to the System that verify the date of birth. Records that may be acceptable for this purpose include the following:

- (1) census record;
- (2) military record;
- (3) naturalization record;
- (4) marriage record;
- (5) life insurance policy;
- (6) school record;
- (7) family Bible record;
- (8) delayed birth certificate;
- (9) passport.

Photocopies of documents may be submitted, subject to the right of the System to require an original or certified copy.

The System shall return all submitted documents to the applicant, after making copies for the System's files.

8.1(4) Required Information--Employer. The employing city or department shall certify the member's date of hire, last day on the job and last day on the payroll by completing the employer's section of the Retirement Application prior to filing said application with the System. If the member has not yet left employment at the time of application, the employer shall complete the required information to the extent it is available at that time. A supplemental report shall then be filed with the System by the employer following the member's termination of employment. The employing city or department shall also furnish any other relevant information requested by the System.

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Reflects amendments through 10/10/13 06/29/17

8.1(5) Optional forms of benefit.

a. An applicant for a service retirement benefit may elect, as part of the application for benefits, to receive an optional form of payment in lieu of the service retirement allowance otherwise payable (i.e. the service retirement allowance under § 411.6(2) and the pension to a spouse of a deceased member under § 411.6(11)); provided, however, this election is not available in the event a Marital Property Order has been filed with the System with respect to the member. The election of an optional form of payment has no effect on any benefit which may become payable to the surviving child of the member under § 411.6(11).

b. The optional form of payment shall be the actuarial equivalent of the retirement benefits otherwise payable to the member and the member's spouse under subsections 2 and 11 of section 411.6

c. Applicant may elect any of the following optional forms of payment:

(1) Straight Life Annuity. Receipt of an adjusted retirement allowance during the member's lifetime, with no survivor benefit payable.

(2) Joint and 100% Survivor Annuity. An adjusted retirement allowance is payable to the member for life. Following the member's death, the adjusted retirement allowance is payable for life to the beneficiary designated by the member as part of the election process.

(3) Joint and 75% Survivor Annuity. An adjusted retirement allowance is payable to the member for life. Following the death of the member, an amount equal to 75% of the adjusted retirement allowance paid to the member is payable for life to the beneficiary designated by the member as part of the election process.

(4) Single Life Annuity with a Designated Lump Sum. The specified amount of money shall be paid to a designated beneficiary (or beneficiaries) in a lump sum upon the death of the member. A monthly retirement allowance is paid to the member for life in an amount actuarially determined to provide for the lump-sum payment. The lump sum designated by the member must be evenly divisible by one thousand, and the amount designated may not reduce the member's monthly retirement allowance by more than 50%. If the designated beneficiary predeceases the member, the designated lump sum shall be paid to the member's estate.

(5) Joint and 100% Survivor Annuity with Pop-Up.* An adjusted retirement allowance is payable to the member for life. Following the member's death, the adjusted retirement allowance is payable for life to the beneficiary designated by the member as part of the election process. If the designated beneficiary predeceases the member, the member's retirement allowance shall be increased to the amount of the service retirement allowance under § 411.6(2), as adjusted pursuant to § 411.6(12), and no survivor benefit is payable following the death of the member.

(6) Joint and 75% Survivor Annuity with Pop-Up.* An adjusted retirement allowance is payable to the member for life. Following the death of the member, an amount equal to 75% of the adjusted retirement allowance paid to the member is payable for life to the beneficiary designated by the member as part of the election process. If the designated beneficiary predeceases the member, the member's retirement allowance shall be increased to the amount of the service retirement allowance under § 411.6(2), as

adjusted pursuant to § 411.6(12), and no survivor benefit is payable following the death of the member.

d. If the applicant is married at the time of application, the member's spouse must consent in writing to any election of an optional form of payment and to the designation of a beneficiary other than the spouse, if applicable.

e. A member's election of an optional form of payment and designation of a beneficiary may be changed or revoked until the date the member's first benefit payment is cashed or deposited directly into the member's account. Upon such date, both the election of the optional form of payment and the designation of a beneficiary are final and irrevocable.

f. The election under this Rule 8.1(5) is available to applicant's whose receipt of service retirement benefits will commence after June 30, 1993.

8.2 Processing of Claim.

8.2(1) Upon receipt of an application for benefits, the System shall review the application and request any additional evidence which is needed to determine the benefits due the applicant. Such additional evidence may include verification of employment with additional participating departments, as disclosed in the Employment Information section of the Retirement Application, or in the Employment History section of the applicant's Membership Form on file with the System. The System shall request such employment information from the appropriate cities or departments. Said cities or departments shall furnish all requested information within five (5) working days of receipt of the request. Upon receipt of the requested evidence, the System shall determine whether the applicant meets all requirements for the benefit applied for.

8.2(2) If any requirement for benefits is not met, the System shall inform the applicant in writing of the denial and its basis.

8.2(3) If all requirements for benefits are met, the System shall send the applicant a notice that benefits are approved, which shall include the effective date and the amount of the monthly benefit awarded.

8.3 Appeals.

See Chapter 6 of these Rules.

* Option is available effective March 1, 2011.

These rules are intended to implement Iowa Code section 411.6.

CHAPTER 9

DISABILITY BENEFITS

9.1 Applications for Disability Benefits.

9.1(1) *Filing.* Applications for ordinary disability retirement benefits and applications for accidental disability benefits may be filed by the member or on the member's behalf by the chief of the employing department. Applications shall be filed with the System, except for applications for temporary disability benefits, which shall be filed with the employing city. Members and cities are encouraged, however, to file an application with the System if it appears at any time that the member's disability is likely to last for a continuous period of at least twelve months. (See rule 9.2(3), below, regarding duration requirements.) The System shall not be bound by an agreement between the member and the employing city relating to membership status or ability to file.

9.1(2) *Forms.* Applications shall be on forms provided by the System. Any written request for disability benefits will be accepted, but subsequent completion of the designated forms shall be required.

9.1(3) *Required Information-Member.* The application must clearly identify all medical conditions claimed to be disabling. The member shall submit the following with the application:

- (1) Any available medical reports from examining physicians;
- (2) Results of any available diagnostic tests;
- (3) Comprehensive list of all examining physicians with addresses and approximate dates;
- (4) Dates and places of hospitalization;
- (5) Signed medical releases authorizing hospitals and examining physicians to release medical records to the System; and
- (6) Particulars of the claim that the disabling condition is job-related (including the time and place of injury) if the claim is for accidental disability benefits.

9.1(4) *Required Information-Employer.* The employing department shall furnish all available records that relate to the member's disability, including medical records, accident reports, temporary disability file (if any) and any other relevant information. The employing department shall also certify whether or not the member is in good standing, as that term is defined in section 411.1. If the department certifies that the member is not in good standing, the department shall furnish all available records that relate to that status.

9.1(5) *Forwarding Application to the System.* Where the application is filed by the chief or is filed with the employing city by the member, the city shall forward the application and related materials to the System promptly. In no event shall the application be sent to the System more than 14 days following its receipt by the city. Any required information that is not yet available at the time the application is forwarded shall be provided to the System as soon as possible following the forwarding of the application. Upon receipt of an application for disability benefits, the System shall send written acknowledgment of receipt to the member, with copies to the chief and the administrative officer of the employing city.

9.1(6) Medical Records. Upon the request of the System or the medical board, a medical provider or its agent shall furnish copies of medical records or reports. The amount to be paid for the copies shall not exceed the reasonable cost of production, and shall not exceed: \$20 for 1 to 20 pages, plus \$.25 per page for more than 20 pages, and the actual expense of postage. No other expenses shall be allowed.

9.2 Processing of Claim.

9.2(1) Nonmedical Requirements.

a. Upon receipt of an application for disability benefits, the System shall determine whether the member meets all nonmedical requirements for the benefit applied for.

b. If any nonmedical requirements are not met, the System shall inform the applicant (and the member, if the member is not the applicant) in writing of the denial and its basis within thirty (30) days of the date of the application.

c. If the nonmedical requirements are met, the System shall refer the application to the medical board.

9.2(2) Disability Determination.

a. The medical board shall review all furnished medical evidence and shall request any additional records it deems necessary from examining physicians.

b. The medical board shall then arrange for a medical examination of the member. Said examination may be waived, at the discretion of the medical board, if the medical board determines that submitted medical evidence is sufficient to establish disability and that an additional examination is therefore unnecessary.

c. At the medical board's option, the medical examination may be performed by one or more members of the medical board or may be performed by another licensed physician at the medical board's direction. Such direction shall include the designation of the particular diagnostic tests and procedures to be performed.

d. The medical board shall review the medical records and the report of the medical examination, and shall report to the System in writing the board's conclusions, recommendations and assessment of the applicant's claim.

e. The Director or his designee shall forward copies of the medical board's conclusions, recommendations and assessment of the claim to the member and to the chief of the employing department for written comment relating to medical matters, and shall send notice of the commencement of the comment period to the administrative officer of the employing city. Comments, if any, must be received by the System within ten days of the date the copies were forwarded. The Director or his designee may, in his or her sole discretion, forward such comments to the medical board for its review and comment.

f. The Director or his designee shall review the file, including the medical board's conclusions, recommendations and assessments and any written comments received and make a written determination

approving or denying benefits. If benefits are approved, the written determination must also specify whether ordinary disability benefits or accidental disability benefits are to be paid. The decision regarding whether accidental disability benefits or ordinary disability benefits are payable is for the System; the designation of accidental or ordinary by the city or the member on the application form is not controlling.

g. If benefits are denied, the notice to the applicant (and the member, if the member is not the applicant) must set forth:

(1) The specific reason(s) for the denial;

(2) A description of any additional material or information needed for the applicant to perfect the claim (if any) and an explanation of why such information is needed; and

(3) That any appeal the applicant wishes to make must be made within thirty (30) days after the date of the notice, and that failure to appeal within the 30 day period will render the decision final, binding and conclusive.

h. If the applicant filed for accidental disability benefits and ordinary disability benefits are awarded instead, the notice shall set forth the reason that accidental benefits were not awarded, information regarding any additional information that is needed, and appeals information, in a manner similar to that provided herein for notices of denial.

i. Copies of all notices awarding or denying benefits shall be sent to the chief and to the administrative officer of the employing city, or his or her designee.

j. Disability benefits awarded under this Chapter shall be payable as follows:

(1) As a general rule, disability benefits awarded under this Chapter shall be payable effective with the date of staff approval.

(2) Exceptions to the general rule:

(a) Disability benefits shall be payable effective with the date the member's paid leave runs out only if that date is prior to the date of staff approval. For purposes of this subrule (a), the date the member's paid leave runs out shall be determined based on the number of days of paid leave the member is entitled to, regardless of the timing or method of payment for such leave.

(b) Disability benefits may also be payable prior to the date of staff approval if so determined and specified by the Board, for good cause shown by the member.

See also Rule 12.7, regarding the commencement of benefits.

9.2(3) Duration Requirements.

a. A "permanent" disability is a disability, as defined in the statute, which is expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than twelve months.

b. A "temporary" disability is a disability, as defined in the statute, which is not expected to be permanent, as defined in a, above.

9.3 Appeals.

See Chapter 6 of these Rules.

9.4 Re-examinations.

9.4(1) Frequency. The System may, review the medical records of all beneficiaries who are under age 55 and who retired on account of disability. The purpose of this file review is to determine which beneficiaries should be medically re-examined.

9.4(2) Factors to be Considered. The System shall consider the following factors in determining whether a beneficiary should be re-examined:

- a. The nature of the disability and its prognosis;
- b. Present occupation (if any) and physical activities;
- c. Any evidence presented to or discovered by the System concerning the present disablement; and
- d. Any verified complaints received from members or the general public which potentially impact upon the individual's entitlement to benefits.
- e. Provided, however, the System shall re-examine a beneficiary upon the beneficiary's reasonable request, without regard to the above factors.

9.4(3) Examinations.

a. After determining which individuals are to be re-examined, the System shall provide the appropriate files to the medical board for the scheduling of a medical examination.

b. One or more members of the medical board may perform the examination, or at the election of the medical board, may arrange for the examination to be performed by another licensed physician.

c. Written notice of the date, time and place of the examination shall be mailed to the disabled individual at least ten (10) days prior to the scheduled examination date.

d. Alternate arrangements shall not be made more than two times, unless the disabled individual has good cause for failing to comply. Whether good cause exists shall be determined by the System.

e. Benefits may be suspended indefinitely for failing to comply with the re-examination process unless good cause is found to exist.

f. Following the medical re-examination, the medical board shall submit written conclusions and recommendations to the System regarding whether the beneficiary continues to meet the medical requirements for disability benefits from the System.

g. The System shall make a continuing disability determination in a manner similar to that set forth herein for determining initial entitlement to disability benefits, and shall notify the beneficiary in writing of its determination.

h. Appeal procedures are comparable to those provided herein for initial denials, except that benefits shall be continued during the pendency of a timely filed appeal.

i. The medical board may suggest appropriate medical treatment or rehabilitation, if, in its opinion, the recommended treatment or rehabilitation would likely restore the beneficiary to duty.

9.5 Reporting of Income.

9.5(1) Individuals required to report. All beneficiaries receiving either ordinary or accidental disability benefits are required to report, with the exception of the following:

- (1) Any beneficiary who is age fifty-five (55) or older;
- (2) Any beneficiary who retired under an accidental disability before July 1, 1976.

9.5(2) Reporting procedures.

a. A beneficiary required to report shall provide a copy of his signed Iowa or federal Form 1040 as filed for the prior year, to the System by the deadline specified in section 411.6(7) plus copies of any of the following that were filed for the year in question:

- W-2 Forms (including those for spouse if joint return)
- 1099 Forms (including those for spouse if joint return)
- Schedules C, E, F and SE (including spouse's if joint return)
- Form 2106 and Schedule A (if claiming Employee Business Expense).

If the beneficiary filed the tax return electronically, in lieu of a copy of the signed return, copies of the tax forms referenced in the preceding paragraph, including Form 1040, must be provided, along with the beneficiary's certification that the return was filed.

The beneficiary shall also submit any other documentation requested by the System for purposes of determining the beneficiary's gross wages, including, but not limited to, a signed statement from the beneficiary's employer(s).

If the required information is not provided by the deadline, the System will follow up with the beneficiary by mail, with return service requested. The follow-up letter shall reference the reporting requirement of the Code and shall state that the benefit is suspended beginning with the next benefit payroll.

In lieu of providing copies of the applicable tax forms, the member may provide a signed statement certifying that the member's earnings were sufficient to eliminate any disability benefit otherwise payable to the member.

b. If a beneficiary has an extended due date for the tax return, the deadline for reporting to the System under this rule is 15 calendar days after the extended Federal tax deadline.

c. The System will review the reports, and, with respect to earnings for years prior to 1998, shall reduce the member's monthly disability allowance if the member's earnings exceed the difference between the member's disability allowance and one and one-half times the earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at the time

of retirement on account of disability. The reduction shall be equal to the amount of the excess determined under the preceding sentence, provided, however, the reduction shall not exceed the amount of the benefits paid in the preceding year. The salary scale applicable to the department from which the member retired shall be utilized for this purpose. The employing city or department shall furnish current salary scale information as requested by the System. Earnings shall be presumed to continue at the same level for subsequent years, however, and payments shall be reinstated only upon proof of earnings (or of the cessation thereof) such that disability benefits are again due. Subject to the foregoing, the member's benefit shall be withheld in full until such time as the excess earnings are recovered, unless an agreement is entered for an alternative rate of recovery, in a manner similar to that set forth in Rule 12.6(7) regarding overpayments. Nothing in this rule shall prevent the System from recouping an overpayment of benefits in a year subsequent to the year in which the overpayment occurred. (See Chapter 12 of these rules for overpayment procedures.)

d. With respect to amounts earned on or after January 1, 1998, the System shall reduce the member's monthly disability allowance if the member's earnings exceed the difference between the member's Net Retirement Allowance and one and one-half times the earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at the time of retirement on account of disability. The reduction shall be equal to the amount of the excess determined under the preceding sentence, provided, however, the reduction shall not exceed the amount of the benefits paid or due in the preceding year. The salary scale applicable to the department from which the member retired shall be utilized for this purpose. The employing city or department shall furnish current salary scale information as requested by the System. Subject to the foregoing, the member's benefit shall be withheld in full until such time as the excess earnings are recovered, unless an agreement is entered for an alternative rate of recovery, in a manner similar to that set forth in Rule 12.6(7) regarding overpayments. Nothing in this rule shall prevent the System from recouping an overpayment of benefits in a year subsequent to the year in which the overpayment occurred. (See Chapter 12 of these rules for overpayment procedures.)

e. "Earnings" for purposes of this Rule 9.5 shall be defined as the sum of the beneficiary's net earnings from self-employment for the taxable year and wages for services rendered in such year, all as evidenced by the beneficiary's tax return. Losses from self employment may not be deducted from wages for this purpose. Provided, however, at the beneficiary's request, "earnings" for purposes of the rule shall be reduced by any impairment-related work expenses and/or unreimbursed employee business expenses which were deductible by the beneficiary for federal income tax purposes. The beneficiary's federal income tax return (including related forms and schedules) shall be conclusive evidence of the existence and amount of such deductions. "Wages" for purposes of this Rule means gross wages, rather than the net amount paid after deductions by the employer for items including, but not limited to, taxes, insurance, plans of deferred compensation, 401(k) plans and cafeteria plans under section 125 of the Internal Revenue Code. Combat zone compensation, as described in section 112 of the Internal Revenue Code, is not earnings for purposes of this rule.

f. "Net Retirement Allowance" is defined in § 411.6(7) to mean the amount determined by subtracting the amount paid during the previous calendar year by the beneficiary for health insurance or similar health care coverage for the beneficiary and the beneficiary's dependents from the amount of the member's retirement allowance paid for that year pursuant to the chapter. For purposes of this definition, amounts paid by the beneficiary's spouse for such coverage shall be treated as having been paid by the beneficiary. The beneficiary is responsible for submitting evidence acceptable to the System of the amounts so paid. If the beneficiary fails to submit sufficient evidence of such amounts to the System by the reporting deadline under this Rule, those amounts shall be deemed to be zero for purposes of determining the Net Retirement Allowance. Notwithstanding any other provisions to the contrary,

amounts paid on a pre-tax basis for health insurance or similar health care coverage by either the beneficiary or the beneficiary's spouse shall not be deducted from the member's retirement allowance under this rule. The beneficiary is responsible for submitting evidence and/or certification acceptable to the System regarding whether said amounts were paid on a pre-tax basis. The System has sole discretion to determine whether evidence submitted under this paragraph is sufficient.

g. If the required Form 1040 and supporting forms and schedules, as set forth in this rule 9.5, are not provided by the specified date, benefit checks will be withheld until such time as acceptable evidence of earnings (or lack thereof) is provided. In addition, a late-filing penalty equal to \$100 will be withheld from the next benefit check payable to the beneficiary.

h. The System shall annually provide a notice outlining reporting responsibilities to each beneficiary.

9.5(3) *Public Safety Occupations.*

a. If a beneficiary who is subject to the provisions of this rule 9.5 is employed in a public safety occupation, as that term is defined in Iowa Code section 411.6(7)(c), the beneficiary's disability retirement allowance shall be suspended for the duration of such public safety employment.

b. Subject to the restoration to service provisions of Iowa Code section 411.6(7)(b), if the beneficiary is employed in a public safety occupation that would otherwise constitute membership service, he or she shall not become a member of the System.

9.6 Pre-Existing Conditions.

9.6(1) All members whose membership in the System commences on or after July 1, 1992, shall furnish medical history information on the form prescribed by the System. Completion of such form shall be obtained by the employing department and shall be filed by said department with the System within 30 days of the membership commencement date.

9.6(2) The form provided for in Rule 9.6(1) above, shall contain the member's certification of the accuracy of the form as completed, and a brief explanation of the pre-existing condition exclusion.

9.6(3) Copies of all medical records obtained or prepared in the course of employment physicals of members whose membership commences on or after July 1, 1992, shall be filed with the System by the examining physician or facility. This requirement shall be incorporated into the medical protocols for such examinations.

9.6(4) All records obtained by the System pursuant to this Rule 9.6 shall be maintained in a segregated file and shall be confidential.

9.6(5) A medical condition shall be deemed to have been known on the date that membership commenced if it is reflected in any record or document completed or obtained pursuant to this Rule 9.6, or in any other record or document obtained pursuant to an application for disability benefits from the System, if such record or document existed prior to the membership commencement date.

9.7 Temporary Disability—Notice and Consultation

9.7(1) *Notice.* The employing city shall notify the System of any temporary disability that has

lasted, or is expected to last, more than sixty (60) days.

9.7(2) Medical board review and consultation. Upon notification by a city, the System may, at the System's discretion, refer the matter to the medical board for review and consultation with the member's treating physician during the course of the member's temporary incapacity. "Review and consultation" for purposes of this rule means examination of the member's medical records. The System shall pay for any review and consultation services performed by the medical board pursuant to this rule.

9.8 Ineligibility for Disability Benefits

9.8(1) Determination. A member otherwise eligible to receive a disability retirement benefit will be ineligible if the System determines that any of the grounds for ineligibility set forth in § 411.6(16) apply.

9.8(2) Appeals. See Chapter 6 of these Rules.

9.8(3) Member in good standing.

a. A member otherwise eligible to receive a disability retirement benefit will be ineligible if the System determines that the member in good standing requirement of section 411.6 is not met, unless the requirement is waived by the Board for good cause as permitted by that section.

b. The disability application of a member denied for failure to meet the member in good standing requirement shall be reopened in the event the member prevails in a personnel matter and thereby becomes a member in good standing at the relevant time.

These rules are intended to implement Iowa Code section 411.6.

CHAPTER 10

SURVIVOR BENEFITS

10.1 Scope of Chapter.

"Survivor benefits" under this Chapter include ordinary death benefits under § 411.6(8), accidental death benefits under § 411.6(9) and pensions to the spouse and children of a deceased pensioned member under § 411.6(11).

10.2 Definitions.

The following terms shall have the prescribed meanings for purposes of this Chapter:

(a) "Beneficiary" means a person or persons designated by a member pursuant to § 411.6(14). In the event that the member is subsequently divorced from an individual who was a named beneficiary, the member's beneficiary designation shall be automatically revoked only to the extent that it designated the former spouse. If the member then dies without filing a subsequent written beneficiary designation with the System, death benefits that would have been paid to the former spouse shall be paid as though the member died without a beneficiary designation.

(b) "Child" means a child as defined in § 411.1(7), except where otherwise indicated.

(c) "Dependent parent" means the mother or father of a deceased member who was dependent on the member for more than one-half of his or her financial support at the time of the member's death.

10.3 Survivor benefits payable.

10.3(1) *Deceased Member not receiving 411 benefit at time of death.*

(a) Ordinary death benefit.

(1) Payable to beneficiary designated in writing by the member to the System upon the death of a member in service with at least one year of membership service, or a member not in service who completed at least four years of membership service. If no beneficiary was designated by the member, or if the beneficiary designated by the member predeceased the member, any ordinary death benefit payable shall be paid based on the following order of priority.

- a. to the member's surviving spouse;
- b. to the member's surviving children, including adult children, in equal shares;
- c. to the member's surviving parents, in equal shares;
- d. to the member's estate;
- e. to the member's heirs, if no estate is probated.

(2) Benefit is paid as a lump-sum payment equal to the greater of: (a) 50% of the member's earnable compensation in the year preceding the member's death, if the member was in service, or, if the member was not in service, an amount equal to 50% of the member's earnable compensation in the member's last year of service, or (b) the amount the member would have

been entitled to withdraw if the member had terminated service on the date of his or her death.

(3) In lieu of the lump-sum payment provided in subrule (2) above, qualified beneficiaries may elect to receive a monthly pension equal to 1/12 of 40% of the average final compensation of the member, but not less than 20% of the average monthly earnable compensation paid to an active member of the System. Effective January 1 of each year, the average earnable compensation for purposes of this subrule shall be based on the most recent actuarial report adopted by the Board. If the member was not in service at the time of death, the pension provided in this subsection shall be reduced by 1/22 times the difference between 22 years of service and the number of years of service completed by the member. A "qualified beneficiary" for purposes of this provision is the member's surviving spouse or child.

(4) For a member not in service at the time of death, the pension provided in subrule (3) above is payable commencing with the date the member would have been age 55, except that if there is a surviving child of the member, the pension is payable commencing with the date of the member's death, and shall continue until the child no longer meets the definition of a "child" under Iowa Code section 411.1. The pension shall resume (payable to the surviving spouse or surviving parent, if applicable) effective with the date the member would have reached the age of 55.

(5) For a member in service at the time of death, the pension provided in subrule (3) shall be paid commencing with the member's death. In addition to the pension, there shall be paid for each child of the member a pension equal to 6% of the average monthly earnable compensation paid to an active member of the System. Monthly earnable compensation for purposes of this subrule shall be based on the most recent data available to the system at the time the application is adjudicated. Effective January 1 of each year, the average earnable compensation for purposes of this subrule shall be based on the most recent actuarial report adopted by the Board.

(b) Accidental death benefit.

(1) Payable in lieu of an ordinary death benefit upon a determination that the death of a member in service was accidental, as defined in § 411.6(9).

(2) If the member's designated beneficiary is the member's spouse, child or parent, the accidental death benefit consists of a pension equal to 50% of the average final compensation of the member, payable as follows:

- a. to the member's surviving spouse, if the spouse is the designated beneficiary.
- b. if the member's child or children are the designated beneficiaries, then to the member's surviving child or children, in equal shares. The pension to each child shall terminate when the child no longer meets the definition of "child" in section 411.1.
- c. if the member's surviving dependent parent or parents are the designated beneficiaries, then to the member's surviving parents, in equal shares.

(3) In addition, a pension equal to 6% of the average monthly earnable compensation paid to an active member of the System shall be paid for each child of the member. Effective January 1 of each year, the average earnable compensation for purposes of this subrule shall be based on the most recent actuarial report adopted by the Board.

(4) A person entitled to the pension payable under subrule (2) above may elect to receive an ordinary death benefit in lieu of the accidental death pension.

(5) If the member failed to designate a beneficiary, or if all of the beneficiaries designated by the member predeceased the member, or if the member's beneficiary designation is otherwise ineffective, then a pension equal to 50% of the average final compensation of the member shall be paid in the following order of priority:

- a. to the member's surviving spouse.
- b. to the member's surviving child or children, in equal shares. The pension to each child shall terminate when the child no longer meets the definition of "child" in section 411.1.
- c. to the member's surviving dependent parents, in equal shares.

(6) If there is no beneficiary eligible for the pension provided in subrule (2) above, and there is no individual entitled to the pension provided in subrule (5) above, the death shall be treated as an ordinary death case, and ordinary death benefits shall be payable in lieu of accidental death benefits.

(c) Line of duty death benefit.

(1) Payable to the person or persons entitled to receive an accidental death pension on the member's record. Provided, however, a surviving child of the member who no longer meets the definition of child in section 411.1 shall be eligible to receive the line of duty death benefit.

(2) Payable as a lump sum payment in the amount of \$100,000 (total).

(3) Payable where death is determined by the System to be the result of a traumatic personal injury incurred in the line of duty, subject to the requirements and limitations of § 411.6(15).

(d) Required Beginning Date.

Notwithstanding any provision of this chapter or the statute to the contrary, benefits shall commence no later than the Required Beginning Date, as set forth in section 401(a)(9) of the Internal Revenue Code.

(1) Life expectancy rule. Unless the beneficiary is the surviving spouse, monthly pension benefits shall commence no later than the last day of the calendar year of the year following calendar year of the member's death. If the beneficiary is the surviving spouse, such benefits shall commence no later than last day of the calendar year in which the member would have attained age 70½.

(2) 5-year rule. Benefits paid in the form of a lump sum distribution shall be paid no later than the last day of the calendar year which contains the fifth anniversary of the member's death.

10.3(2) Member receiving 411 benefit at time of death.

(a) Pension to spouse and children of deceased pensioned member.

(1) Payable to the surviving spouse and/or child of a deceased member who was receiving a service retirement benefit, ordinary disability benefit or accidental disability benefit at the time of death.

(2) The pension payable to the spouse of a deceased pensioned member shall equal 50% of the amount to which the deceased member was entitled as of the date of death, provided, however, the spouse's pension as of the date of entitlement shall not be less than an amount equal to 20% of the average earnable compensation paid to an active member of the System. Effective January 1 of each year, the average earnable compensation for purposes of this subrule shall be based on the most recent actuarial report adopted by the Board.

(3) A pension shall be paid for each child of the deceased member in an amount equal to 6% of the average earnable compensation paid to an active member of the System. Effective January 1 of each year, the average earnable compensation for purposes of this subrule shall be based on the most recent actuarial report adopted by the Board.

(4) The pension otherwise payable to the spouse of a deceased pensioned member shall not be paid if such payment would be inconsistent with the optional form of benefit elected by the member pursuant to § 411.6A. Election of an optional form of benefit by a member has no effect on the pension payable to the child of such member.

10.4 Application procedure.

10.4(1) *Filing.* Applications for survivor benefits shall be filed with the System.

10.4(2) *Forms.* Applications shall be on forms provided by the System. Any written request for benefits will be accepted, but subsequent completion of the designated forms shall be required.

10.4(3) *Required Evidence--Applicant.* The applicant shall submit any documents required by this subrule with the application.

(a) Proof of death. The member's death certificate shall be submitted if requested by the System.

(b) Proof of age is required for entitlement to a child's benefit. Proof of the member's age is required if entitlement is to be effective on the date the member would have attained age 55 (e.g. ordinary death benefit payable to a spouse or dependent parent). Proof of age shall be in the form of a birth certificate or church record recorded before age five. If neither of these records exists, the applicant shall submit one or more other documents or records acceptable to the System which verify the date of birth. Records that may be acceptable for this purpose include the following:

- (1) census record;
- (2) military record;
- (3) naturalization record;

- (4) marriage record;
- (5) life insurance policy;
- (6) school record;
- (7) family Bible record;
- (8) delayed birth certificate;
- (9) passport.

(c) Proof of relationship to the deceased member shall be submitted with all applications for a monthly pension.

(1) Acceptable evidence of relationship for a child's benefit or dependent parent's benefit includes the documents listed above for proof of age, provided the requisite relationship is indicated on such document.

(2) An applicant for spouse's benefit must submit evidence of all marriages (including the marriage to the member) and divorces (if any). Preferred evidence of marriage is a marriage certificate. Other evidence of marriage will be accepted only if a marriage certificate does not exist or is otherwise unavailable. A divorce decree shall be submitted as evidence of divorce.

(3) Common law marriage. A common law marriage is a social relationship between a two people that meets all the necessary requisites of a marriage except that it was not solemnized, performed or witnessed by an official authorized by law to perform marriages. The necessary elements of a common law marriage are: (a) a present intent of both parties freely given to become married, (b) a public declaration by the parties or a holding out to the public that they are married to each other, (c) continuous cohabitation together as a married couple, and (d) both parties must be capable of entering into the marriage relationship. No special time limit is necessary to establish a common law marriage. Iowa recognizes all valid common law marriages. An applicant for a spouse's benefit based on an alleged common law marriage shall complete and submit the applicable forms, which shall be provided by the System. Statements from third parties familiar with the relationship may be required to corroborate the statements of the parties to the relationship. In addition, the applicant must submit documentary evidence of the relationship. Records that may be acceptable evidence of the relationship may include tax returns, bank statements, insurance policies, mortgages, leases, hotel registrations and mail addressed to the parties as a married couple. The System will make a written determination regarding the existence of a marital relationship in each case where the applicant's entitlement to benefits is based on such a relationship.

(d) Proof of dependency is required for any application for a dependent parent's benefit. Acceptable evidence of dependency includes a copy of the member's tax return on which the member claimed the applicant as a dependent.

Photocopies of documents may be submitted, subject to the right of the System to require an original or certified copy.

The System shall return all submitted documents to the applicant, after making copies for the System's files.

10.4(4) Required Information--Employer. For a member who was not receiving 411 benefits at the time of death, the city or department which last employed the member shall certify the member's date of hire, last day on the job and last day on the payroll by completing the employer's section of the Survivor Application prior to filing said application with the System. The employing city or department shall also furnish any other relevant information requested by the System.

10.5 Processing of Claim.

10.5(1) Upon receipt of an application for benefits, the System shall review the application and request any additional evidence which is needed to determine the benefits due the applicant. Such additional evidence may include verification of employment with additional participating departments, as disclosed in the Employment Information section of the Retirement Application, or in the Employment History section of the applicant's Membership Form on file with the System. The System shall request such employment information from the appropriate cities or departments. Said cities or departments shall furnish all requested information within five (5) working days of receipt of the request. Upon receipt of the requested evidence, the System shall determine whether the applicant meets all requirements for the benefit applied for.

10.5(2) If any requirement for benefits is not met, the System shall inform the applicant in writing of the denial and its basis.

10.5(3) If all requirements for benefits are met, the System shall send the applicant a notice that benefits are approved, which shall include the effective date and the amount of the monthly benefit awarded.

10.6 Entitlement to Child's Benefits Based on Student Status.

10.6(1) Initial Entitlement. Proof of full-time attendance at an accredited educational institution is required for entitlement to benefits as a child who is between the ages of 18 and 22 and is not disabled. The applicant shall complete the form provided by the System for that purpose and shall forward the form to the educational institution for verification and submission to the System. A student will be determined to be in "full-time attendance" if he or she is so classified by the educational institution, in accordance with its standards and regular practices.

10.6(2) Entitlement During Periods of Nonattendance. The eligibility of a child beneficiary who is a full-time student will continue during a period of nonattendance if all of the following conditions are met:

- (a) The period of nonattendance is 4 consecutive months or less;
- (b) The student shows an intent to resume studies as a full-time student at the end of the period or at the end of the period is a full-time student; and
- (c) The period of nonattendance is not due to expulsion or suspension from the school.

10.6(3) Termination of Entitlement. Entitlement to benefits based on student status shall

terminate effective with the first day of the first month following the earliest of the following:

- (a) the date of attainment of age 22 (i.e. the child's 22nd birthday);
- (b) the date the child is no longer a full-time student; or
- (c) the date during a period of nonattendance on which the child no longer intends to return to full-time attendance.

10.6(4) *Re-entitlement to Benefits Based on Student Status.* If benefits terminate due to failure to maintain full-time attendance and the child subsequently returns to such attendance, the child may reapply for benefits, provided the other requirements for entitlement are still met (e.g. the child is under age 22). The effective date of reentitlement shall be the date on which the child was again in full-time attendance; provided, however, if the actual period of nonattendance was less than 4 months, benefits shall be reinstated retroactive to the prior termination date.

These rules are intended to implement Iowa Code section 411.6.

CHAPTER 11

WITHDRAWAL OF CONTRIBUTIONS

11.1 Scope. Upon termination of service, a member who was in active service on or after July 1, 1990 may withdraw the member's contributions, together with interest thereon.

11.2 Funds Subject to Right of Withdrawal. The right of withdrawal applies to funds attributable to the member's own contributions for the member's entire period of service. Partial withdrawals shall not be permitted.

11.3 Interest. The interest rate shall be simple interest of 5% per year for the member's period of service. No interest shall be payable for any period following the member's termination of service.

11.4 Deemed Waiver. By exercising the right to withdrawal, a member is deemed to have waived all rights for any other benefits from the System for the period of service for which the member's contributions are withdrawn.

11.5 Application for Withdrawal. Members withdrawing contributions under these rules shall submit an application to the System on the form provided by the System. Any written request for withdrawal will be accepted, but subsequent completion of the designated form shall be required. An application for withdrawal from a married member will be approved only if the member's spouse consents in writing to the withdrawal, unless the amount to be withdrawn does not exceed the amount that may be withdrawn without consent pursuant to section 401(a) of the Internal Revenue Code.

11.6 Repurchase of Service Credit for Contributions Previously Withdrawn.

11.6(1) Eligibility. Effective July 1, 2009, an active member of the System who has at least five years of service, as determined pursuant to Iowa Code section 411.4, and who received a refund of contributions for a prior period of service pursuant to Iowa Code section 411.23, may repurchase up to five years of service credit for that period of service under the terms of this Rule.

11.6(2) Service Eligible for Repurchase. An eligible member may elect to purchase a maximum of five years of service credit under this rule. A member may elect to purchase service credit for all or part of period of service for which contributions were withdrawn, subject to the five-year limitation and the limitations of Rule 11.6(5).

11.6(3) Application. A member seeking to purchase service credit under this chapter shall file a written application with the System requesting an actuarial determination of the purchase cost of the requested service credit. Applications shall be on forms provided by the System. The member must submit any documentation reasonably requested by the System.

11.6(4) Determination of Actuarial Cost. The System's actuary shall calculate the actuarial cost of the proposed purchase of service using the same actuarial assumptions and cost method used in preparing the System's annual actuarial valuation pursuant to Iowa Code section 411.8 that are in effect at the time of the calculation. The calculation shall be based on the difference between the present value of the member's future benefits based on the member's years of service already credited and the present value of the member's future benefits with the inclusion of the years of service to be purchased. The System shall then provide a purchase cost quote to the member. Purchase cost quotes shall expire six months after the date of the quote, and the expiration date shall be printed on the quote.

11.6(5) Internal Revenue Code Compliance. Service purchases made under this chapter shall not exceed the annual additions limitation of IRC section 415(c) for the calendar year in which the purchase is made. In addition, the System shall ensure that the requirements of IRC section 415(n) are met. The following procedures shall apply:

(1) If the member's total benefit at retirement passes the IRC section 415(b) dollar limitation test, the System shall pay the total benefit.

(2) If the member's total benefit at retirement fails the IRC section 415(b) dollar limitation test, the System shall reduce the benefit to the extent necessary to comply with the test.

11.6(6) Payment of the Purchase Cost.

(a) Upon receipt of the purchase cost quote, the member may elect in writing to purchase the credit, subject to the limitations of IRC section 415 and Rule 11.6(5). The purchase cost shall be paid by the member by a check payable to the System, and shall be paid prior to the expiration date of the quote. A member who wishes to purchase service credit after the expiration date of the quote must first obtain a new quote. Contributions for purchase of service credit are made on a post-tax basis. A member whose purchase of service is limited by the annual additions limitation under Rule 11.6(5) may purchase additional service in a subsequent calendar year, subject to obtaining a new purchase cost quote and to the limitations of this Chapter.

(b) In lieu of payment of the purchase cost by check payable to the System, the member may elect to purchase service credit by means of a direct rollover or direct transfer contribution, as set forth in Rule 17.4. In the event the amount of the direct rollover or direct transfer is less than the cost to purchase the credit, the balance of the purchase cost shall be paid by the member by a check payable to the System.

11.6(7) Period to be Credited. Service shall be credited to the years in which the subject service was performed. A member who purchases service for a partial period of previously-withdrawn service may select the years to be credited in a manner similar to that provided for military service under Rule 15.7.

11.6(8) Revocation. A member may revoke a service purchase election and receive a refund without interest of the purchase cost paid, provided that the revocation request is in writing and is received by the System no later than 60 days following the date of the receipt of the payment of the purchase cost by the System and prior to the date of the commencement of benefits to the member under section 411.6.

These rules are intended to implement Iowa Code sections 411.10A and 411.23.

CHAPTER 12

PAYMENTS

12.1 Date. Payments for monthly benefits shall be transmitted to allow for delivery of payment on or before the last day of the month for which payment is due. In the event payment is not received, a replacement check may be issued no earlier than ten calendar days following the original payroll date. If payment is received but is lost prior to the cashing of the check, the System may issue a replacement check at any time. The System may require execution of a designated request form prior to issuance of a replacement check. A copy of a cancelled check from a financial institution shall be sufficient proof of the issuance of the check by the System. The System may charge a fee for a replacement check in the amount of the bank charges incurred by the System. In the event the System has already issued a replacement check to the recipient in the previous twelve months, an administrative fee of \$25.00 will be charged in addition to the amount of the bank charges. The applicable fee shall be deducted from the replacement check prior to issuance.

12.2 Address. Checks shall be mailed to the payee's current mailing address. Benefits may also be paid by means of direct deposit or electronic funds transfer to the payee's account in a financial institution, upon the payee's completion of the form designated by the System for this purpose.

Effective January 1, 2005 monthly benefits shall be directly deposited to the payee's account in a financial institution via electronic funds transfer. The System will provide a monthly written notice of the benefit amount and anticipated deposit date to beneficiaries receiving payment via direct deposit. A beneficiary may elect to receive monthly benefits in the form of a paper check, but the System shall charge an administrative fee for processing such checks in the amount of \$15.00 per month. Such fees shall be deducted before the check is issued to the beneficiary. The System may, however, for good cause shown, waive the administrative fee. The fee described in this paragraph shall apply only to individuals whose entitlement commences after December 31, 2004 and those who are already being paid via direct deposit on that date.

12.3 Representative Payment.

12.3(1) Minors. Direct payments shall not be made to a minor child.

a. If benefits are to be paid simultaneously to a Minor Child of a member and the surviving spouse of that member, and the surviving spouse is the parent of the Minor Child, benefits for the child shall be made payable to the surviving spouse on the child's behalf. (E.g.: To Jane Doe for children of John Doe; To Jane Doe for Mary Doe). This procedure shall not be followed, however, if the surviving spouse is known to be incompetent or other circumstances are known to exist which, in the judgment of the Director, should preclude payments for the child being made to the surviving spouse.

b. If a parent of the Minor Child is not concurrently eligible for benefits from the System, benefits shall be paid on the child's behalf to the child's guardian or conservator, if any. (E.g.: To Jane Doe, guardian of Mary Doe). If there is no guardian or conservator, benefits shall be paid under the Iowa Uniform Transfers to Minors Act (Iowa Code Chapter 565B). (E.g.: To Jane Doe as Custodian for Mary Doe under the Iowa Uniform Transfers to Minors Act.)

c. Upon marriage or attainment of age 18, a Minor Child who remains eligible for payment and is legally competent shall be paid directly.

12.3(2) Adults. Adult beneficiaries who are unable to manage their finances due to severe physical or mental limitations shall have a representative payee appointed by the System to receive and manage their benefits.

a. *Appointed representatives.* Payment may be made on behalf of a beneficiary to an individual who has power of attorney or who has been appointed guardian or conservator by the court, without further evidence of incompetence. The representative must file the prescribed payee application form with the System and furnish a copy of his or her appointment papers in order to initiate the representative payment.

b. *No appointed representative.* Where a beneficiary is not capable of managing finances but there has been no power of attorney, guardian or conservator appointed, representative payment may still be made. The prospective payee must file the payee application with the System. The System will contact the beneficiary's doctor or other appropriate source to confirm the incompetence to manage funds. The System will also determine through the application process whether the payee applicant is the appropriate person to be appointed. A spouse or other relative will ordinarily have priority over a unrelated applicant.

c. *Rights and obligations of the representative payee.* A representative payee shall represent the beneficiary in the transaction of the beneficiary's affairs with the System and shall have all of the rights and obligations of the beneficiary. A person serving in the capacity of representative payee must agree to transact all business with the System in a manner that best serves the interests of the beneficiary and to use all payments from the System for the benefit of the beneficiary. Failure to do so may cause the discontinuance of the representative payee relationship and/or result in the required repayment to the System of all or a portion of the benefits received by the representative payee.

12.4 Proration.

12.4(1) General Rule. Benefits payable to all beneficiaries for the first month of entitlement shall be prorated based on the number of days of eligibility during the month in question.

12.4(2) Special Rule for Month of Death. Benefits shall terminate effective with the last day of the month of a beneficiary's death. A pension to the spouse and/or children of a deceased pensioned member shall be effective no earlier than the first day of the first month following the month of the member's death.

12.5 Underpayment. A corrective payment shall be made to a beneficiary who received a payment from the System in an amount less than that to which the beneficiary was entitled. No interest shall be paid on such amounts.

12.6 Overpayment. An overpayment exists whenever a beneficiary receives payment in an amount greater than that which the beneficiary was entitled to receive.

12.6(1) "Recoupment" means the repayment of an overpayment, either by repayment from the beneficiary or by withholding from future payments, or both. All overpayments are subject to recoupment.

12.6(2) Notice. A beneficiary shall be notified by the System when it is determined that an overpayment exists. The notice shall include the amount, date and cause for the overpayment, and the proposed method of recoupment. The System shall provide additional information regarding the computation of the overpayment upon the beneficiary's request.

12.6(3) Request for Review. A beneficiary may request a review of the existence or amount of an overpayment or of the proposed method of recoupment within 30 days of receiving notice thereof. This period may be extended for good cause at the discretion of the Director. The beneficiary may include with his request any evidence relevant to the payment decision. The Director shall review the overpayment decision, taking into account any evidence submitted by the beneficiary, and shall inform the beneficiary in writing of the decision on review.

12.6(4) Waiver. Upon the beneficiary's request, the Director may waive recoupment of all or part of any overpayment if it is determined that:

a. the beneficiary was without fault in the overpayment and recoupment would result in financial hardship

or

b. recoupment would be unfair for any other reason.

The beneficiary shall be deemed to be "without fault" in the overpayment if the overpayment was caused by an error of the System.

A request for waiver of an overpayment shall be made in writing on a form provided for that purpose by the System.

12.6(5) Decisions under subrules 12.6(3) or 12.6(4) may be appealed by the beneficiary within 30 days of the date of the decision. The appeal procedure under Chapter 6 of these rules shall be followed.

12.6(6) Benefits Paid Pending Decision. No recoupment shall be made during the pendency of a request for review, a request for waiver, or the appeal of a decision on either. Recoupment shall begin no later than the month after the month the final overpayment decision is issued.

12.6(7) Rate of Recoupment. The Director may enter into an agreement with an overpaid beneficiary regarding the rate at which the overpayment will be recouped, either by installment payments or by withholding. The rate of recoupment is subject to the discretion of the Director, but overpayments should ordinarily be recouped over a period not to exceed 12 months.

12.6(8) Overpaid individual deceased. If the overpaid individual has died, the overpayment may be recovered as follows:

a. The System may file a claim in the estate, or may withhold benefits due the estate, if any;

b. The System may require distributees of the estate to refund the overpaid amount, to the extent of funds received from the estate;

c. If no estate is probated, the System may require heirs of the decedent to refund the overpaid amount, to the extent of funds received in accordance with the rules of intestate succession;

or

d. If the overpayment cannot be recovered from the decedent's estate, the System may recover the overpayment by withholding benefits from other individuals entitled to benefits based on the earnings of the same member.

12.7 Commencement of Benefits.

12.7(1) General Rule. Benefit payments shall commence upon approval by the System. In the event of an appeal challenging the benefit as awarded, payments shall continue to be made during the pendency of the appeal in the amount originally determined. Any underpayment or overpayment resulting from the decision on appeal will be handled in accordance with this Chapter.

12.7(2) Special Retroactivity Rule for Certain Disability Appeals. This special rule applies in the event: a member is awarded a disability pension and the date of the award is after the last day of the period for which the member was entitled to any pay for accumulated sick leave or vacation. In that event, the benefit shall be paid retroactive to the later of (1) the filing date of the disability application or (2) the first day following the period for which accumulated sick leave or vacation was payable.

12.8 Forgery. Where a forgery of a Municipal Fire and Police Retirement System of Iowa check issued in payment of a benefit or refund is alleged, the payee must complete and sign an affidavit that the endorsement is a forgery and attach a supplemental statement to the forgery affidavit setting forth the facts and circumstances of the alleged forgery. A forgery affidavit shall be signed before a notary public who shall sign and affix a notary seal to the affidavit.

12.9 Readjustment of Pensions.

12.9(1) Survivor's Minimum. The minimum 20% benefit provided under § 411.6(11)(a) is relevant only to the initial benefit computation shall not be recomputed in the escalation process. Escalation of such benefits shall be computed in accordance with the procedures set forth in § 411.6(12).

12.9(2) Delay in Escalation. If escalation is delayed for any reason, any additional amounts due shall be included with the first monthly benefit check payable after the escalation determination is made. Such amounts shall be paid retroactive to the effective date. No interest on such amounts shall be paid.

12.9(3) Suspension Due to Reemployment. In the event a member's benefit is reinstated following a period of reemployment pursuant to section 411.3(3), the benefit shall be recalculated to provide credit for the first July 1 annual readjustment (if any) that occurred during the period of reemployment. The benefit shall not be recalculated to provide credit for subsequent annual readjustments during the same period of reemployment, if any.

12.9(4) Appeals. A member who wishes to appeal a determination of the System related to escalation of the member's benefit (including a determination that no escalation is due) must file the appeal in writing with the System within six months of the date the escalation in question was (or would have been) effective. The provisions of Chapter 6 of these rules otherwise apply with respect to such an appeal.

12.10 Marital Property Orders. The System is not subject to the Qualified Domestic Relations Order (QDRO) provisions of the Internal Revenue Code, but will recognize a valid domestic relations order relating to the division of marital property (including the member's accrued benefit under the chapter) in a dissolution action. Such orders shall hereinafter be referred to as "Marital Property Orders." The System shall review all Marital Property Orders presented and shall inform both the member and the alternate

payee (or their representatives) within a reasonable time whether or not such order is valid. Valid orders shall be effectuated by the System. A Marital Property Order must comply with the following requirements in order to be valid and enforceable:

12.10(1) *Facts required in order:*

- (a) The name and last known mailing address (if any) of the member and the name and mailing address of the alternate payee;
- (b) The dollar amount or percentage of the member's benefits to be paid by the system to the alternate payee. In the alternative, the order may specify a formula, such as the following: one-half of the amount determined by a formula, the numerator of which is the number of years the member contributed to the plan during the marriage, and the denominator of which is the total number of years the member contributed to the plan prior to drawing benefits; and
- (c) The number of payments or period to which such order applies. The period may not exceed the lifetime of the member;
- (d) Extent (if any) to which former spouse is to be treated as the surviving spouse upon the death of the member. See subrule 12.10(3), below.
- (e) Effect in the event of an application by the member to withdraw the member's contributions pursuant to Iowa Code § 411.23.

12.10(2) *Order may not alter benefit*

- (a) May not require the system to provide any type or form of benefit or any option not otherwise provided by the system;
- (b) May not require the system to provide increased benefits over what would otherwise be payable on the member's record, as determined on the basis of actuarial value;
- (c) May not require the system to provide benefits at a time otherwise not permitted under the chapter;
- (d) May not require the payment of benefits to an alternate payee to the extent that they are already required to be paid to another alternate payee under a previous marital property order;
- (e) May not permit the alternate payee to designate a beneficiary. In the event the alternate payee predeceases the member, the alternate payee's portion of the monthly benefit will revert to the member; and
- (f) May not permit payment to the alternate payee following the death of the member, except as provided in C. below.

12.10(3) *Treatment of former spouse as surviving spouse*

- (a) A former spouse shall be treated as a surviving spouse only if specifically designated as such pursuant to section 411.1.

(b) If the former spouse is designated as a surviving spouse, the dissolution of marriage decree shall state the dollar amount or percentage of the total surviving spouse benefit to be paid by the system to the former spouse. The benefit payable to a surviving spouse shall not be recomputed upon the death of any other surviving spouse.

(c) The designation of a former spouse as the surviving spouse prior to the member's retirement precludes the election of an optional retirement benefit under section 411.6A by the member upon retirement.

(d) The designation of a former spouse as the surviving spouse prior to the member's retirement precludes a change in the member's beneficiary designation pursuant to section 411.6(14) to the extent that such change would be inconsistent with the terms of an existing Marital Property Order.

12.10(4) *Deferred Retirement Option Plan ("DROP") Benefits*

(a) DROP benefits paid pursuant to 14.6 after the entry of a Marital Property Order ("MPO") shall be paid to the alternate payee to the extent provided in the MPO.

(b) If the MPO does not address DROP, the DROP distribution, if any, shall be paid to the alternate payee in the same proportion provided in the MPO relating to the member's retirement benefits.

This subrule is intended to implement Iowa Code sections 411.6C and 422.13. This rule is intended to implement the decision of the Iowa Supreme Court in Branstetter v. Bannister, 508 N.W.2d 638 (Iowa 1993) and the provisions of Iowa Code section 411.13, as amended by 1996 Acts of the General Assembly.

12.11 Child Support Orders. The System will recognize child support withholding orders under Chapter 252D. In order to be effective, such orders must include sufficient identifying information, as determined by the System. The member's social security number shall be provided to the System with the order.

12.12 Federal Tax Levies. The System will comply with federal tax levies to the extent mandated by the Internal Revenue Code and the regulations thereunder.

These rules are intended to implement Iowa Code sections 411.6 and 411.13.

CHAPTER 13

PRE-EMPLOYMENT MATTERS

13.1 Medical Protocols. The Board shall promulgate medical protocols, which shall govern the physical examination of applicants for the positions of police officer or firefighter in all cities that are subject to chapter 400 of the Iowa Code. Said protocols may be revised from time to time, at the discretion of the Board.

13.2 Physical Examinations. The physical examination of said applicants shall be conducted by the medical board as directed by the System. Said examinations shall be conducted at sites determined by the System. The costs of the examinations shall be paid by the cities.

13.3 Physical Examination Following Break in Service. A member who returns to service or transfers to another city or department following a break in service of more than one month duration shall be treated as an applicant for purposes of the physical examination provisions of this chapter, Iowa Code section 400.8 and the System's medical protocols.

13.4 Expiration of Medical Examination Report. The medical examination report prepared as a result of a medical examination of an applicant pursuant to the System's medical protocols may be relied on by a city for twelve months after the date of the report, provided, however, if the date of commencement of employment is more than sixty days after the date of the medical examination, the applicant must certify whether he or she has had a material change in medical status since the date of the examination. An updated medical examination and report is required prior to hiring in the event the applicant does not commence employment within the twelve-month period, or if the applicant does not commence employment within the 60 day period and cannot certify that there has been no material change in medical status.

These rules are intended to implement Iowa Code section 400.8.

CHAPTER 14

DEFERRED RETIREMENT OPTION PLAN

14.1 Definitions.

The following terms shall have the prescribed meanings for purposes of this Chapter:

- (a) *DROP benefit* means, for a participant, an amount credited to the participant's account each applicable month equal to the member's applicable percentage multiplied by the member's participant retirement amount.
- (b) *Accumulated DROP benefit* means the amount credited to the member's participant account while participating in DROP.
- (c) *DROP period* means the period beginning with the first day of the month the member commences participation in DROP and ending with the last day of the month in which the member's participation in DROP terminates.
- (d) *Participant retirement amount* means the amount equal to the monthly retirement allowance the eligible member would have received under section 411.6 if the member retired on the date the eligible member commenced participation in the plan, based on earnings through the previous full quarter of earnable compensation earned by the member.

14.2 Applications for Deferred Retirement Option Plan (“DROP”) Benefits.

14.2(1) Filing. Applications for benefits shall be submitted to the employing department by the member and shall be filed with the System by said department within five (5) working days of receipt.

14.2(2) Forms. Applications shall be on forms provided by the System. Any written request for benefits will be accepted, but subsequent completion of the designated forms shall be required.

14.2(3) Required Information--Applicant. The applicant shall submit proof of age with the application. Proof of age may also be required for the applicant's spouse or contingent beneficiary, as directed by the System. Proof of age shall be in the form of a birth certificate or church record recorded before age five. If neither of these records exists, the applicant shall submit one or more other documents or records acceptable to the System that verify the date of birth. Records that may be acceptable for this purpose include the following:

- (1) census record;
- (2) military record;
- (3) naturalization record;
- (4) marriage record;
- (5) life insurance policy;
- (6) school record;

- (7) family Bible record;
- (8) delayed birth certificate;
- (9) passport.

Photocopies of documents may be submitted, subject to the right of the System to require an original or certified copy.

14.2(4) Required Information--Employer. The employing city or department shall certify the member's date of hire by completing the employer's section of the DROP Application prior to filing said application with the System. The employing city or department shall also furnish any other relevant information requested by the System.

14.2(5) Election of DROP Period. The application shall include the following:

- (1) The month the member elects to commence participation in DROP.
- (2) The month the member elects to terminate participation in DROP. The date elected may be three, four or five years after the DROP commencement date. Provided, however, that for the two year period beginning with the first day of first month following the implementation of the DROP, an eligible member between the ages of 62 and 64 may elect a plan termination date that is one or two years after the DROP commencement date.

14.3 Processing of Claim.

14.3(1) Upon receipt of an application for DROP, the System shall review the application and request any additional evidence which is needed to determine the benefits due the applicant. Such additional evidence may include verification of employment with additional participating departments, as disclosed in the Employment Information section of the Retirement Application, or in the Employment History section of the applicant's Membership Form on file with the System. The System shall request such employment information from the appropriate cities or departments. Said cities or departments shall furnish all requested information within five (5) working days of receipt of the request. Upon receipt of the requested evidence, the System shall determine whether the applicant meets all requirements for the benefit applied for.

14.3(2) If any requirement for benefits is not met, the System shall inform the applicant in writing of the denial and its basis.

14.3(3) If all requirements for benefits are met, the System shall send the applicant a notice that benefits are approved, which shall include the effective date and the amount of the DROP benefit awarded.

14.4 Accrual of DROP Benefit. An amount equal to seventy-five percent of the member's DROP benefit shall accrue to the benefit of the member for each month of participation in the plan. An amount equal to twenty-five percent of the member's accumulated DROP benefit shall accrue to the benefit of the member upon the occurrence of any of the following events: (1) termination of participation in the plan on the selected plan termination date; (2) termination of participation prior to the selected plan termination date as the result of entitlement to a disability benefit under either section 411.6(3) or section 411.6(5); or (3) death prior to the selected plan termination date.

This rule is intended to implement Iowa Code section 411.6C(2)(c).

14.5 Termination of Participation. Participation in DROP shall terminate upon the member's termination of membership service. The employing city or department shall certify the date of the member's termination of membership service.

14.6 Payment of DROP Benefit. The member's accrued DROP benefit shall be paid upon termination of the member's participation. The DROP benefit shall be paid in the form of a lump sum distribution unless the member elects a rollover to an eligible retirement plan as defined in section 411.6B.

14.7 Payment of Participant Retirement Amount. Upon termination of participation in DROP, the member shall be deemed to be retired under the System. Payment of a service retirement allowance shall commence and shall be in the amount of the Participant's Retirement Amount unless the member elects an optional form of distribution pursuant to section 411.6A and Rule 8.1(5).

14.8 Appeals.

See Chapter 6 of these Rules.

CHAPTER 15

MILITARY SERVICE

15.1 Eligibility. Effective July 1, 2008, an active member of the System who has at least five years of service, as determined pursuant to Iowa Code section 411.4, may purchase service credit for military service under the terms of this Chapter.

15.2 Service Eligible for Purchase. An eligible member may elect to purchase up to five years of service credit for military service that is not already required to be recognized by the System under section 414(u) of the Internal Revenue Code (“IRC”) or the federal Uniformed Services Employment and Reemployment Rights Act (“USERRA”). A member may elect to purchase service credit for all or part of his or her eligible service, subject to the five-year limitation and the limitations of Rule 15.5. “Military service” for purposes of this Chapter means active duty service in any of the following: (1) the United States Army, Navy, Marine Corps, Air Force, or Coast Guard; (2) the Reserves of any of the preceding branches of service; (3) the Army National Guard or Air National Guard; (4) the Commissioned Corps of the Public Health Service; and (5) any other category of persons designated by the President in time of war or emergency.

15.3 Application. A member seeking to purchase service credit under this chapter shall file a written application with the System requesting an actuarial determination of the purchase cost of the requested service credit. Applications shall be on forms provided by the System. The member must provide the following information:

- (1) Proof of age, as described in Rule 8.1(3).
- (2) Dates of covered service under the System and name of employing city (or cities).
- (3) Periods of military service for which credit is requested.
- (4) Proof of applicable military service. Records that may be acceptable for this purpose include the member’s DD 214, discharge papers or other records as determined by the System.
- (5) Any other documentation reasonably requested by the System.

15.4 Determination of Actuarial Cost. The System’s actuary shall calculate the actuarial cost of the proposed purchase of service using the same actuarial assumptions and cost method used in preparing the System’s annual actuarial valuation pursuant to Iowa Code section 411.8 that are in effect at the time of the calculation. The calculation shall be based on the difference between the present value of the member’s future benefits based on the member’s actual years of service and the present value of the member’s future benefits based on the member’s actual years of service plus the years of service to be purchased. The System shall then provide a purchase cost quote to the member. Purchase cost quotes shall expire six months after the date of the quote, and the expiration date shall be printed on the quote.

15.5 Internal Revenue Code Compliance. Service purchases made under this chapter shall not exceed the annual additions limitation of IRC section 415(c) for the calendar year in which the purchase is made. In addition, the System shall ensure that the requirements of IRC section 415(n) are met. The following procedures shall apply:

15.5(1) If the member's total benefit at retirement passes the IRC section 415(b) dollar limitation test, the System shall pay the total benefit.

15.5(2) If the member's total benefit at retirement fails the IRC section 415(b) dollar limitation test, the System shall reduce the benefit to the extent necessary to comply with the test.

15.6 Payment of the Purchase Cost.

(a) Upon receipt of the purchase cost quote, the member may elect in writing to purchase the credit, subject to the limitations of IRC section 415 and Rule 15.5. The purchase cost shall be paid by the member by a check payable to the System, and shall be paid prior to the expiration date of the quote. A member who wishes to purchase service credit after the expiration date of the quote must first obtain a new quote. Contributions for purchase of service credit are made on a post-tax basis. A member whose purchase of service is limited by the annual additions limitation under Rule 15.5 may purchase additional service in a subsequent calendar year, subject to obtaining a new purchase cost quote and to the limitations of this Chapter.

(b) In lieu of payment of the purchase cost by check payable to the System, the member may elect to purchase service credit by means of a direct rollover or direct transfer contribution, as set forth in Rule 17.4. In the event the amount of the direct rollover or direct transfer is less than the cost to purchase the credit, the balance of the purchase cost shall be paid by the member by a check payable to the System.

15.7 Period to be Credited. Service shall be credited to the years in which the subject military service was performed. A member who purchases service for a partial period of military service may select the years to be credited. For example, a member who performed eligible military service from 1995 through 1999 may elect to purchase service credit for one or more of those years. Service shall be credited in a manner consistent with that set forth in section 411.4.

15.8 Revocation. A member may revoke a service purchase election and receive a refund without interest of the purchase cost paid, provided that the revocation request is in writing and is received by the System no later than 60 days following the date of the receipt of the payment of the purchase cost by the System and prior to the date of the commencement of benefits to the member under section 411.6.

15.9 Withdrawal of Contributions. A withdrawal of contributions under section 411.23(1) shall include the amounts the member paid for service purchased under section 411.10, if any. Interest shall be calculated on such amounts from the date of the purchase, using the same rate applicable to member contributions made pursuant to section 411.8.

15.10 Death of Member in Military Service. Effective for deaths occurring on or after January 1, 2007, if a member dies while performing qualified military service, as defined under pursuant to IRC section 414(u), the death shall be treated by the System as an accidental death and benefits shall be payable in accordance with section 411.6(9).

15.11 Disability of Member in Military Service. Effective for applications filed on or after July 1, 2013, if a member became disabled while performing qualified military service, as defined under pursuant to IRC section 414(u), the member shall be treated as a member in good standing, whether or not the member returns to membership service, and shall be permitted to file an application for an ordinary disability retirement pension.

15.12 Differential Wage Payments. Effective January 1, 2009, if a member who is absent from 411 service while performing military service receives differential wage payments, as defined in IRC section 3401(h)(2) from a participating city, the differential wage payment is treated as earnable compensation and the individual is treated as an active member of the System while receiving said payments. Nothing in this rule or in section 411.9(3) requires a city to make differential wage payments.

15.13 Appeals. See Chapter 6 of these Rules.

These rules are intended to implement Iowa Code sections 411.9 (1A), 411.9 (1B) and 411.10.

CHAPTER 16

ACTUARIAL ASSUMPTIONS AND METHODS

16.1 Actuarial Method. Effective for the fiscal year beginning July 1, 2011, the actuary shall perform the annual actuarial valuation of the system using the entry-age normal method and an amortization period equal to 25 years.

These rules are intended to implement Iowa Code sections 411.5, 411.8 and 97D.5.

CHAPTER 17

ROLLOVERS

17.1 Rollovers of Members' Accounts. Pursuant to the provisions of § 411.6B and the Internal Revenue Code, the System shall give advance notice to the distributee of an eligible rollover distribution of the right to elect a direct rollover to an eligible retirement plan, and of the mandatory withholding requirement where a direct rollover is not elected. Election of a direct rollover shall be made by completion of the form provided by the System. The System may require the distributee to provide written verification of the status of the proposed recipient plan.

17.2 Automatic Rollovers.

a. Pursuant to the provisions of § 411.23 and the Internal Revenue Code, the System shall refund a member's contributions if the following conditions are met: (1) the member was a member of the System for less than four years; (2) the member terminated service four or more years prior to the date of the refund; and (3) the amount to be refunded does not exceed \$5,000 (indexed).

b. In the event such a refund is made without the member's consent or election and exceeds \$1,000, the System shall pay the distribution in the form of a direct rollover to an individual retirement plan (IRA) designated by the System.

17.3 Rollovers by Nonspouse Beneficiaries Effective January 1, 2010, a designated beneficiary who is not the surviving spouse of the member may roll over all or part of an eligible rollover distribution to an individual retirement account established by the beneficiary for the purpose of receiving the nonspouse beneficiary rollover pursuant to section 402(c)(11) of the Internal Revenue Code and the guidance thereunder.

17.4 Acceptance of Rollovers for Purchase of Service Credit

17.4(1) General. A member may, to the extent permitted by the Internal Revenue Service, purchase any service credit permitted under Iowa Code sections 411.10 or 411.10A by means of a direct rollover or direct transfer, consistent with the applicable provisions of the Internal Revenue Code. Purchases of service credit by means of a direct rollover under this section shall not exceed the amounts permitted under section 415(n) of the Internal Revenue Code and Iowa Code sections 411.10 and 411.10A as determined by the System. Purchase of service by means of a rollover under this Rule is in lieu of the payment provisions of Rule 11.6(6), regarding repurchase of service credit for contributions previous withdrawn, and of Rule 15.6, regarding purchase of service credit for military service.

17.4(2) Direct Rollovers. A member may purchase service credit as authorized by this Rule through a direct rollover to the System of an eligible rollover distribution from an eligible retirement plan as permitted by the Internal Revenue Service under the Internal Revenue Code. The amount of the direct rollover into the system may not exceed the cost of the service purchased by a member.

17.4(3) Direct Transfers. A member may also purchase any service credit authorized by this Rule by means of a direct transfer of either pretax amounts or after-tax contributions, from an annuity contract under section 403(b) of the Internal Revenue Code or an eligible plan described in section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. A direct transfer is a trustee-to-trustee transfer to the System of contributions made to annuity contracts under section 403(b) or eligible

governmental plans under section 457(b) for purposes of purchasing service credit in the retirement system.

17.4(4) Definitions.

(a) “*Eligible retirement plan*” has the meaning set forth in Iowa Code section 411.6B.

(b) “*Eligible rollover distribution*” means a distribution of all or any part of a participant’s account in an eligible retirement plan, except that an eligible rollover distribution does not include any of the following:

(1) A distribution that is one of a series of substantially equal periodic payments, which occur annually or more frequently, 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 made for a specified period of ten years or more.

(2) A distribution to the extent that the distribution is required pursuant to section 401(a)(9) of the Internal Revenue Code.

(3) Any amounts that are not permitted to be treated as eligible rollover distributions by the Internal Revenue Service.

These rules are intended to implement Iowa Code section 411.6B.

ADMINISTRATIVE RULES
OF THE
MUNICIPAL FIRE AND POLICE RETIREMENT SYSTEM OF IOWA

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CHAPTER 1

ORGANIZATION AND OPERATION

1.1 Definitions. The terms used in these Rules have the meanings set forth in Chapter 3 hereof.

1.2 Purpose of rules. This Chapter describes the organization and operation of the System created pursuant to Chapter 411 of the Code of Iowa.

1.3 Waiver. The purpose of these rules is to facilitate the transaction of business before the System and to promote the just resolution of controversies. Consistent with this purpose, the application of any of these rules, unless otherwise provided by law, may be waived by the System to prevent undue hardship to a party to a proceeding.

1.4 Organization. The System consists of the Board and the office of the Director.

1.4(1) Board. The Board consists of nine voting and four non-voting members. The Board is the policy-making body for the System.

1.4(2) Board responsibilities. The Board has the following responsibilities:

(a) The Board has general responsibility for the establishment and proper operation of the System.

(b) The Board is responsible for effecting the transition from the individual city systems to the statewide system. To accomplish this transaction, the Board shall adopt a transition plan and other appropriate transition documents it deems necessary. The transition plan, or other transition documents, shall include provisions to facilitate continuity in the transition, and a recommendation for equitable process for determining earnable compensation changes.

(c) The Board shall designate two persons who will sign the Director's vouchers for payments from the fire and police retirement fund.

(d) The Board may select master custodian banks to provide custody of assets of the retirement system.

(e) The Board shall engage actuarial and other services as are required to transact System business, and approve compensation for services.

(f) The Board may designate a legal advisor to represent the system.

(g) The Board must designate a single medical provider network as the medical board for the System.

(h) The eight appointed voting members of the Board shall elect the ninth voting board member.

(i) The Board shall adopt rules for the establishment and administration of the System and the fund, and for the transaction of its business.

(j) The Board shall keep data necessary for actuarial valuation of the fund, and for checking the experience of the System.

(k) The Board shall keep a record of all Board proceedings. The record will be open to public inspection.

(l) The Board shall submit an annual report to the Governor, the General Assembly and the city council of each participating city concerning the financial condition of the System, its current and future liabilities, and its actuarial valuation. Effective with the fiscal year beginning July 1, 2008, pursuant to Iowa Code section 97D.5, the annual report shall include the following additional information, determined using the entry age normal actuarial cost method based on a level percent of payroll basis with a thirty-year amortization period for unfunded liabilities: (1) the actuarially required contribution rate and (2) the normal cost rate.

(m) The Board is responsible for the management of the fund. The Board shall establish the fund's investment policy on an annual basis. Fund assets are then invested by the Director in accordance with the investment policy.

(n) The Board shall ensure that the contributions required under Iowa Code Section 411.8 are certified to the proper city official.

(o) The Board shall establish the System's budget.

(p) The Board must establish the rate of interest that will accrue on withdrawn contributions.

(q) The Board shall submit a certified audit report prepared by a certified public accountant to the auditor of state annually.

(r) The Board shall adopt an actuarial method, actuarial assumptions, including an interest rate assumption, and mortality and other tables necessary to conduct the annual actuarial valuation of the system. The Board shall do so based on the actuarial investigation to be conducted by the system's actuary once in each five-year period.

1.4(3) *The Office of the Director.* The Director is appointed by the Board and serves at its pleasure. The Director is the Chief Operating Officer and Administrator of the System. The Director is also the custodian of Board records. The Director is the custodian of the fire and police retirement fund. The Director invests system funds in accordance with the investment policy established by the Board. The Director employs and directs the staff of the System, executes contracts on behalf of the System and makes expenditures, reports, and investigations as necessary to carry out the powers and duties created in Chapter 411. The Director shall establish and maintain internal policy manuals on behalf of the System.

1.4(4) *Committees.* The Chair of the Board may designate or establish committees to carry out the duties of the Board. The Chair of the Board appoints the members of the Committee.

1.4(5) *Office location and hours.* The office of the System is at 7155 Lake Drive, Suite 201, West Des Moines, Iowa 50266; telephone (515) 254-9200 or (888) 254-9200. Offices are closed on Saturday and Sunday and on certain national holidays.

1.5 Meetings, Agenda, Communication.

1.5(1) *Time of meetings.* The Board shall meet at least quarterly. The Chair may call special meetings.

1.5(2) Place and conduct of meetings. Meetings are generally held at a location designated by the Director. Meetings will be conducted in accordance with Robert's Rules of Order, unless otherwise provided in these rules.

1.5(3) Notification of meetings. The Director shall provide public notice of all meeting dates, locations and a tentative agenda. Notice of the meetings is given by posting the tentative agenda and by distribution to any person who has filed a request for notice with the System. The agenda lists the specific time, date, place and topics to be discussed at the meeting.

1.5(4) Posting of agenda. The tentative agenda for each meeting will be posted at the System's offices, normally at least seven (7) days prior to the meeting. The agenda will be posted at least twenty-four (24) hours prior to the meeting, unless for good cause such notice is impossible or impracticable, in which case as much notice as is reasonably possible is given. When it is determined that an emergency meeting is required, the nature of the emergency shall be stated in the minutes.

1.5(5) Distribution of agenda. The agenda will be mailed to anyone who files a request with the Director. The request should state whether the agenda is for a particular meeting or all meetings of the Board.

1.5(6) Amendment to agenda. Any amendment to the agenda after posting and distribution under subrules 1.5(4) and 1.5(5) will be posted, but will not be mailed. The amended agenda will be posted at least 24 hours prior to the meeting, unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible will be given. The Board may adopt amendments to the agenda at the meeting only if good cause exists requiring expeditious discussion or action on such matters. The reason and circumstances necessitating such agenda amendments, or those given less than 24 hours' notice by posting, shall be stated in the minutes of the meeting.

1.5(7) Electronic meetings. The Board may conduct a meeting by electronic means as provided for in Iowa Code Section 21.8.

1.5(8) Communications. All communications to the Board shall be addressed to the Director of the System at 7155 Lake Drive, Suite 201, West Des Moines, Iowa 50266; telephone (515) 254-9200 or (888) 254-9200. Other papers required to be filed with the Board shall be filed in the office of the Director, within the time limit, if any, for such filing. Unless otherwise specifically provided, all communications and documents are officially filed upon receipt at the office of the Director.

1.6 Attendance and Participation by the Public.

1.6(1) Attendance. All meetings are open to the public. The Board may exclude the public from portions of the meeting in accordance with Iowa Code Section 21.5.

1.6(2) Items on agenda. Presentations to the Board may be made at the discretion of the Chair.

1.6(3) Items not on agenda. Because Iowa Code Section 21.4 requires the Board to give notice of its agenda, the Board discourages persons from raising matters not on the agenda. Persons who wish to address the Board on a matter not on the agenda should file a request with the Director.

1.6(4) Meeting decorum. The Chair may limit participation as necessary for the orderly conduct of agency business.

1.6(5) Use of cameras and recording devices. Cameras and recording devices may be used dur-

ing meetings provided they do not interfere with the orderly conduct of the meeting. The Chair may order the use of these devices discontinued if they cause interference and may exclude those persons who fail to comply with that order.

1.7 Quorum and Voting Requirement.

1.7(1) *Quorum.* A majority of the voting members of the Board constitutes a quorum for the transaction of business.

1.7(2) *Voting.* The concurrence of a majority of the voting members of the Board is required to determine any matter before the Board for action, except for a vote to close a meeting which requires the concurrence of two-thirds of the members of the Board present.

1.8 Minutes, Recording of Meetings.

1.8(1) *Minutes.* The Director shall keep minutes of each meeting. Minutes shall be reviewed and approved by the Board, and retained permanently by the Director at the business office.

1.8(2) *Recordings.* The Director shall record by mechanized means each meeting, and shall retain the recording for at least one (1) year. Recordings of closed sessions shall be sealed and retained at least one year.

1.9 Officer and Duties.

1.9(1) *Officer.* The Officer of the Board is the Chair.

1.9(2) *Duties.* The Chair shall preside at meetings and shall exercise the powers conferred upon the Chair.

1.10 Election and Succession of Chair.

1.10(1) *The Chair.*

a. Once elected, the Chair shall serve until the earlier of the end of the Chair's current term on the Board or until removed from office for stated cause by a majority vote of the Board. An election will be held upon the expiration of the term or the removal of the then-serving Chair. The Chair may serve for multiple terms of service on the Board.

b. Effective for terms beginning on or after May 1, 2013, the Board shall elect a Chair from among its own members once every two years. The term of the Chair shall begin on May 1 and shall end on April 30 of the second subsequent year. The Chair shall serve until the earlier of that date, the date his or her term on the Board expires, or until removed from office for stated cause by a majority vote of the Board. An election will be held at the last Board meeting prior to the expiration of the term, or upon the removal of the then-serving Chair. The Chair may serve for multiple terms of service on the Board.

1.10(2) *The Vice-Chair.*

a. The Vice-Chair shall preside in the absence of the Chair. Once elected, the Vice-Chair shall serve until the earlier of the end of the Vice-Chair's current term on the Board or until removed from office for stated cause by a majority vote of the Board. An election will be held upon the expiration of the

term or the removal of the then-serving Vice-Chair. The Vice-Chair may serve for multiple terms of service on the Board.

b. Effective for terms beginning on or after May 1, 2013, the Board shall elect a Vice Chair from among its own members once every two years. The term of the Vice Chair shall begin on May 1 and shall end on April 30 of the second subsequent year. The Vice Chair shall serve until the earlier of that date, the date his or her term on the Board expires, or until removed from office for stated cause by a majority vote of the Board. An election will be held at the last Board meeting prior to the expiration of the term, or upon the removal of the then-serving Vice Chair. The Vice Chair may serve for multiple terms of service on the Board.

1.11 Appointment of the Citizen Member.

Pursuant to section 411.36(d), the citizen member of the Board shall be appointed by the other members of the Board. Upon the existence of a vacancy in the position of citizen member or at the expiration of the incumbent's term, the Board shall make said appointment following consultation with the governing bodies of the Iowa Association of Professional Firefighters, the Iowa State Police Association and the Iowa League of Cities, and posting of the vacancy on the System's website. The Board may, in its discretion, use additional means to provide notice of such a vacancy to interested individuals. An incumbent citizen member may be reappointed by the Board.

1.12 Gender Balance.

The Board as a whole shall maintain gender balance in a manner consistent with Iowa Code section 69.16A.

1.13 Forms and Information. Persons wishing to obtain forms or information about benefits under the System shall address requests to:

Executive Director
Municipal Fire & Police Retirement System of Iowa
7155 Lake Drive, Suite 201
West Des Moines, Iowa 50266

These rules are intended to implement Iowa Code sections 411.5, 411.36 and 411.37.

CHAPTER 2

RECORDS

2.1 Definitions. As used in this chapter:

2.1(1) *Confidential record* in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the system is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

2.1(2) *Open record* in these rules means a record other than a confidential record.

2.1(3) *Record* in these rules means the whole or a part of a "public record" as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the system.

2.1(4) *Personal information* means information pertaining to or about an individual in a record which identifies the individual and which is contained in a record system. The name and city affiliation of a member are not "personal information" for purposes of this chapter.

2.1(5) *Record system* in these rules means any group of records under the control of the system from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol or other unique retriever assigned to an individual.

2.2 Request for access to records.

2.2(1) *Location of record.* A request for access to a record should be directed to the director.

2.2(2) *Office Records.* Open records shall be made available during all customary office hours.

2.2(3) *Request for access.* Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

2.2(4) *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the system shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The system shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The system may deny access to the record by members of the public only on the grounds that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the

public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 2.3 and other applicable provisions of law.

2.2(5) Security of record. No person may, without permission from the system, search or remove any record from system files. Examination and copying of system records shall be supervised by the system or a designee of the system. Records shall be protected from damage and disorganization.

2.2(6) Copying. A reasonable number of copies of an open record may be made in the system's office.

2.2(7) Fees.

a. *When charged.* The system may charge fees in connection with the examination or copying of records. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. *Copying and postage costs.* Price schedules for published materials and for photocopies of records supplied by the system shall be prominently posted in system offices. Copies of records may be made by or for members of the public on photocopy machines at cost as determined and posted in system offices by the system. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. *Supervisory fee.* An hourly fee may be charged for actual expenses in supervising the examination and copying of requested records when the supervision time required is in excess of 15 minutes. The system shall prominently post the hourly fees to be charged for supervision of records during examination and copying.

2.3 Confidentiality of Records.

2.3(1) *Personal information.* Records established and maintained by the system containing personal information are not public records under Iowa Code chapter 22. Only the name and city affiliation of the individual who is the subject of these records can be disclosed.

2.3(2) *Investment information.* Records containing financial or commercial information that relates to the investment of system funds are not public records under Iowa Code chapter 22 if disclosure of such information could result in a loss to the system or to the provider of the information.

2.4 Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the system may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the system to release specified confidential records under certain circumstances or to particular persons. In requesting the system to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 2.2.

2.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity to secure access to the record.

2.4(2) Requests. The system may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

2.4(3) Notice to subject of record and opportunity to obtain injunction. After the system receives a request for access to a confidential record, and before the system releases such a record, the system may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent that such a delay is practicable and in the public interest, the system may give the subject of the confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

2.4(4) Request denied. When the system denies a request for access to a confidential record, the system shall promptly notify the requester. If the requester indicates to the system that a written notification of the denial is desired, the system shall promptly provide such a notification that is signed by the system and that includes:

- a. The name and title or position of the system responsible for the denial; and
- b. A citation to the provision of law vesting authority in the system to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

2.4(5) Request granted. When the system grants a request for access to a confidential record to a particular person, the system shall notify that person and indicate any lawful restrictions imposed by the system on that person's examination and copying of the record.

2.5 Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and shall identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identify. Appearance of counsel before the system on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the system to disclose records about that person to the person's attorney.

2.6 Disclosure without the consent of the subject.

2.6(1) Open records are routinely disclosed without the consent of the subject.

2.6(2) If the system is prohibited from disclosing part of a document from inspection, that part will not be disclosed and the remainder will be made available for inspection.

2.6(3) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a. For a routine use as defined in rule 2.7.
- b. To a recipient who has provided the system with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that, the record is transferred in a form that does not identify the subject.

- c. To a government system or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government system or instrumentality has submitted a written request to the system specifying the record desired and the law enforcement activity for which the record is sought.
- d. To a person pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.
- e. Disclosures in the course of employee disciplinary proceedings.
- f. In response to a court order or subpoena.

2.7 Routine use.

2.7(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

2.7(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

- a. Disclosure to the officers, employees, and agents of the system who have a need for the record in the performance of their duties. The system may, upon request of any officer or employee, or on the system's own initiative, determine what constitutes legitimate need to use confidential records.
- b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c. Disclosure to the public upon request. The system may upon request, or on the system's own initiative, determine what constitutes legitimate need to use a record.
- d. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

2.8 Applicability. This chapter does not:

- 1. Require the system to index or retrieve records which contain information about persons by that person's name or other personal identifier.
- 2. Make available to the general public records, which would otherwise not be available under the public records law, Iowa Code chapter 22.
- 3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the system which are governed by the rules of another entity.
- 4. Make available records compiled by the system in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject

person or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the system.

These rules are intended to implement Iowa Code section 411.5.

CHAPTER 3

DEFINITIONS AND CONSTRUCTION

3.1 Definitions

Wherever the following terms are used in these Rules, they shall have the meaning specified below, unless the context clearly requires a different meaning:

3.1(1) *Average Final Compensation* means the average Earnable Compensation of the member during the three years of service the member earned the member's highest salary as a police officer or fire fighter, or if the member had less than three years of service, then the average Earnable Compensation of the member's entire period of service. For years prior to January 1, 2003, a "year of service" for purposes of this definition is to be determined based on payroll periods. Provided, however, if the period so determined contains less than 365 days (or 366 days if such period encompasses February 29) days shall be added to the beginning or the end of such period so that the resulting "year of service" constitutes 365 (or 366, if applicable) consecutive days. The last payroll period shall constitute a complete payroll period for purposes of counting days whether or not the member was employed on the last day of that pay period.

Effective January 1, 2003, a year of service for purposes of this definition is to be determined based on calendar quarters. The high three years of service need not be consecutive, and shall not be overlapping.

3.1(2) *Board* means the Board of Trustees of the Municipal Fire and Police Retirement System of Iowa.

3.1(3) *Director* means the Executive Director of the police and fire retirement system created under Chapter 411 of the Iowa Code.

3.1(4) *Fund* means the police and fire retirement fund created under Chapter 411 of the Iowa Code.

3.1(5) *Earnable compensation or compensation earnable* means all compensation which a member receives for services rendered as a police officer or fire fighter in the course of employment with a participating city, except for the following specified categories of compensation, which are not included:

(a) Overtime. Pay for services in excess of forty hours in any week for police officers, or fifty-six hours in any week for fire fighters.

(b) Meal or travel expenses. Any advance or reimbursement for expenditures for meals or travel.

(c) Uniform allowances. Any payment toward the cost of purchase, upkeep or replacement of uniforms.

(d) Fringe benefits. Includes, but is not limited to, employer-paid premiums for all types of insurance, other health or dental benefits, recreational facilities, tuition reimbursements, moving expense reimbursement and any benefit provided in-kind rather than in cash. Also includes cash payments in lieu of health insurance coverage and any other benefit classified as a fringe benefit by the Internal Revenue Service and not otherwise addressed under the statute or these rules.

(e) Severance pay. Any payment beyond the wages the member is otherwise entitled to receive which is paid due to the member's termination of employment.

(f) Accumulated sick or vacation pay. Any amount received on or after the member's date of retirement or termination of employment as payment for unused accrued sick leave or unused accrued vacation. Payments in the nature of sick leave or vacation pay are subject to this rule regardless of the terminology used to describe them. In the event the member terminates employment with a participating city and is subsequently employed by another participating city, the date of termination of employment with the first city shall be deemed to be no later than the date of commencement of employment with the second city.

(g) Special Rule for Deferred Compensation. Contributions to a plan of deferred compensation are included in Earnable Compensation to the extent that the member has the option to receive such amounts as wages. Amounts a member has elected to voluntarily defer from wages to a plan of deferred compensation are thus included in Earnable Compensation.

3.1(6) *Minor child* means a Child (as defined in § 411.1(7)) who is unmarried and under the age of eighteen.

3.1(7) *System* means the Municipal Fire and Police Retirement System of Iowa ("MFPSI") established under Iowa Code Chapter 411.

3.1(8) *"Vested member"* means a member who has become eligible to receive monthly retirement benefits upon the member's retirement as the result of either age or years of service. A member must meet one of the following requirements to be vested:

- (a) Complete at least four years of service or
- (b) Attain the age of fifty-five while performing membership service.

A vested member who achieved vested status based on attainment of age 55 who has less than four years of service shall, upon termination of service and application to the System, receive a service retirement allowance equal to 1/22 of the retirement allowance the member would have received based on 22 years of service, multiplied by the number of years of service credited to the member.

3.2 *Construction.* In the construction of these rules, the masculine shall include the feminine or neuter and the singular, the plural, or vice versa, in all cases where such meanings would be appropriate.

These rules are intended to implement Iowa Code section 411.1.

CHAPTER 4

RULEMAKING

4.1 Commencing rulemaking. The System shall give notice of its intention to adopt, amend or repeal a rule by publishing the text of the proposed change, or a summary of the issues and subject matter to be considered and the time, place and manner in which interested persons may comment upon the proposal, in a mailing to all interested persons and organizations on its mailing list. In the event the text is too voluminous for publication, the notification shall state the subject matter of the proposed rule, a summary of changes from the existing rule, if any, and the location and telephone number where interested persons may obtain the actual text. The notice shall also include the name and address of a person to whom interested persons may present written views and arguments, and the deadline by which these submissions may be submitted. This person shall be responsible for the review and summarization of all submissions.

4.2 Oral presentations. When requested in writing by twenty-five (25) interested persons or by an association having not less than twenty-five (25) members, an opportunity for an oral presentation shall be scheduled. The request must be presented at the System's office within twenty days of the publication of the Notice of Intended Action and must identify the proposed rule subject to the request by subject matter and date of publication.

4.2(1) Notice. When so requested under the provisions of rule 4.1 or at the discretion of the Board, the System shall schedule an opportunity for oral presentations by publishing a notice of the opportunity in the same manner provided in rule 4.1, above. The notice shall refer to the subject matter and publication date of the proposed rule, and shall give the public not less than twenty (20) days notice of the date, time and place of the meeting. Additional notice shall be mailed to all persons who have requested the opportunity for an oral presentation.

4.2(2) Conduct of meetings. The Director or his designee shall serve as the presiding officer at the meetings. At the commencement of the meeting the presiding officer shall request any person wishing to make an oral presentation to advise the presiding officer of his name, address and affiliation.

a. At the commencement of the meeting the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority and the reasons for the proposed rule. When necessary in the interests of time, the presiding officer may limit individual presentations as necessary to ensure that all persons who have requested an opportunity to speak may do so.

b. To facilitate the exchange of information, if time permits, the presiding officer may open the floor to questions or general discussion.

c. Persons who disrupt or obstruct the meeting either by their behavior or by the use of a camera or recording device shall be requested to cease. The presiding officer shall exclude any person who fails to comply with the request.

d. The presiding officer shall, when practical, receive all relevant physical and documentary evidence presented by witnesses. All evidence becomes the property of the System.

e. A record shall be prepared consisting of the minutes or verbatim record and all evidence submitted. The presiding officer shall then prepare a summary of the content of all comments received at the meeting.

4.3 Conferences or consultation. In addition to the required rulemaking procedures, the Director or his

designee may, in his discretion, obtain viewpoints or advice concerning proposed rulemaking through informal conferences or consultations.

4.4 Adoption. Not less than thirty-five days after the publication of notice, the proposed rule may be adopted in final form, and, if so adopted, shall be made effective immediately unless a later date is specified in the rule.

4.5 Statement of reasons. If so requested by any interested person, and upon adoption of any proposed rule, the Director shall prepare a statement of principal reasons for and against the proposed rule. The statement shall set forth the reasons for overruling the considerations urged against the rule.

4.6 Petition for rulemaking. A petition for rulemaking shall be filed in the office of the Municipal Fire and Police Retirement System of Iowa, 7155 Lake Drive, Suite 201, West Des Moines, Iowa 50266; telephone (515) 254-9200 or (888) 254-9200. The petition shall either be mailed certified, return receipt requested, or delivered in person. An additional copy may be provided if the petitioner wishes to retain a file-stamped copy of the petition. The petition shall be either typewritten or legibly printed in ink and must substantially conform to the following form:

MUNICIPAL FIRE AND POLICE RETIREMENT SYSTEM OF IOWA

7155 Lake Drive, Suite 201
West Des Moines, Iowa 50266

Petition by _____ (Name))
to (Amend, Adopt or Repeal))
Rules Relating to (state)
subject matter))
PETITION FOR RULEMAKING

(petition must state in separate, numbered paragraphs)

1. Petitioner's name, address and telephone number.
 2. The nature of petitioner's interest in the matter.
 3. The text or substance of any requested rule adoption, amendment or repeal including the text and citation for any current rule in effect.
 4. The reasons for seeking the requested action, including any statute, rule, data, evidence or arguments which are relevant to the request. Copies of any statute, rule, evidence etc. should be attached to the petition.

Petitioner's signature

4.7 Procedure after petition is filed.

4.7(1) *Inspection by the Director.* Upon filing of the petition the Director or his designee shall inspect the petition to ensure substantial compliance with the recommended form. If the petition does not contain the text or substance of the proposed amendment or any reasons for the proposed amendment or fails to include copies of any cited statute, rule or evidence, the System may reject the petition and return it to the petitioner along with the reasons for the rejection. Petitioner may then correct the reasons for rejection and refile the petition.

4.7(2) *System action.* Within ninety days of the filing of a petition the System shall either grant the petition and commence rulemaking, or deny the petition and notify the petitioner in writing of the grounds for the denial.

4.8 Exemptions from rulemaking procedures.

To the extent the Board for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the Board may adopt that rule without publishing advance notice under Rule 4.1 and without providing for written or oral public submissions prior to its adoption. "Good cause" for purposes of this Rule 4.8 is limited to situations where the rule in question confers a benefit or removes a restriction on the public or some segment thereof, or those involving imminent peril to the public health, safety or welfare. The Board shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this rule.

These rules are intended to implement Iowa Code section 411.5.

CHAPTER 5

POLICY STATEMENTS

5.1 Scope. When, in the exercise of its discretion, the Board deems it appropriate to respond to requests for policy statements within the scope of its jurisdiction under Chapter 411 of the Code, the Board will issue policy statements pursuant to the procedures set forth in this rule.

5.2 Request for Board Policy Statement. Any person may file a request with the System for a policy statement of the Board at the System's office. The request must be typewritten or legibly handwritten and must provide the following information:

5.2(1) A clear and concise statement of all relevant facts on which the request is based.

5.2(2) A citation and the relevant language of the specific statute, rule, policy, decision, or order, whose applicability is questioned, and any other relevant law.

5.2(3) The questions the person wants answered, stated clearly and concisely.

5.2(4) The answers to the questions desired by the person and a summary of the reasons urged by the person in support of those answers.

5.2(5) The reasons for requesting the statement and disclosure of the person's interest in the outcome.

5.2(6) A statement indicating whether the person is currently a party to another proceeding involving the questions at issue and whether, to the person's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

5.3 Evaluation and Issuance of Policy Statements.

5.3(1) If the Director determines that the request necessitates an immediate response, the Director shall prepare a response, after communications with the Chair of the Board and after obtaining such staff and professional support as may be necessary to respond to the request.

5.3(2) In all other cases, upon receipt of a request for policy statement, the Director will promptly perform a preliminary evaluation of the request and, based upon this preliminary evaluation, will, if necessary, obtain staff and professional support to assist in the evaluation.

5.3(3) After the evaluation of the request is complete, the Director will communicate the results of the evaluation to the Board, or, if applicable, to the appropriate committee thereof.

5.3(4) If the Board deems it appropriate to issue a policy statement, it will do so at a meeting of the Board as a whole. The requesting party will be given notice of the meeting and, when appropriate, an opportunity to be heard by the Board.

These rules are intended to implement Iowa Code sections 411.5 and 411.37.

CHAPTER 6

APPEALS

6.1 Scope and Definitions.

6.1(1) Scope. This Chapter applies when there is an adjudication of the law to particular facts in which the legal rights, duties or privileges of a party are determined.

6.1(2) Definitions. Except where otherwise specifically defined by law, for purposes of this Chapter, the following terms have the prescribed meanings:

(1) Committee means the Appeals Committee of the Board.

(2) Issuance means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified therein.

(3) Party means each person or entity named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

(4) Applicant means the party that initially applied for benefits from the System. The Applicant may be either the Member or the City.

6.2 Time Requirements.

6.2(1) Time shall be computed as provided in Iowa Code section 4.1.

6.2(2) For good cause, the Committee may extend or shorten the time to take any action. Except for good cause stated in the record, before extending or shortening the time to take any action, the Committee shall afford all parties an opportunity to be heard or to file written arguments.

6.3 Requests for a Hearing.

6.3(1) Appeal.

a. A party who wishes to appeal a decision by the System shall, within 30 days after notification was mailed to the party's last known address, file a request for a hearing. The employing city shall be deemed to be a party.

b. Requests for hearing shall be made in writing, and shall be signed and dated by the requesting party or the party's representative.

6.4 Notice Procedure.

6.4(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the proceeding. Notice shall be given at least thirty (30) days prior to the scheduled hearing. Delivery may be by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

- c. First class mail.
- d. Private carrier or delivery service.

6.4(2) *Contents.* The notice of hearing shall contain the following information:

- a. A statement of the date, time, place and nature of the hearing.
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted.
- e. Identification of all parties including the name, address and telephone number of the person who will appear on behalf of the System, of the Committee members expected to hear the appeal and of parties' counsel where known; and
- f. Reference to the procedural rules governing conduct of the hearing and to the relevant open meetings requirements.

6.4(3) *Copies.*

- a. Copies of the notice shall be sent to the following:
 - 1. Any attorney of record or other designated representative;
 - 2. The administrative officer of the employing city or his or her designee.
- b. The System shall furnish, with the notice and all copies thereof, copies of the non-privileged documents in its files which relate to the matter under appeal. Said documents shall be marked as System's exhibits and shall constitute a part of the record for purposes of the appeal.

6.5 Waiver of Procedures. Unless otherwise precluded by law, the parties in a proceeding may waive any provision of this chapter. However, the Committee, in its discretion, may refuse to give effect to such a waiver if it deems the waiver to be inconsistent with the public interest,

6.6 Telephone Proceedings. The Committee may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The Committee will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

6.7 Committee Selection and Disqualification.

6.7(1) The Appeals Committee shall be comprised of a three-member committee of the Board of Trustees and shall be appointed by the Executive Director.

6.7(2) The Committee must include at least one firefighter member if the Member party is a firefighter, or at least one police member if the Member party is a police officer.

6.7(3) The Committee shall select one of its members to chair the hearing.

6.7(4) A member of the Board shall disqualify himself or herself from the Committee, if, in the opinion of such member, he or she has personal knowledge of or an economic interest in the issues or the parties involved in the appeal which makes it impossible to render an impartial judgment.

6.7(5) The requirements of subrule 6.7(2), above, may be waived for good cause. Good cause shall include the unavailability of a firefighter or police officer member (as applicable) due to a disqualification pursuant to subrule 6.7(4), above, and shall also include administrative efficiency and the convenience of Board members.

6.8 Consolidation - Severance.

6.8(1) *Consolidation.* The Committee may consolidate any or all matters at issue in two or more proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

6.8(2) *Severance.* The Committee, for good cause shown, may order any proceedings or portions thereof severed.

6.9 Service and Filing of Documents.

6.9(1) *Service -- When Required.* Except where otherwise provided by law, every motion, document, or other paper filed in the proceeding shall be served upon each of the parties of record to the proceedings.

6.9(2) *Service -- How Made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order.

6.9(3) *Service of Medical Records and Reports.* Each party to an appeal relating to either accidental or ordinary disability benefits shall serve all medical records and reports concerning the member in the possession of the party upon each opposing party and shall file such records and reports with the System not more than ten (10) days following the later of the date of receipt or the date of filing of the appeal. (Provided, however, this rule does not apply to medical records or reports which are designated as System's exhibits and provided to the parties pursuant to Rule 6.4, above.) A notice shall accompany such records and reports identifying the records and reports served by the name of the practitioner or institution and date of the records and reports, and if served later than ten (10) days following the date of the appeal, stating the date when the records and reports were received by the party serving them. Medical records and reports which are not served by a party in accordance with this subrule may not be introduced by the party at the hearing. The requirements of this subrule may be waived for good cause, as determined by the Committee.

6.9(4) *Filing -- When Required.* After the notice of hearing, all motions, documents or other papers in the proceeding shall be filed with the System. All motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the System.

6.9(5) *Filing -- When Made.* Except where otherwise provided by law, a document is deemed filed at the time it is received by the System.

6.10 *Medical Evidence and Discovery.* Any relevant record or report, including medical records and reports, served upon a party in compliance with these rules prior to any deadline established by these rules or by order of the Board for service of the records and reports shall be admissible as evidence at the hearing. Any party against which a medical record or report may be used shall have the right, at the party's own expense, to cross-examine by deposition the medical practitioner producing the record or report, and the deposition shall be admissible as evidence in the case. See Rule 6.20(2), however, with respect to depositions of members of the Medical Board.

6.11 *Subpoenas.*

6.11(1) *Issuance.*

a. A subpoena shall be issued by the Board at the request of a party. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least seven (7) days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

6.11(2) *Motion to Quash or Modify.* The Committee may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

6.12 *Prehearing Procedure.*

6.12(1) Each party shall file the following no later than fourteen (14) days before the scheduled hearing date:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there is good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing, along with eight (8) marked copies of said exhibits. Exhibits shall be marked as "Member's Exhibit ____" or "City's Exhibit ____" as appropriate. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there is good cause for the failure to include them. Documents which have been designated as System's exhibits pursuant to Rule 6.4, above, shall not be re-introduced by either party.

6.12(2) The Committee may order parties in the case to appear before the Committee for a conference, or to communicate with the Committee or its counsel and with each other in any manner as may be prescribed to consider, so far as is applicable to the particular case:

a. Agreeing to admissions of uncontested facts, documents or records, to avoid unnecessary proof;

b. Limiting the number of witnesses;

- c. Settling any facts of which the Committee is to be asked to take official notice;
- d. Stating and simplifying the factual and legal issues to be determined;
- e. Specifying all proposed exhibits and proof thereof;
- f. Setting or altering dates for completion of discovery or completion of medical evidence by each party;
- g. Specifying all witnesses expected to testify;
- h. Any other matter which may facilitate, expedite or simplify any appeal.

6.12(3) The Committee may enter an order reciting any action taken pursuant to the procedures described in this Rule 6.12 which will control the subsequent course of action relative to matters which it includes, unless modified to prevent manifest injustice.

6.13 Continuances. Unless otherwise provided, applications for continuances shall be made to the Committee.

6.13(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven (7) days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the Committee waives the requirement for a written request. However, a party making such an oral application must confirm that request by written application within five (5) days after the oral request unless that requirement is waived by the Committee. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

6.14 Withdrawals. A party requesting an appeal may withdraw that request prior to the hearing, subject to the approval of the Board. Unless otherwise provided, a withdrawal shall be with prejudice.

6.15 Intervention.

6.15(1) Motion. A request to intervene in a proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding.

6.15(2) When Filed. The request to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding, and shall be filed no later than fourteen (14) days prior to the scheduled hearing date.

6.16 Hearing procedures.

6.16(1) The Committee presides at the hearing, and may rule on motions, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings. The hearing is de novo. The Applicant shall have the burden of proof, which shall be by a preponderance of the evidence.

6.16(2) All objections shall be timely made and stated on the record.

6.16(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.

6.16(4) The hearing will be held in open session, unless closed pursuant to Iowa Code chapter 21 or another provision of law.

6.16(5) Subject to terms and conditions prescribed by the Board, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

6.16(6) The Committee shall maintain the decorum of the hearing and may expel or refuse to admit anyone whose conduct is disorderly.

6.16(7) Witnesses may be sequestered during the hearing.

6.16(8) The Committee shall conduct the hearing in an informal manner. The Committee and its counsel may question parties and witnesses, discuss issues with the parties and their representatives and do all things necessary to bring the hearing to an expeditious and efficient close. The hearing will proceed generally as follows:

a. The chair of the Committee shall give an opening statement briefly describing the nature of the proceeding;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases, with the Applicant proceeding first, unless a different sequence is agreed to prior to the commencement of the hearing;

d. Each witness shall be sworn or affirmed by the Committee or the court reporter, and be subject to examination and cross-examination. The Committee may limit questioning in a manner consistent with law;

e. The parties and witnesses shall also be subject to examination by the Committee and the Committee's counsel. The Committee may do anything it deems necessary to ensure a full and fair consideration of the case, including suspending the hearing and continuing it at a later date if necessary to obtain material evidence.

f. When all parties and witnesses have been heard, the parties shall be given the opportunity to present final arguments.

6.17 Evidence.

6.17(1) The Committee shall rule on admissibility of evidence and may, where appropriate, take

official notice of facts in accordance with all applicable requirements of law.

6.17(2) Stipulation of facts is encouraged. The Committee may make a decision based on stipulated facts.

6.17(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the Committee determines that good cause justifies expansion of the issues. If the Committee decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to prepare on the additional issue.

6.17(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties.

6.17(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The Committee may rule on the objection at the time it is made or may reserve a ruling until the written decision.

6.17(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the Committee, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

6.18 Deliberations. The Committee may proceed with its deliberations immediately following the close of the evidence, subject to the right of any party to file a brief or other written argument within seven (7) days of the date of hearing. Deliberations shall be continued as necessary to allow for such a filing. Any party may waive its right to file a brief or other argument.

6.19 Default.

6.19(1) If a party fails to appear in a proceeding after proper service of notice, the Committee may, if no adjournment is granted, proceed with the hearing and render a decision in the absence of the party.

6.19(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the proceeding and has failed to appear after proper service.

6.20 Ex Parte Communication.

6.20(1) *Prohibited Communications.* Following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between any party or representative of any party in connection with any issue of fact or law in a case and any person assigned to render a proposed or final decision or to make findings of fact or conclusions of law except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other.

6.20(2) *Communication with Medical Board.*

a. **In General.** Following the issuance of the initial decision on a claim for ordinary or accidental disability benefits, all communications directly between the member or the employing city (or the representatives of either) and the Medical Board are prohibited. Any requests for information from the Medical Board shall be directed through the System. The System shall provide copies of any response received from the Medical Board to all parties.

b. **Depositions.** Depositions of members of the Medical Board shall be available only by arrangement with the System. Such depositions shall be admissible as evidence in the case, but the deponent remains the witness of the System, and communication with the deponent is permitted only during the deposition itself.

c. **Committee.** The Committee may direct written inquiries to the Medical Board on its own motion at any time. Copies of such inquiries and their responses shall be provided by the System to all parties, and shall become a part of the record. Opportunity for response shall also be provided to the parties.

6.20(3) *Disclosure of Prohibited Communications.* Any person who receives a communication prohibited by subrules 6.20(1) or (2) shall disclose that communication to all parties. A copy of any prohibited written communication or a summary of any prohibited oral communication shall be submitted for inclusion in the record.

6.20(4) *Sanctions.* The Committee may impose appropriate sanctions for violations of this rule.

6.21 *Recording Costs.* Upon request, the System shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

6.22 *Written Decision.* Following the deadline for filing a brief, the Committee shall render proposed Findings of Fact and Conclusions of Law, to be ratified by the Board of Trustees on consent motions at the next regularly scheduled Board meeting. The decision of the Committee shall become final upon ratification by the Board. Copies shall then be mailed to all parties or their representatives. A copy shall also be mailed to the administrative officer of the employing city.

6.23 *Review of Decisions.* Review of adverse hearing decisions is by the filing of a certiorari action in the District Court. The Court's review is limited to questions of law.

These rules are intended to implement Iowa Code section 411.5.

CHAPTER 7

CONTRIBUTIONS AND REPORTS

7.1 Contribution Dates. The combined employee-employer contribution to the fund must be received by the System from each City by the fifteenth (15th) day of the following month.

7.2 Contribution Reporting Form. A Contribution Reporting Form must be filed by each City with the City's contribution. Forms are available from the System. Each Contribution Reporting Form must include all members who had earnable compensation during the payroll period. A City may use an alternative to the Contribution Reporting Form only upon approval of the alternative form by the System. Beginning January 1, 2003 a Contribution Report must be filed quarterly by each City. Reports must be received by the System no later than the fifteenth (15th) day of the month following the calendar quarter to be reported. Each Contribution Report must include all members who had earnable compensation during the quarter. Reports must be filed electronically or by diskette in a format acceptable to the System. Noncompliance with the requirements of this rule will result in an administrative charge of \$100 to the City for each instance of noncompliance.

7.3 Accrual of Interest.

7.3(1) Interest on Late Contributions. Subject to subrule 7.3(2) below, contributions not received by the date specified in Rule 7.1 above shall accrue interest at the greater of the interest rate assumption adopted by the System or the rate of interest on the custodial bank's Short Term Investment Fund (STIF) account for the period in question. Interest may be waived by the Director, however, upon request prior to the due date by the City, if the contribution is late due to circumstances beyond the control of the City. Accrued interest shall be paid into the fund.

7.3(2) Automatic Waiver of Interest. Interest otherwise payable pursuant to subrule 7.3(1) above for a period not to exceed five days shall be waived by the system if all contributions due from the City for the preceding 6 months have been received timely by the system, as reflected in the records of the system. In the event the contribution is more than five days late but the requirements of this subrule are otherwise met, interest for the first five days of the late period shall be waived.

7.3(3) Back Pay. Amounts paid by a city to a member as back pay that would have constituted earnable compensation if paid when earned shall be allocated by the System as earnable compensation to the periods for which paid. Employer and employee contributions plus interest shall be paid to the System on such amounts. Said contributions and interest shall be calculated pursuant to § 411.11(2).

7.4 Checks. All checks received in payment of the employer-employee contribution and any interest thereon shall be made payable to the Municipal Fire and Police Retirement System of Iowa, and mailed, along with the completed report form provided for under Rule 7.2, above, to the System at the following address: 7155 Lake Drive, Suite 201, West Des Moines, Iowa 50266; telephone (515) 254-9200 or (888) 254-9200 or such alternative address as may be identified by the System.

7.5 Contribution Rates - Effective Date of Change.

7.5(1) City. The normal contribution rate, as determined annually by the actuary pursuant to § 411.8, shall be effective with the first payday in July of each year, unless a different effective date is specifically provided by statute, and shall apply to the entire pay period covered by that payroll.

7.5(2) Member. The members' contribution rate, as set forth in § 411.8, shall be effective with

the first payday in July of each year, unless a different effective date is specifically provided by statute, and shall apply to the entire pay period covered by that payroll.

These rules are intended to implement Iowa Code sections 411.8, 411.11, 411.12 and 411.38.

Subrule 7.3(2) was adopted by the Board on July 14, 1995, and was effective immediately. The subrule was adopted without notice or comment pursuant to Rule 4.8. The Board found that public notice and participation were unnecessary, since the subrule confers a benefit on the affected cities.

CHAPTER 8

SERVICE RETIREMENT BENEFITS

8.1 Applications for Service Retirement Benefits.

8.1(1) Filing. Applications for benefits shall be submitted to the employing department by the member and shall be filed with the System by said department within five (5) working days of receipt.

8.1(2) Forms. Applications shall be on forms provided by the System. Any written request for benefits will be accepted, but subsequent completion of the designated forms shall be required.

8.1(3) Required Information--Applicant. The applicant shall submit proof of age with the application. Proof of age may also be required for the applicant's spouse or contingent beneficiary, as directed by the System. Proof of age shall be in the form of a birth certificate or church record recorded before age five. If neither of these records exists, the applicant shall submit one or more other documents or records acceptable to the System that verify the date of birth. Records that may be acceptable for this purpose include the following:

- (1) census record;
- (2) military record;
- (3) naturalization record;
- (4) marriage record;
- (5) life insurance policy;
- (6) school record;
- (7) family Bible record;
- (8) delayed birth certificate;
- (9) passport.

Photocopies of documents may be submitted, subject to the right of the System to require an original or certified copy.

The System shall return all submitted documents to the applicant, after making copies for the System's files.

8.1(4) Required Information--Employer. The employing city or department shall certify the member's date of hire, last day on the job and last day on the payroll by completing the employer's section of the Retirement Application prior to filing said application with the System. If the member has not yet left employment at the time of application, the employer shall complete the required information to the extent it is available at that time. A supplemental report shall then be filed with the System by the employer following the member's termination of employment. The employing city or department shall also furnish any other relevant information requested by the System.

8.1(5) Optional forms of benefit.

a. An applicant for a service retirement benefit may elect, as part of the application for benefits, to receive an optional form of payment in lieu of the service retirement allowance otherwise payable (i.e. the service retirement allowance under § 411.6(2) and the pension to a spouse of a deceased member under § 411.6(11)); provided, however, this election is not available in the event a Marital Property Order has been filed with the System with respect to the member. The election of an optional form of payment has no effect on any benefit which may become payable to the surviving child of the member under § 411.6(11).

b. The optional form of payment shall be the actuarial equivalent of the retirement benefits otherwise payable to the member and the member's spouse under subsections 2 and 11 of section 411.6

c. Applicant may elect any of the following optional forms of payment:

(1) Straight Life Annuity. Receipt of an adjusted retirement allowance during the member's lifetime, with no survivor benefit payable.

(2) Joint and 100% Survivor Annuity. An adjusted retirement allowance is payable to the member for life. Following the member's death, the adjusted retirement allowance is payable for life to the beneficiary designated by the member as part of the election process.

(3) Joint and 75% Survivor Annuity. An adjusted retirement allowance is payable to the member for life. Following the death of the member, an amount equal to 75% of the adjusted retirement allowance paid to the member is payable for life to the beneficiary designated by the member as part of the election process.

(4) Single Life Annuity with a Designated Lump Sum. The specified amount of money shall be paid to a designated beneficiary (or beneficiaries) in a lump sum upon the death of the member. A monthly retirement allowance is paid to the member for life in an amount actuarially determined to provide for the lump-sum payment. The lump sum designated by the member must be evenly divisible by one thousand, and the amount designated may not reduce the member's monthly retirement allowance by more than 50%. If the designated beneficiary predeceases the member, the designated lump sum shall be paid to the member's estate.

(5) Joint and 100% Survivor Annuity with Pop-Up.* An adjusted retirement allowance is payable to the member for life. Following the member's death, the adjusted retirement allowance is payable for life to the beneficiary designated by the member as part of the election process. If the designated beneficiary predeceases the member, the member's retirement allowance shall be increased to the amount of the service retirement allowance under § 411.6(2), as adjusted pursuant to § 411.6(12), and no survivor benefit is payable following the death of the member.

(6) Joint and 75% Survivor Annuity with Pop-Up.* An adjusted retirement allowance is payable to the member for life. Following the death of the member, an amount equal to 75% of the adjusted retirement allowance paid to the member is payable for life to the beneficiary designated by the member as part of the election process. If the designated beneficiary predeceases the member, the member's retirement allowance shall be increased to the amount of the service retirement allowance under § 411.6(2), as

adjusted pursuant to § 411.6(12), and no survivor benefit is payable following the death of the member.

d. If the applicant is married at the time of application, the member's spouse must consent in writing to any election of an optional form of payment and to the designation of a beneficiary other than the spouse, if applicable.

e. A member's election of an optional form of payment and designation of a beneficiary may be changed or revoked until the date the member's first benefit payment is cashed or deposited directly into the member's account. Upon such date, both the election of the optional form of payment and the designation of a beneficiary are final and irrevocable.

f. The election under this Rule 8.1(5) is available to applicant's whose receipt of service retirement benefits will commence after June 30, 1993.

8.2 Processing of Claim.

8.2(1) Upon receipt of an application for benefits, the System shall review the application and request any additional evidence which is needed to determine the benefits due the applicant. Such additional evidence may include verification of employment with additional participating departments, as disclosed in the Employment Information section of the Retirement Application, or in the Employment History section of the applicant's Membership Form on file with the System. The System shall request such employment information from the appropriate cities or departments. Said cities or departments shall furnish all requested information within five (5) working days of receipt of the request. Upon receipt of the requested evidence, the System shall determine whether the applicant meets all requirements for the benefit applied for.

8.2(2) If any requirement for benefits is not met, the System shall inform the applicant in writing of the denial and its basis.

8.2(3) If all requirements for benefits are met, the System shall send the applicant a notice that benefits are approved, which shall include the effective date and the amount of the monthly benefit awarded.

8.3 Appeals.

See Chapter 6 of these Rules.

* Option is available effective March 1, 2011.

These rules are intended to implement Iowa Code section 411.6.

CHAPTER 9

DISABILITY BENEFITS

9.1 Applications for Disability Benefits.

9.1(1) *Filing.* Applications for ordinary disability retirement benefits and applications for accidental disability benefits may be filed by the member or on the member's behalf by the chief of the employing department. Applications shall be filed with the System, except for applications for temporary disability benefits, which shall be filed with the employing city. Members and cities are encouraged, however, to file an application with the System if it appears at any time that the member's disability is likely to last for a continuous period of at least twelve months. (See rule 9.2(3), below, regarding duration requirements.) The System shall not be bound by an agreement between the member and the employing city relating to membership status or ability to file.

9.1(2) *Forms.* Applications shall be on forms provided by the System. Any written request for disability benefits will be accepted, but subsequent completion of the designated forms shall be required.

9.1(3) *Required Information-Member.* The application must clearly identify all medical conditions claimed to be disabling. The member shall submit the following with the application:

- (1) Any available medical reports from examining physicians;
- (2) Results of any available diagnostic tests;
- (3) Comprehensive list of all examining physicians with addresses and approximate dates;
- (4) Dates and places of hospitalization;
- (5) Signed medical releases authorizing hospitals and examining physicians to release medical records to the System; and
- (6) Particulars of the claim that the disabling condition is job-related (including the time and place of injury) if the claim is for accidental disability benefits.

9.1(4) *Required Information-Employer.* The employing department shall furnish all available records that relate to the member's disability, including medical records, accident reports, temporary disability file (if any) and any other relevant information. The employing department shall also certify whether or not the member is in good standing, as that term is defined in section 411.1. If the department certifies that the member is not in good standing, the department shall furnish all available records that relate to that status.

9.1(5) *Forwarding Application to the System.* Where the application is filed by the chief or is filed with the employing city by the member, the city shall forward the application and related materials to the System promptly. In no event shall the application be sent to the System more than 14 days following its receipt by the city. Any required information that is not yet available at the time the application is forwarded shall be provided to the System as soon as possible following the forwarding of the application. Upon receipt of an application for disability benefits, the System shall send written acknowledgment of receipt to the member, with copies to the chief and the administrative officer of the employing city.

9.1(6) *Medical Records.* Upon the request of the System or the medical board, a medical provider or its agent shall furnish copies of medical records or reports. The amount to be paid for the copies shall not exceed the reasonable cost of production, and shall not exceed: \$20 for 1 to 20 pages, plus \$.25 per page for more than 20 pages, and the actual expense of postage. No other expenses shall be allowed.

9.2 Processing of Claim.

9.2(1) *Nonmedical Requirements.*

- a. Upon receipt of an application for disability benefits, the System shall determine whether the member meets all nonmedical requirements for the benefit applied for.
- b. If any nonmedical requirements are not met, the System shall inform the applicant (and the member, if the member is not the applicant) in writing of the denial and its basis within thirty (30) days of the date of the application.
- c. If the nonmedical requirements are met, the System shall refer the application to the medical board.

9.2(2) *Disability Determination.*

- a. The medical board shall review all furnished medical evidence and shall request any additional records it deems necessary from examining physicians.
- b. The medical board shall then arrange for a medical examination of the member. Said examination may be waived, at the discretion of the medical board, if the medical board determines that submitted medical evidence is sufficient to establish disability and that an additional examination is therefore unnecessary.
- c. At the medical board's option, the medical examination may be performed by one or more members of the medical board or may be performed by another licensed physician at the medical board's direction. Such direction shall include the designation of the particular diagnostic tests and procedures to be performed.
- d. The medical board shall review the medical records and the report of the medical examination, and shall report to the System in writing the board's conclusions, recommendations and assessment of the applicant's claim.
- e. The Director or his designee shall forward copies of the medical board's conclusions, recommendations and assessment of the claim to the member and to the chief of the employing department for written comment relating to medical matters, and shall send notice of the commencement of the comment period to the administrative officer of the employing city. Comments, if any, must be received by the System within ten days of the date the copies were forwarded. The Director or his designee may, in his or her sole discretion, forward such comments to the medical board for its review and comment.
- f. The Director or his designee shall review the file, including the medical board's conclusions, recommendations and assessments and any written comments received and make a written determination approving or denying benefits. If benefits are approved, the written determination must also specify whether ordinary disability benefits or accidental disability benefits are to be paid. The decision

regarding whether accidental disability benefits or ordinary disability benefits are payable is for the System; the designation of accidental or ordinary by the city or the member on the application form is not controlling.

g. If benefits are denied, the notice to the applicant (and the member, if the member is not the applicant) must set forth:

(1) The specific reason(s) for the denial;

(2) A description of any additional material or information needed for the applicant to perfect the claim (if any) and an explanation of why such information is needed; and

(3) That any appeal the applicant wishes to make must be made within thirty (30) days after the date of the notice, and that failure to appeal within the 30 day period will render the decision final, binding and conclusive.

h. If the applicant filed for accidental disability benefits and ordinary disability benefits are awarded instead, the notice shall set forth the reason that accidental benefits were not awarded, information regarding any additional information that is needed, and appeals information, in a manner similar to that provided herein for notices of denial.

i. Copies of all notices awarding or denying benefits shall be sent to the chief and to the administrative officer of the employing city, or his or her designee.

j. Disability benefits awarded under this Chapter shall be payable as follows:

(1) As a general rule, disability benefits awarded under this Chapter shall be payable effective with the date of staff approval.

(2) Exceptions to the general rule:

(a) Disability benefits shall be payable effective with the date the member's paid leave runs out only if that date is prior to the date of staff approval. For purposes of this subrule (a), the date the member's paid leave runs out shall be determined based on the number of days of paid leave the member is entitled to, regardless of the timing or method of payment for such leave.

(b) Disability benefits may also be payable prior to the date of staff approval if so determined and specified by the Board, for good cause shown by the member.

See also Rule 12.7, regarding the commencement of benefits.

9.2(3) Duration Requirements.

a. A "permanent" disability is a disability, as defined in the statute, which is expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than twelve months.

b. A "temporary" disability is a disability, as defined in the statute, which is not expected to be permanent, as defined in a, above.

9.3 Appeals.

See Chapter 6 of these Rules.

9.4 Re-examinations.

9.4(1) Frequency. The System may, review the medical records of all beneficiaries who are under age 55 and who retired on account of disability. The purpose of this file review is to determine which beneficiaries should be medically re-examined.

9.4(2) Factors to be Considered. The System shall consider the following factors in determining whether a beneficiary should be re-examined:

- a. The nature of the disability and its prognosis;
- b. Present occupation (if any) and physical activities;
- c. Any evidence presented to or discovered by the System concerning the present disablement; and
- d. Any verified complaints received from members or the general public which potentially impact upon the individual's entitlement to benefits.
- e. Provided, however, the System shall re-examine a beneficiary upon the beneficiary's reasonable request, without regard to the above factors.

9.4(3) Examinations.

a. After determining which individuals are to be re-examined, the System shall provide the appropriate files to the medical board for the scheduling of a medical examination.

b. One or more members of the medical board may perform the examination, or at the election of the medical board, may arrange for the examination to be performed by another licensed physician.

c. Written notice of the date, time and place of the examination shall be mailed to the disabled individual at least ten (10) days prior to the scheduled examination date.

d. Alternate arrangements shall not be made more than two times, unless the disabled individual has good cause for failing to comply. Whether good cause exists shall be determined by the System.

e. Benefits may be suspended indefinitely for failing to comply with the re-examination process unless good cause is found to exist.

f. Following the medical re-examination, the medical board shall submit written conclusions and recommendations to the System regarding whether the beneficiary continues to meet the medical requirements for disability benefits from the System.

g. The System shall make a continuing disability determination in a manner similar to that set forth herein for determining initial entitlement to disability benefits, and shall notify the beneficiary in writing of its determination.

h. Appeal procedures are comparable to those provided herein for initial denials, except that benefits shall be continued during the pendency of a timely filed appeal.

i. The medical board may suggest appropriate medical treatment or rehabilitation, if, in its opinion, the recommended treatment or rehabilitation would likely restore the beneficiary to duty.

9.5 Reporting of Income.

9.5(1) Individuals required to report. All beneficiaries receiving either ordinary or accidental disability benefits are required to report, with the exception of the following:

- (1) Any beneficiary who is age fifty-five (55) or older;
- (2) Any beneficiary who retired under an accidental disability before July 1, 1976.

9.5(2) Reporting procedures.

a. A beneficiary required to report shall provide a copy of his signed Iowa or federal Form 1040 as filed for the prior year, to the System by the deadline specified in section 411.6(7) plus copies of any of the following that were filed for the year in question:

- W-2 Forms (including those for spouse if joint return)
- 1099 Forms (including those for spouse if joint return)
- Schedules C, E, F and SE (including spouse's if joint return)
- Form 2106 and Schedule A (if claiming Employee Business Expense).

If the beneficiary filed the tax return electronically, in lieu of a copy of the signed return, copies of the tax forms referenced in the preceding paragraph, including Form 1040, must be provided, along with the beneficiary's certification that the return was filed.

The beneficiary shall also submit any other documentation requested by the System for purposes of determining the beneficiary's gross wages, including, but not limited to, a signed statement from the beneficiary's employer(s).

If the required information is not provided by the deadline, the System will follow up with the beneficiary by mail, with return service requested. The follow-up letter shall reference the reporting requirement of the Code and shall state that the benefit is suspended beginning with the next benefit payroll.

In lieu of providing copies of the applicable tax forms, the member may provide a signed statement certifying that the member's earnings were sufficient to eliminate any disability benefit otherwise payable to the member.

b. If a beneficiary has an extended due date for the tax return, the deadline for reporting to the System under this rule is 15 calendar days after the extended Federal tax deadline.

c. The System will review the reports, and, with respect to earnings for years prior to 1998, shall reduce the member's monthly disability allowance if the member's earnings exceed the difference between the member's disability allowance and one and one-half times the earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at the time of retirement on account of disability. The reduction shall be equal to the amount of the excess determined under the preceding sentence, provided, however, the reduction shall not exceed the amount

of the benefits paid in the preceding year. The salary scale applicable to the department from which the member retired shall be utilized for this purpose. The employing city or department shall furnish current salary scale information as requested by the System. Earnings shall be presumed to continue at the same level for subsequent years, however, and payments shall be reinstated only upon proof of earnings (or of the cessation thereof) such that disability benefits are again due. Subject to the foregoing, the member's benefit shall be withheld in full until such time as the excess earnings are recovered, unless an agreement is entered for an alternative rate of recovery, in a manner similar to that set forth in Rule 12.6(7) regarding overpayments. Nothing in this rule shall prevent the System from recouping an overpayment of benefits in a year subsequent to the year in which the overpayment occurred. (See Chapter 12 of these rules for overpayment procedures.)

d. With respect to amounts earned on or after January 1, 1998, the System shall reduce the member's monthly disability allowance if the member's earnings exceed the difference between the member's Net Retirement Allowance and one and one-half times the earnable compensation of an active member at the same position on the salary scale within the member's rank as the member held at the time of retirement on account of disability. The reduction shall be equal to the amount of the excess determined under the preceding sentence, provided, however, the reduction shall not exceed the amount of the benefits paid or due in the preceding year. The salary scale applicable to the department from which the member retired shall be utilized for this purpose. The employing city or department shall furnish current salary scale information as requested by the System. Subject to the foregoing, the member's benefit shall be withheld in full until such time as the excess earnings are recovered, unless an agreement is entered for an alternative rate of recovery, in a manner similar to that set forth in Rule 12.6(7) regarding overpayments. Nothing in this rule shall prevent the System from recouping an overpayment of benefits in a year subsequent to the year in which the overpayment occurred. (See Chapter 12 of these rules for overpayment procedures.)

e. "Earnings" for purposes of this Rule 9.5 shall be defined as the sum of the beneficiary's net earnings from self-employment for the taxable year and wages for services rendered in such year, all as evidenced by the beneficiary's tax return. Losses from self employment may not be deducted from wages for this purpose. Provided, however, at the beneficiary's request, "earnings" for purposes of the rule shall be reduced by any impairment-related work expenses and/or unreimbursed employee business expenses which were deductible by the beneficiary for federal income tax purposes. The beneficiary's federal income tax return (including related forms and schedules) shall be conclusive evidence of the existence and amount of such deductions. "Wages" for purposes of this Rule means gross wages, rather than the net amount paid after deductions by the employer for items including, but not limited to, taxes, insurance, plans of deferred compensation, 401(k) plans and cafeteria plans under section 125 of the Internal Revenue Code. Combat zone compensation, as described in section 112 of the Internal Revenue Code, is not earnings for purposes of this rule.

f. "Net Retirement Allowance" is defined in § 411.6(7) to mean the amount determined by subtracting the amount paid during the previous calendar year by the beneficiary for health insurance or similar health care coverage for the beneficiary and the beneficiary's dependents from the amount of the member's retirement allowance paid for that year pursuant to the chapter. For purposes of this definition, amounts paid by the beneficiary's spouse for such coverage shall be treated as having been paid by the beneficiary. The beneficiary is responsible for submitting evidence acceptable to the System of the amounts so paid. If the beneficiary fails to submit sufficient evidence of such amounts to the System by the reporting deadline under this Rule, those amounts shall be deemed to be zero for purposes of determining the Net Retirement Allowance. Notwithstanding any other provisions to the contrary, amounts paid on a pre-tax basis for health insurance or similar health care coverage by either the beneficiary or the beneficiary's spouse shall not be deducted from the member's retirement allowance under this rule. The beneficiary is responsible for submitting evidence and/or certification acceptable to

the System regarding whether said amounts were paid on a pre-tax basis. The System has sole discretion to determine whether evidence submitted under this paragraph is sufficient.

g. If the required Form 1040 and supporting forms and schedules, as set forth in this rule 9.5, are not provided by the specified date, benefit checks will be withheld until such time as acceptable evidence of earnings (or lack thereof) is provided. In addition, a late-filing penalty equal to \$100 will be withheld from the next benefit check payable to the beneficiary.

h. The System shall annually provide a notice outlining reporting responsibilities to each beneficiary.

9.5(3) *Public Safety Occupations.*

a. If a beneficiary who is subject to the provisions of this rule 9.5 is employed in a public safety occupation, as that term is defined in Iowa Code section 411.6(7)(c), the beneficiary's disability retirement allowance shall be suspended for the duration of such public safety employment.

b. Subject to the restoration to service provisions of Iowa Code section 411.6(7)(b), if the beneficiary is employed in a public safety occupation that would otherwise constitute membership service, he or she shall not become a member of the System.

9.6 Pre-Existing Conditions.

9.6(1) All members whose membership in the System commences on or after July 1, 1992, shall furnish medical history information on the form prescribed by the System. Completion of such form shall be obtained by the employing department and shall be filed by said department with the System within 30 days of the membership commencement date.

9.6(2) The form provided for in Rule 9.6(1) above, shall contain the member's certification of the accuracy of the form as completed, and a brief explanation of the pre-existing condition exclusion.

9.6(3) Copies of all medical records obtained or prepared in the course of employment physicals of members whose membership commences on or after July 1, 1992, shall be filed with the System by the examining physician or facility. This requirement shall be incorporated into the medical protocols for such examinations.

9.6(4) All records obtained by the System pursuant to this Rule 9.6 shall be maintained in a segregated file and shall be confidential.

9.6(5) A medical condition shall be deemed to have been known on the date that membership commenced if it is reflected in any record or document completed or obtained pursuant to this Rule 9.6, or in any other record or document obtained pursuant to an application for disability benefits from the System, if such record or document existed prior to the membership commencement date.

9.7 Temporary Disability—Notice and Consultation

9.7(1) *Notice.* The employing city shall notify the System of any temporary disability that has lasted, or is expected to last, more than sixty (60) days.

9.7(2) *Medical board review and consultation.* Upon notification by a city, the System may, at the System's discretion, refer the matter to the medical board for review and consultation with the

member's treating physician during the course of the member's temporary incapacity. "Review and consultation" for purposes of this rule means examination of the member's medical records. The System shall pay for any review and consultation services performed by the medical board pursuant to this rule.

9.8 Ineligibility for Disability Benefits

9.8(1) Determination. A member otherwise eligible to receive a disability retirement benefit will be ineligible if the System determines that any of the grounds for ineligibility set forth in § 411.6(16) apply.

9.8(2) Appeals. See Chapter 6 of these Rules.

9.8(3) Member in good standing.

a. A member otherwise eligible to receive a disability retirement benefit will be ineligible if the System determines that the member in good standing requirement of section 411.6 is not met, unless the requirement is waived by the Board for good cause as permitted by that section.

b. The disability application of a member denied for failure to meet the member in good standing requirement shall be reopened in the event the member prevails in a personnel matter and thereby becomes a member in good standing at the relevant time.

These rules are intended to implement Iowa Code section 411.6.

CHAPTER 10

SURVIVOR BENEFITS

10.1 Scope of Chapter.

"Survivor benefits" under this Chapter include ordinary death benefits under § 411.6(8), accidental death benefits under § 411.6(9) and pensions to the spouse and children of a deceased pensioned member under § 411.6(11).

10.2 Definitions.

The following terms shall have the prescribed meanings for purposes of this Chapter:

(a) "Beneficiary" means a person or persons designated by a member pursuant to § 411.6(14). In the event that the member is subsequently divorced from an individual who was a named beneficiary, the member's beneficiary designation shall be automatically revoked only to the extent that it designated the former spouse. If the member then dies without filing a subsequent written beneficiary designation with the System, death benefits that would have been paid to the former spouse shall be paid as though the member died without a beneficiary designation.

(b) "Child" means a child as defined in § 411.1(7), except where otherwise indicated.

(c) "Dependent parent" means the mother or father of a deceased member who was dependent on the member for more than one-half of his or her financial support at the time of the member's death.

10.3 Survivor benefits payable.

10.3(1) Deceased Member not receiving 411 benefit at time of death.

(a) Ordinary death benefit.

(1) Payable to beneficiary designated in writing by the member to the System upon the death of a member in service with at least one year of membership service, or a member not in service who completed at least four years of membership service. If no beneficiary was designated by the member, or if the beneficiary designated by the member predeceased the member, any ordinary death benefit payable shall be paid based on the following order of priority.

- a. to the member's surviving spouse;
- b. to the member's surviving children, including adult children, in equal shares;
- c. to the member's surviving parents, in equal shares;
- d. to the member's estate;
- e. to the member's heirs, if no estate is probated.

(2) Benefit is paid as a lump-sum payment equal to the greater of: (a) 50% of the member's earnable compensation in the year preceding the member's death, if the member was in service, or, if the member was not in service, an amount equal to 50% of the member's earnable compensation in the member's last year of service, or (b) the amount the member would have been entitled to withdraw if the member had terminated service on the date of his or her death.

(3) In lieu of the lump-sum payment provided in subrule (2) above, qualified beneficiaries may elect to receive a monthly pension equal to 1/12 of 40% of the average final compensation of the member, but not less than 20% of the average monthly earnable compensation paid to an active member of the System. Effective January 1 of each year, the average earnable compensation for purposes of this subrule shall be based on the most recent actuarial report adopted by the Board. If the member was not in service at the time of death, the pension provided in this subsection shall be reduced by 1/22 times the difference between 22 years of service and the number of years of service completed by the member. A "qualified beneficiary" for purposes of this provision is the member's surviving spouse or child.

(4) For a member not in service at the time of death, the pension provided in subrule (3) above is payable commencing with the date the member would have been age 55, except that if there is a surviving child of the member, the pension is payable commencing with the date of the member's death, and shall continue until the child no longer meets the definition of a "child" under Iowa Code section 411.1. The pension shall resume (payable to the surviving spouse or surviving parent, if applicable) effective with the date the member would have reached the age of 55.

(5) For a member in service at the time of death, the pension provided in subrule (3) shall be paid commencing with the member's death. In addition to the pension, there shall be paid for each child of the member a pension equal to 6% of the average monthly earnable compensation paid to an active member of the System. Monthly earnable compensation for purposes of this subrule shall be based on the most recent data available to the system at the time the application is adjudicated. Effective January 1 of each year, the average earnable compensation for purposes of this subrule shall be based on the most recent actuarial report adopted by the Board.

(b) Accidental death benefit.

(1) Payable in lieu of an ordinary death benefit upon a determination that the death of a member in service was accidental, as defined in § 411.6(9).

(2) If the member's designated beneficiary is the member's spouse, child or parent, the accidental death benefit consists of a pension equal to 50% of the average final compensation of the member, payable as follows:

- a. to the member's surviving spouse, if the spouse is the designated beneficiary.
- b. if the member's child or children are the designated beneficiaries, then to the member's surviving child or children, in equal shares. The pension to each child shall terminate when the child no longer meets the definition of "child" in section 411.1.
- c. if the member's surviving dependent parent or parents are the designated beneficiaries, then to the member's surviving parents, in equal shares.

(3) In addition, a pension equal to 6% of the average monthly earnable compensation paid to an active member of the System shall be paid for each child of the member. Effective January 1 of each year, the average earnable compensation for purposes of this subrule shall be based on the most recent actuarial report adopted by the Board.

(4) A person entitled to the pension payable under subrule (2) above may elect to receive an ordinary death benefit in lieu of the accidental death pension.

(5) If the member failed to designate a beneficiary, or if all of the beneficiaries designated by the member predeceased the member, or if the member's beneficiary designation is otherwise ineffective, then a pension equal to 50% of the average final compensation of the member shall be paid in the following order of priority:

- a. to the member's surviving spouse.
- b. to the member's surviving child or children, in equal shares. The pension to each child shall terminate when the child no longer meets the definition of "child" in section 411.1.
- c. to the member's surviving dependent parents, in equal shares.

(6) If there is no beneficiary eligible for the pension provided in subrule (2) above, and there is no individual entitled to the pension provided in subrule (5) above, the death shall be treated as an ordinary death case, and ordinary death benefits shall be payable in lieu of accidental death benefits.

(c) Line of duty death benefit.

(1) Payable to the person or persons entitled to receive an accidental death pension on the member's record. Provided, however, a surviving child of the member who no longer meets the definition of child in section 411.1 shall be eligible to receive the line of duty death benefit.

(2) Payable as a lump sum payment in the amount of \$100,000 (total).

(3) Payable where death is determined by the System to be the result of a traumatic personal injury incurred in the line of duty, subject to the requirements and limitations of § 411.6(15).

(d) Required Beginning Date.

Notwithstanding any provision of this chapter or the statute to the contrary, benefits shall commence no later than the Required Beginning Date, as set forth in section 401(a)(9) of the Internal Revenue Code.

(1) Life expectancy rule. Unless the beneficiary is the surviving spouse, monthly pension benefits shall commence no later than the last day of the calendar year of the year following calendar year of the member's death. If the beneficiary is the surviving spouse, such benefits shall commence no later than last day of the calendar year in which the member would have attained age 70½.

(2) 5-year rule. Benefits paid in the form of a lump sum distribution shall be paid no later than the last day of the calendar year which contains the fifth anniversary of the member's death.

10.3(2) Member receiving 411 benefit at time of death.

(a) Pension to spouse and children of deceased pensioned member.

(1) Payable to the surviving spouse and/or child of a deceased member who was receiving a service retirement benefit, ordinary disability benefit or accidental disability benefit at the time of death.

(2) The pension payable to the spouse of a deceased pensioned member shall equal 50% of the amount to which the deceased member was entitled as of the date of death, provided, however, the spouse's pension as of the date of entitlement shall not be less than an amount equal to 20% of the average earnable compensation paid to an active member of the System. Effective January 1 of each year, the average earnable compensation for purposes of this subrule shall be based on the most recent actuarial report adopted by the Board.

(3) A pension shall be paid for each child of the deceased member in an amount equal to 6% of the average earnable compensation paid to an active member of the System. Effective January 1 of each year, the average earnable compensation for purposes of this subrule shall be based on the most recent actuarial report adopted by the Board.

(4) The pension otherwise payable to the spouse of a deceased pensioned member shall not be paid if such payment would be inconsistent with the optional form of benefit elected by the member pursuant to § 411.6A. Election of an optional form of benefit by a member has no effect on the pension payable to the child of such member.

10.4 Application procedure.

10.4(1) Filing. Applications for survivor benefits shall be filed with the System.

10.4(2) Forms. Applications shall be on forms provided by the System. Any written request for benefits will be accepted, but subsequent completion of the designated forms shall be required.

10.4(3) Required Evidence--Applicant. The applicant shall submit any documents required by this subrule with the application.

(a) Proof of death. The member's death certificate shall be submitted if requested by the System.

(b) Proof of age is required for entitlement to a child's benefit. Proof of the member's age is required if entitlement is to be effective on the date the member would have attained age 55 (e.g. ordinary death benefit payable to a spouse or dependent parent). Proof of age shall be in the form of a birth certificate or church record recorded before age five. If neither of these records exists, the applicant shall submit one or more other documents or records acceptable to the System which verify the date of birth. Records that may be acceptable for this purpose include the following:

- (1) census record;
- (2) military record;
- (3) naturalization record;
- (4) marriage record;
- (5) life insurance policy;

- (6) school record;
- (7) family Bible record;
- (8) delayed birth certificate;
- (9) passport.

(c) Proof of relationship to the deceased member shall be submitted with all applications for a monthly pension.

(1) Acceptable evidence of relationship for a child's benefit or dependent parent's benefit includes the documents listed above for proof of age, provided the requisite relationship is indicated on such document.

(2) An applicant for spouse's benefit must submit evidence of all marriages (including the marriage to the member) and divorces (if any). Preferred evidence of marriage is a marriage certificate. Other evidence of marriage will be accepted only if a marriage certificate does not exist or is otherwise unavailable. A divorce decree shall be submitted as evidence of divorce.

(3) Common law marriage. A common law marriage is a social relationship between a two people that meets all the necessary requisites of a marriage except that it was not solemnized, performed or witnessed by an official authorized by law to perform marriages. The necessary elements of a common law marriage are: (a) a present intent of both parties freely given to become married, (b) a public declaration by the parties or a holding out to the public that they are married to each other, (c) continuous cohabitation together as a married couple, and (d) both parties must be capable of entering into the marriage relationship. No special time limit is necessary to establish a common law marriage. Iowa recognizes all valid common law marriages. An applicant for a spouse's benefit based on an alleged common law marriage shall complete and submit the applicable forms, which shall be provided by the System. Statements from third parties familiar with the relationship may be required to corroborate the statements of the parties to the relationship. In addition, the applicant must submit documentary evidence of the relationship. Records that may be acceptable evidence of the relationship may include tax returns, bank statements, insurance policies, mortgages, leases, hotel registrations and mail addressed to the parties as a married couple. The System will make a written determination regarding the existence of a marital relationship in each case where the applicant's entitlement to benefits is based on such a relationship.

(d) Proof of dependency is required for any application for a dependent parent's benefit. Acceptable evidence of dependency includes a copy of the member's tax return on which the member claimed the applicant as a dependent.

Photocopies of documents may be submitted, subject to the right of the System to require an original or certified copy.

The System shall return all submitted documents to the applicant, after making copies for the System's files.

10.4(4) Required Information--Employer. For a member who was not receiving 411 benefits at the time of death, the city or department which last employed the member shall certify the member's date of hire, last day on the job and last day on the payroll by completing the employer's section of the Survivor Application prior to filing said application with the System. The employing city or department shall also furnish any other relevant information requested by the System.

10.5 Processing of Claim.

10.5(1) Upon receipt of an application for benefits, the System shall review the application and request any additional evidence which is needed to determine the benefits due the applicant. Such additional evidence may include verification of employment with additional participating departments, as disclosed in the Employment Information section of the Retirement Application, or in the Employment History section of the applicant's Membership Form on file with the System. The System shall request such employment information from the appropriate cities or departments. Said cities or departments shall furnish all requested information within five (5) working days of receipt of the request. Upon receipt of the requested evidence, the System shall determine whether the applicant meets all requirements for the benefit applied for.

10.5(2) If any requirement for benefits is not met, the System shall inform the applicant in writing of the denial and its basis.

10.5(3) If all requirements for benefits are met, the System shall send the applicant a notice that benefits are approved, which shall include the effective date and the amount of the monthly benefit awarded.

10.6 Entitlement to Child's Benefits Based on Student Status.

10.6(1) Initial Entitlement. Proof of full-time attendance at an accredited educational institution is required for entitlement to benefits as a child who is between the ages of 18 and 22 and is not disabled. The applicant shall complete the form provided by the System for that purpose and shall forward the form to the educational institution for verification and submission to the System. A student will be determined to be in "full-time attendance" if he or she is so classified by the educational institution, in accordance with its standards and regular practices.

10.6(2) Entitlement During Periods of Nonattendance. The eligibility of a child beneficiary who is a full-time student will continue during a period of nonattendance if all of the following conditions are met:

- (a) The period of nonattendance is 4 consecutive months or less;
- (b) The student shows an intent to resume studies as a full-time student at the end of the period or at the end of the period is a full-time student; and
- (c) The period of nonattendance is not due to expulsion or suspension from the school.

10.6(3) Termination of Entitlement. Entitlement to benefits based on student status shall terminate effective with the first day of the first month following the earliest of the following:

- (a) the date of attainment of age 22 (i.e. the child's 22nd birthday);
- (b) the date the child is no longer a full-time student; or

(c) the date during a period of nonattendance on which the child no longer intends to return to full-time attendance.

10.6(4) *Re-entitlement to Benefits Based on Student Status.* If benefits terminate due to failure to maintain full-time attendance and the child subsequently returns to such attendance, the child may reapply for benefits, provided the other requirements for entitlement are still met (e.g. the child is under age 22). The effective date of reentitlement shall be the date on which the child was again in full-time attendance; provided, however, if the actual period of nonattendance was less than 4 months, benefits shall be reinstated retroactive to the prior termination date.

These rules are intended to implement Iowa Code section 411.6.

CHAPTER 11

WITHDRAWAL OF CONTRIBUTIONS

11.1 Scope. Upon termination of service, a member who was in active service on or after July 1, 1990 may withdraw the member's contributions, together with interest thereon.

11.2 Funds Subject to Right of Withdrawal. The right of withdrawal applies to funds attributable to the member's own contributions for the member's entire period of service. Partial withdrawals shall not be permitted.

11.3 Interest. The interest rate shall be simple interest of 5% per year for the member's period of service. No interest shall be payable for any period following the member's termination of service.

11.4 Deemed Waiver. By exercising the right to withdrawal, a member is deemed to have waived all rights for any other benefits from the System for the period of service for which the member's contributions are withdrawn.

11.5 Application for Withdrawal. Members withdrawing contributions under these rules shall submit an application to the System on the form provided by the System. Any written request for withdrawal will be accepted, but subsequent completion of the designated form shall be required. An application for withdrawal from a married member will be approved only if the member's spouse consents in writing to the withdrawal, unless the amount to be withdrawn does not exceed the amount that may be withdrawn without consent pursuant to section 401(a) of the Internal Revenue Code.

11.6 Repurchase of Service Credit for Contributions Previously Withdrawn.

11.6(1) Eligibility. Effective July 1, 2009, an active member of the System who has at least five years of service, as determined pursuant to Iowa Code section 411.4, and who received a refund of contributions for a prior period of service pursuant to Iowa Code section 411.23, may repurchase up to five years of service credit for that period of service under the terms of this Rule.

11.6(2) Service Eligible for Repurchase. An eligible member may elect to purchase a maximum of five years of service credit under this rule. A member may elect to purchase service credit for all or part of period of service for which contributions were withdrawn, subject to the five-year limitation and the limitations of Rule 11.6(5).

11.6(3) Application. A member seeking to purchase service credit under this chapter shall file a written application with the System requesting an actuarial determination of the purchase cost of the requested service credit. Applications shall be on forms provided by the System. The member must submit any documentation reasonably requested by the System.

11.6(4) Determination of Actuarial Cost. The System's actuary shall calculate the actuarial cost of the proposed purchase of service using the same actuarial assumptions and cost method used in preparing the System's annual actuarial valuation pursuant to Iowa Code section 411.8 that are in effect at the time of the calculation. The calculation shall be based on the difference between the present value of the member's future benefits based on the member's years of service already credited and the present value of the member's future benefits with the inclusion of the years of service to be purchased. The System shall then provide a purchase cost quote to the member. Purchase cost quotes shall expire six months after the date of the quote, and the expiration date shall be printed on the quote.

11.6(5) Internal Revenue Code Compliance. Service purchases made under this chapter shall not exceed the annual additions limitation of IRC section 415(c) for the calendar year in which the purchase is made. In addition, the System shall ensure that the requirements of IRC section 415(n) are met. The following procedures shall apply:

(1) If the member's total benefit at retirement passes the IRC section 415(b) dollar limitation test, the System shall pay the total benefit.

(2) If the member's total benefit at retirement fails the IRC section 415(b) dollar limitation test, the System shall reduce the benefit to the extent necessary to comply with the test.

11.6(6) Payment of the Purchase Cost.

(a) Upon receipt of the purchase cost quote, the member may elect in writing to purchase the credit, subject to the limitations of IRC section 415 and Rule 11.6(5). The purchase cost shall be paid by the member by a check payable to the System, and shall be paid prior to the expiration date of the quote. A member who wishes to purchase service credit after the expiration date of the quote must first obtain a new quote. Contributions for purchase of service credit are made on a post-tax basis. A member whose purchase of service is limited by the annual additions limitation under Rule 11.6(5) may purchase additional service in a subsequent calendar year, subject to obtaining a new purchase cost quote and to the limitations of this Chapter.

(b) In lieu of payment of the purchase cost by check payable to the System, the member may elect to purchase service credit by means of a direct rollover or direct transfer contribution, as set forth in Rule 17.4. In the event the amount of the direct rollover or direct transfer is less than the cost to purchase the credit, the balance of the purchase cost shall be paid by the member by a check payable to the System.

11.6(7) Period to be Credited. Service shall be credited to the years in which the subject service was performed. A member who purchases service for a partial period of previously-withdrawn service may select the years to be credited in a manner similar to that provided for military service under Rule 15.7.

11.6(8) Revocation. A member may revoke a service purchase election and receive a refund without interest of the purchase cost paid, provided that the revocation request is in writing and is received by the System no later than 60 days following the date of the receipt of the payment of the purchase cost by the System and prior to the date of the commencement of benefits to the member under section 411.6.

These rules are intended to implement Iowa Code sections 411.10A and 411.23.

CHAPTER 12

PAYMENTS

12.1 Date. Payments for monthly benefits shall be transmitted to allow for delivery of payment on or before the last day of the month for which payment is due. In the event payment is not received, a replacement check may be issued no earlier than ten calendar days following the original payroll date. If payment is received but is lost prior to the cashing of the check, the System may issue a replacement check at any time. The System may require execution of a designated request form prior to issuance of a replacement check. A copy of a cancelled check from a financial institution shall be sufficient proof of the issuance of the check by the System. The System may charge a fee for a replacement check in the amount of the bank charges incurred by the System. In the event the System has already issued a replacement check to the recipient in the previous twelve months, an administrative fee of \$25.00 will be charged in addition to the amount of the bank charges. The applicable fee shall be deducted from the replacement check prior to issuance.

12.2 Address. Checks shall be mailed to the payee's current mailing address. Benefits may also be paid by means of direct deposit or electronic funds transfer to the payee's account in a financial institution, upon the payee's completion of the form designated by the System for this purpose.

Effective January 1, 2005 monthly benefits shall be directly deposited to the payee's account in a financial institution via electronic funds transfer. The System will provide a monthly written notice of the benefit amount and anticipated deposit date to beneficiaries receiving payment via direct deposit. A beneficiary may elect to receive monthly benefits in the form of a paper check, but the System shall charge an administrative fee for processing such checks in the amount of \$15.00 per month. Such fees shall be deducted before the check is issued to the beneficiary. The System may, however, for good cause shown, waive the administrative fee. The fee described in this paragraph shall apply only to individuals whose entitlement commences after December 31, 2004 and those who are already being paid via direct deposit on that date.

12.3 Representative Payment.

12.3(1) Minors. Direct payments shall not be made to a minor child.

a. If benefits are to be paid simultaneously to a Minor Child of a member and the surviving spouse of that member, and the surviving spouse is the parent of the Minor Child, benefits for the child shall be made payable to the surviving spouse on the child's behalf. (E.g.: To Jane Doe for children of John Doe; To Jane Doe for Mary Doe). This procedure shall not be followed, however, if the surviving spouse is known to be incompetent or other circumstances are known to exist which, in the judgment of the Director, should preclude payments for the child being made to the surviving spouse.

b. If a parent of the Minor Child is not concurrently eligible for benefits from the System, benefits shall be paid on the child's behalf to the child's guardian or conservator, if any. (E.g.: To Jane Doe, guardian of Mary Doe). If there is no guardian or conservator, benefits shall be paid under the Iowa Uniform Transfers to Minors Act (Iowa Code Chapter 565B). (E.g.: To Jane Doe as Custodian for Mary Doe under the Iowa Uniform Transfers to Minors Act.)

c. Upon marriage or attainment of age 18, a Minor Child who remains eligible for payment and is legally competent shall be paid directly.

12.3(2) Adults. Adult beneficiaries who are unable to manage their finances due to severe physical or mental limitations shall have a representative payee appointed by the System to receive and manage their benefits.

a. *Appointed representatives.* Payment may be made on behalf of a beneficiary to an individual who has power of attorney or who has been appointed guardian or conservator by the court, without further evidence of incompetence. The representative must file the prescribed payee application form with the System and furnish a copy of his or her appointment papers in order to initiate the representative payment.

b. *No appointed representative.* Where a beneficiary is not capable of managing finances but there has been no power of attorney, guardian or conservator appointed, representative payment may still be made. The prospective payee must file the payee application with the System. The System will contact the beneficiary's doctor or other appropriate source to confirm the incompetence to manage funds. The System will also determine through the application process whether the payee applicant is the appropriate person to be appointed. A spouse or other relative will ordinarily have priority over a unrelated applicant.

c. *Rights and obligations of the representative payee.* A representative payee shall represent the beneficiary in the transaction of the beneficiary's affairs with the System and shall have all of the rights and obligations of the beneficiary. A person serving in the capacity of representative payee must agree to transact all business with the System in a manner that best serves the interests of the beneficiary and to use all payments from the System for the benefit of the beneficiary. Failure to do so may cause the discontinuance of the representative payee relationship and/or result in the required repayment to the System of all or a portion of the benefits received by the representative payee.

12.4 Proration.

12.4(1) General Rule. Benefits payable to all beneficiaries for the first month of entitlement shall be prorated based on the number of days of eligibility during the month in question.

12.4(2) Special Rule for Month of Death. Benefits shall terminate effective with the last day of the month of a beneficiary's death. A pension to the spouse and/or children of a deceased pensioned member shall be effective no earlier than the first day of the first month following the month of the member's death.

12.5 Underpayment. A corrective payment shall be made to a beneficiary who received a payment from the System in an amount less than that to which the beneficiary was entitled. No interest shall be paid on such amounts.

12.6 Overpayment. An overpayment exists whenever a beneficiary receives payment in an amount greater than that which the beneficiary was entitled to receive.

12.6(1) "Recoupment" means the repayment of an overpayment, either by repayment from the beneficiary or by withholding from future payments, or both. All overpayments are subject to recoupment.

12.6(2) Notice. A beneficiary shall be notified by the System when it is determined that an overpayment exists. The notice shall include the amount, date and cause for the overpayment, and the proposed method of recoupment. The System shall provide additional information regarding the computation of the overpayment upon the beneficiary's request.

12.6(3) Request for Review. A beneficiary may request a review of the existence or amount of an overpayment or of the proposed method of recoupment within 30 days of receiving notice thereof. This period may be extended for good cause at the discretion of the Director. The beneficiary may include with his request any evidence relevant to the payment decision. The Director shall review the overpayment decision, taking into account any evidence submitted by the beneficiary, and shall inform the beneficiary in writing of the decision on review.

12.6(4) Waiver. Upon the beneficiary's request, the Director may waive recoupment of all or part of any overpayment if it is determined that:

a. the beneficiary was without fault in the overpayment and recoupment would result in financial hardship

or

b. recoupment would be unfair for any other reason.

The beneficiary shall be deemed to be "without fault" in the overpayment if the overpayment was caused by an error of the System.

A request for waiver of an overpayment shall be made in writing on a form provided for that purpose by the System.

12.6(5) Decisions under subrules 12.6(3) or 12.6(4) may be appealed by the beneficiary within 30 days of the date of the decision. The appeal procedure under Chapter 6 of these rules shall be followed.

12.6(6) Benefits Paid Pending Decision. No recoupment shall be made during the pendency of a request for review, a request for waiver, or the appeal of a decision on either. Recoupment shall begin no later than the month after the month the final overpayment decision is issued.

12.6(7) Rate of Recoupment. The Director may enter into an agreement with an overpaid beneficiary regarding the rate at which the overpayment will be recouped, either by installment payments or by withholding. The rate of recoupment is subject to the discretion of the Director, but overpayments should ordinarily be recouped over a period not to exceed 12 months.

12.6(8) Overpaid individual deceased. If the overpaid individual has died, the overpayment may be recovered as follows:

a. The System may file a claim in the estate, or may withhold benefits due the estate, if any;

b. The System may require distributees of the estate to refund the overpaid amount, to the extent of funds received from the estate;

c. If no estate is probated, the System may require heirs of the decedent to refund the overpaid amount, to the extent of funds received in accordance with the rules of intestate succession;

or

d. If the overpayment cannot be recovered from the decedent's estate, the System may recover the overpayment by withholding benefits from other individuals entitled to benefits based on the earnings

of the same member.

12.7 Commencement of Benefits.

12.7(1) General Rule. Benefit payments shall commence upon approval by the System. In the event of an appeal challenging the benefit as awarded, payments shall continue to be made during the pendency of the appeal in the amount originally determined. Any underpayment or overpayment resulting from the decision on appeal will be handled in accordance with this Chapter.

12.7(2) Special Retroactivity Rule for Certain Disability Appeals. This special rule applies in the event: a member is awarded a disability pension and the date of the award is after the last day of the period for which the member was entitled to any pay for accumulated sick leave or vacation. In that event, the benefit shall be paid retroactive to the later of (1) the filing date of the disability application or (2) the first day following the period for which accumulated sick leave or vacation was payable.

12.8 Forgery. Where a forgery of a Municipal Fire and Police Retirement System of Iowa check issued in payment of a benefit or refund is alleged, the payee must complete and sign an affidavit that the endorsement is a forgery and attach a supplemental statement to the forgery affidavit setting forth the facts and circumstances of the alleged forgery. A forgery affidavit shall be signed before a notary public who shall sign and affix a notary seal to the affidavit.

12.9 Readjustment of Pensions.

12.9(1) Survivor's Minimum. The minimum 20% benefit provided under § 411.6(11)(a) is relevant only to the initial benefit computation shall not be recomputed in the escalation process. Escalation of such benefits shall be computed in accordance with the procedures set forth in § 411.6(12).

12.9(2) Delay in Escalation. If escalation is delayed for any reason, any additional amounts due shall be included with the first monthly benefit check payable after the escalation determination is made. Such amounts shall be paid retroactive to the effective date. No interest on such amounts shall be paid.

12.9(3) Suspension Due to Reemployment. In the event a member's benefit is reinstated following a period of reemployment pursuant to section 411.3(3), the benefit shall be recalculated to provide credit for the first July 1 annual readjustment (if any) that occurred during the period of reemployment. The benefit shall not be recalculated to provide credit for subsequent annual readjustments during the same period of reemployment, if any.

12.9(4) Appeals. A member who wishes to appeal a determination of the System related to escalation of the member's benefit (including a determination that no escalation is due) must file the appeal in writing with the System within six months of the date the escalation in question was (or would have been) effective. The provisions of Chapter 6 of these rules otherwise apply with respect to such an appeal.

12.10 Marital Property Orders. The System is not subject to the Qualified Domestic Relations Order (QDRO) provisions of the Internal Revenue Code, but will recognize a valid domestic relations order relating to the division of marital property (including the member's accrued benefit under the chapter) in a dissolution action. Such orders shall hereinafter be referred to as "Marital Property Orders." The System shall review all Marital Property Orders presented and shall inform both the member and the alternate payee (or their representatives) within a reasonable time whether or not such order is valid. Valid orders shall be effectuated by the System. A Marital Property Order must comply with the following requirements in order to be valid and enforceable:

12.10(1) *Facts required in order:*

- (a) The name and last known mailing address (if any) of the member and the name and mailing address of the alternate payee;
- (b) The dollar amount or percentage of the member's benefits to be paid by the system to the alternate payee. In the alternative, the order may specify a formula, such as the following: one-half of the amount determined by a formula, the numerator of which is the number of years the member contributed to the plan during the marriage, and the denominator of which is the total number of years the member contributed to the plan prior to drawing benefits; and
- (c) The number of payments or period to which such order applies. The period may not exceed the lifetime of the member;
- (d) Extent (if any) to which former spouse is to be treated as the surviving spouse upon the death of the member. See subrule 12.10(3), below.
- (e) Effect in the event of an application by the member to withdraw the member's contributions pursuant to Iowa Code § 411.23.

12.10(2) *Order may not alter benefit*

- (a) May not require the system to provide any type or form of benefit or any option not otherwise provided by the system;
- (b) May not require the system to provide increased benefits over what would otherwise be payable on the member's record, as determined on the basis of actuarial value;
- (c) May not require the system to provide benefits at a time otherwise not permitted under the chapter;
- (d) May not require the payment of benefits to an alternate payee to the extent that they are already required to be paid to another alternate payee under a previous marital property order;
- (e) May not permit the alternate payee to designate a beneficiary. In the event the alternate payee predeceases the member, the alternate payee's portion of the monthly benefit will revert to the member; and
- (f) May not permit payment to the alternate payee following the death of the member, except as provided in C. below.

12.10(3) *Treatment of former spouse as surviving spouse*

- (a) A former spouse shall be treated as a surviving spouse only if specifically designated as such pursuant to section 411.1.
- (b) If the former spouse is designated as a surviving spouse, the dissolution of marriage decree shall state the dollar amount or percentage of the total surviving spouse benefit to be paid by the system to the former spouse. The benefit payable to a surviving spouse shall not

be recomputed upon the death of any other surviving spouse.

(c) The designation of a former spouse as the surviving spouse prior to the member's retirement precludes the election of an optional retirement benefit under section 411.6A by the member upon retirement.

(d) The designation of a former spouse as the surviving spouse prior to the member's retirement precludes a change in the member's beneficiary designation pursuant to section 411.6(14) to the extent that such change would be inconsistent with the terms of an existing Marital Property Order.

12.10(4) *Deferred Retirement Option Plan ("DROP") Benefits*

(a) DROP benefits paid pursuant to 14.6 after the entry of a Marital Property Order ("MPO") shall be paid to the alternate payee to the extent provided in the MPO.

(b) If the MPO does not address DROP, the DROP distribution, if any, shall be paid to the alternate payee in the same proportion provided in the MPO relating to the member's retirement benefits.

This subrule is intended to implement Iowa Code sections 411.6C and 422.13. This rule is intended to implement the decision of the Iowa Supreme Court in Branstetter v. Branstetter, 508 N.W.2d 638 (Iowa 1993) and the provisions of Iowa Code section 411.13, as amended by 1996 Acts of the General Assembly.

12.11 Child Support Orders. The System will recognize child support withholding orders under Chapter 252D. In order to be effective, such orders must include sufficient identifying information, as determined by the System. The member's social security number shall be provided to the System with the order.

12.12 Federal Tax Levies. The System will comply with federal tax levies to the extent mandated by the Internal Revenue Code and the regulations thereunder.

These rules are intended to implement Iowa Code sections 411.6 and 411.13.

CHAPTER 13

PRE-EMPLOYMENT MATTERS

13.1 Medical Protocols. The Board shall promulgate medical protocols, which shall govern the physical examination of applicants for the positions of police officer or firefighter in all cities that are subject to chapter 400 of the Iowa Code. Said protocols may be revised from time to time, at the discretion of the Board.

13.2 Physical Examinations. The physical examination of said applicants shall be conducted by the medical board as directed by the System. Said examinations shall be conducted at sites determined by the System. The costs of the examinations shall be paid by the cities.

13.3 Physical Examination Following Break in Service. A member who returns to service or transfers to another city or department following a break in service of more than one month duration shall be treated as an applicant for purposes of the physical examination provisions of this chapter, Iowa Code section 400.8 and the System's medical protocols.

13.4 Expiration of Medical Examination Report. The medical examination report prepared as a result of a medical examination of an applicant pursuant to the System's medical protocols may be relied on by a city for twelve months after the date of the report, provided, however, if the date of commencement of employment is more than sixty days after the date of the medical examination, the applicant must certify whether he or she has had a material change in medical status since the date of the examination. An updated medical examination and report is required prior to hiring in the event the applicant does not commence employment within the twelve-month period, or if the applicant does not commence employment within the 60 day period and cannot certify that there has been no material change in medical status.

These rules are intended to implement Iowa Code section 400.8.

CHAPTER 14

DEFERRED RETIREMENT OPTION PLAN

14.1 Definitions.

The following terms shall have the prescribed meanings for purposes of this Chapter:

- (a) *DROP benefit* means, for a participant, an amount credited to the participant's account each applicable month equal to the member's applicable percentage multiplied by the member's participant retirement amount.
- (b) *Accumulated DROP benefit* means the amount credited to the member's participant account while participating in DROP.
- (c) *DROP period* means the period beginning with the first day of the month the member commences participation in DROP and ending with the last day of the month in which the member's participation in DROP terminates.
- (d) *Participant retirement amount* means the amount equal to the monthly retirement allowance the eligible member would have received under section 411.6 if the member retired on the date the eligible member commenced participation in the plan, based on earnings through the previous full quarter of earnable compensation earned by the member.

14.2 Applications for Deferred Retirement Option Plan (“DROP”) Benefits.

14.2(1) Filing. Applications for benefits shall be submitted to the employing department by the member and shall be filed with the System by said department within five (5) working days of receipt.

14.2(2) Forms. Applications shall be on forms provided by the System. Any written request for benefits will be accepted, but subsequent completion of the designated forms shall be required.

14.2(3) Required Information--Applicant. The applicant shall submit proof of age with the application. Proof of age may also be required for the applicant's spouse or contingent beneficiary, as directed by the System. Proof of age shall be in the form of a birth certificate or church record recorded before age five. If neither of these records exists, the applicant shall submit one or more other documents or records acceptable to the System that verify the date of birth. Records that may be acceptable for this purpose include the following:

- (1) census record;
- (2) military record;
- (3) naturalization record;
- (4) marriage record;
- (5) life insurance policy;
- (6) school record;
- (7) family Bible record;

- (8) delayed birth certificate;
- (9) passport.

Photocopies of documents may be submitted, subject to the right of the System to require an original or certified copy.

14.2(4) Required Information--Employer. The employing city or department shall certify the member's date of hire by completing the employer's section of the DROP Application prior to filing said application with the System. The employing city or department shall also furnish any other relevant information requested by the System.

14.2(5) Election of DROP Period. The application shall include the following:

- (1) The month the member elects to commence participation in DROP.

(2) The month the member elects to terminate participation in DROP. The date elected may be three, four or five years after the DROP commencement date. Provided, however, that for the two year period beginning with the first day of first month following the implementation of the DROP, an eligible member between the ages of 62 and 64 may elect a plan termination date that is one or two years after the DROP commencement date.

14.3 Processing of Claim.

14.3(1) Upon receipt of an application for DROP, the System shall review the application and request any additional evidence which is needed to determine the benefits due the applicant. Such additional evidence may include verification of employment with additional participating departments, as disclosed in the Employment Information section of the Retirement Application, or in the Employment History section of the applicant's Membership Form on file with the System. The System shall request such employment information from the appropriate cities or departments. Said cities or departments shall furnish all requested information within five (5) working days of receipt of the request. Upon receipt of the requested evidence, the System shall determine whether the applicant meets all requirements for the benefit applied for.

14.3(2) If any requirement for benefits is not met, the System shall inform the applicant in writing of the denial and its basis.

14.3(3) If all requirements for benefits are met, the System shall send the applicant a notice that benefits are approved, which shall include the effective date and the amount of the DROP benefit awarded.

14.4 Accrual of DROP Benefit. An amount equal to seventy-five percent of the member's DROP benefit shall accrue to the benefit of the member for each month of participation in the plan. An amount equal to twenty-five percent of the member's accumulated DROP benefit shall accrue to the benefit of the member upon the occurrence of any of the following events: (1) termination of participation in the plan on the selected plan termination date; (2) termination of participation prior to the selected plan termination date as the result of entitlement to a disability benefit under either section 411.6(3) or section 411.6(5); or (3) death prior to the selected plan termination date.

This rule is intended to implement Iowa Code section 411.6C(2)(c).

14.5 Termination of Participation. Participation in DROP shall terminate upon the member's termination of membership service. The employing city or department shall certify the date of the member's termination of membership service.

14.6 Payment of DROP Benefit. The member's accrued DROP benefit shall be paid upon termination of the member's participation. The DROP benefit shall be paid in the form of a lump sum distribution unless the member elects a rollover to an eligible retirement plan as defined in section 411.6B.

14.7 Payment of Participant Retirement Amount. Upon termination of participation in DROP, the member shall be deemed to be retired under the System. Payment of a service retirement allowance shall commence and shall be in the amount of the Participant's Retirement Amount unless the member elects an optional form of distribution pursuant to section 411.6A and Rule 8.1(5).

14.8 Appeals.

See Chapter 6 of these Rules.

CHAPTER 15

MILITARY SERVICE

15.1 Eligibility. Effective July 1, 2008, an active member of the System who has at least five years of service, as determined pursuant to Iowa Code section 411.4, may purchase service credit for military service under the terms of this Chapter.

15.2 Service Eligible for Purchase. An eligible member may elect to purchase up to five years of service credit for military service that is not already required to be recognized by the System under section 414(u) of the Internal Revenue Code (“IRC”) or the federal Uniformed Services Employment and Reemployment Rights Act (“USERRA”). A member may elect to purchase service credit for all or part of his or her eligible service, subject to the five-year limitation and the limitations of Rule 15.5. “Military service” for purposes of this Chapter means active duty service in any of the following: (1) the United States Army, Navy, Marine Corps, Air Force, or Coast Guard; (2) the Reserves of any of the preceding branches of service; (3) the Army National Guard or Air National Guard; (4) the Commissioned Corps of the Public Health Service; and (5) any other category of persons designated by the President in time of war or emergency.

15.3 Application. A member seeking to purchase service credit under this chapter shall file a written application with the System requesting an actuarial determination of the purchase cost of the requested service credit. Applications shall be on forms provided by the System. The member must provide the following information:

- (1) Proof of age, as described in Rule 8.1(3).
- (2) Dates of covered service under the System and name of employing city (or cities).
- (3) Periods of military service for which credit is requested.
- (4) Proof of applicable military service. Records that may be acceptable for this purpose include the member’s DD 214, discharge papers or other records as determined by the System.
- (5) Any other documentation reasonably requested by the System.

15.4 Determination of Actuarial Cost. The System’s actuary shall calculate the actuarial cost of the proposed purchase of service using the same actuarial assumptions and cost method used in preparing the System’s annual actuarial valuation pursuant to Iowa Code section 411.8 that are in effect at the time of the calculation. The calculation shall be based on the difference between the present value of the member’s future benefits based on the member’s actual years of service and the present value of the member’s future benefits based on the member’s actual years of service plus the years of service to be purchased. The System shall then provide a purchase cost quote to the member. Purchase cost quotes shall expire six months after the date of the quote, and the expiration date shall be printed on the quote.

15.5 Internal Revenue Code Compliance. Service purchases made under this chapter shall not exceed the annual additions limitation of IRC section 415(c) for the calendar year in which the purchase is made. In addition, the System shall ensure that the requirements of IRC section 415(n) are met. The following procedures shall apply:

15.5(1) If the member's total benefit at retirement passes the IRC section 415(b) dollar limitation test, the System shall pay the total benefit.

15.5(2) If the member's total benefit at retirement fails the IRC section 415(b) dollar limitation test, the System shall reduce the benefit to the extent necessary to comply with the test.

15.6 Payment of the Purchase Cost.

(a) Upon receipt of the purchase cost quote, the member may elect in writing to purchase the credit, subject to the limitations of IRC section 415 and Rule 15.5. The purchase cost shall be paid by the member by a check payable to the System, and shall be paid prior to the expiration date of the quote. A member who wishes to purchase service credit after the expiration date of the quote must first obtain a new quote. Contributions for purchase of service credit are made on a post-tax basis. A member whose purchase of service is limited by the annual additions limitation under Rule 15.5 may purchase additional service in a subsequent calendar year, subject to obtaining a new purchase cost quote and to the limitations of this Chapter.

(b) In lieu of payment of the purchase cost by check payable to the System, the member may elect to purchase service credit by means of a direct rollover or direct transfer contribution, as set forth in Rule 17.4. In the event the amount of the direct rollover or direct transfer is less than the cost to purchase the credit, the balance of the purchase cost shall be paid by the member by a check payable to the System.

15.7 Period to be Credited. Service shall be credited to the years in which the subject military service was performed. A member who purchases service for a partial period of military service may select the years to be credited. For example, a member who performed eligible military service from 1995 through 1999 may elect to purchase service credit for one or more of those years. Service shall be credited in a manner consistent with that set forth in section 411.4.

15.8 Revocation. A member may revoke a service purchase election and receive a refund without interest of the purchase cost paid, provided that the revocation request is in writing and is received by the System no later than 60 days following the date of the receipt of the payment of the purchase cost by the System and prior to the date of the commencement of benefits to the member under section 411.6.

15.9 Withdrawal of Contributions. A withdrawal of contributions under section 411.23(1) shall include the amounts the member paid for service purchased under section 411.10, if any. Interest shall be calculated on such amounts from the date of the purchase, using the same rate applicable to member contributions made pursuant to section 411.8.

15.10 Death of Member in Military Service. Effective for deaths occurring on or after January 1, 2007, if a member dies while performing qualified military service, as defined under pursuant to IRC section 414(u), the death shall be treated by the System as an accidental death and benefits shall be payable in accordance with section 411.6(9).

15.11 Disability of Member in Military Service. Effective for applications filed on or after July 1, 2013, if a member became disabled while performing qualified military service, as defined under pursuant to IRC section 414(u), the member shall be treated as a member in good standing, whether or not the member returns to membership service, and shall be permitted to file an application for an ordinary disability retirement pension.

15.12 Differential Wage Payments. Effective January 1, 2009, if a member who is absent from 411 service while performing military service receives differential wage payments, as defined in IRC section 3401(h)(2) from a participating city, the differential wage payment is treated as earnable compensation and the individual is treated as an active member of the System while receiving said payments. Nothing in this rule or in section 411.9(3) requires a city to make differential wage payments.

15.13 Appeals. See Chapter 6 of these Rules.

These rules are intended to implement Iowa Code sections 411.9 (1A), 411.9 (1B) and 411.10.

CHAPTER 16

ACTUARIAL ASSUMPTIONS AND METHODS

16.1 Actuarial Method. Effective for the fiscal year beginning July 1, 2011, the actuary shall perform the annual actuarial valuation of the system using the entry-age normal method and an amortization period equal to 25 years.

These rules are intended to implement Iowa Code sections 411.5, 411.8 and 97D.5.

CHAPTER 17

ROLLOVERS

17.1 Rollovers of Members' Accounts. Pursuant to the provisions of § 411.6B and the Internal Revenue Code, the System shall give advance notice to the distributee of an eligible rollover distribution of the right to elect a direct rollover to an eligible retirement plan, and of the mandatory withholding requirement where a direct rollover is not elected. Election of a direct rollover shall be made by completion of the form provided by the System. The System may require the distributee to provide written verification of the status of the proposed recipient plan.

17.2 Automatic Rollovers.

a. Pursuant to the provisions of § 411.23 and the Internal Revenue Code, the System shall refund a member's contributions if the following conditions are met: (1) the member was a member of the System for less than four years; (2) the member terminated service four or more years prior to the date of the refund; and (3) the amount to be refunded does not exceed \$5,000 (indexed).

b. In the event such a refund is made without the member's consent or election and exceeds \$1,000, the System shall pay the distribution in the form of a direct rollover to an individual retirement plan (IRA) designated by the System.

17.3 Rollovers by Nonspouse Beneficiaries Effective January 1, 2010, a designated beneficiary who is not the surviving spouse of the member may roll over all or part of an eligible rollover distribution to an individual retirement account established by the beneficiary for the purpose of receiving the nonspouse beneficiary rollover pursuant to section 402(c)(11) of the Internal Revenue Code and the guidance thereunder.

17.4 Acceptance of Rollovers for Purchase of Service Credit

17.4(1) General. A member may, to the extent permitted by the Internal Revenue Service, purchase any service credit permitted under Iowa Code sections 411.10 or 411.10A by means of a direct rollover or direct transfer, consistent with the applicable provisions of the Internal Revenue Code. Purchases of service credit by means of a direct rollover under this section shall not exceed the amounts permitted under section 415(n) of the Internal Revenue Code and Iowa Code sections 411.10 and 411.10A as determined by the System. Purchase of service by means of a rollover under this Rule is in lieu of the payment provisions of Rule 11.6(6), regarding repurchase of service credit for contributions previous withdrawn, and of Rule 15.6, regarding purchase of service credit for military service.

17.4(2) Direct Rollovers. A member may purchase service credit as authorized by this Rule through a direct rollover to the System of an eligible rollover distribution from an eligible retirement plan as permitted by the Internal Revenue Service under the Internal Revenue Code. The amount of the direct rollover into the system may not exceed the cost of the service purchased by a member.

17.4(3) Direct Transfers. A member may also purchase any service credit authorized by this Rule by means of a direct transfer of either pretax amounts or after-tax contributions, from an annuity contract under section 403(b) of the Internal Revenue Code or an eligible plan described in section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. A direct transfer is a trustee-to-trustee transfer to the System of contributions made to annuity contracts under section 403(b) or eligible

governmental plans under section 457(b) for purposes of purchasing service credit in the retirement system.

17.4(4) Definitions.

(a) *“Eligible retirement plan”* has the meaning set forth in Iowa Code section 411.6B.

(b) *“Eligible rollover distribution”* means a distribution of all or any part of a participant’s account in an eligible retirement plan, except that an eligible rollover distribution does not include any of the following:

(1) A distribution that is one of a series of substantially equal periodic payments, which occur annually or more frequently, 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 made for a specified period of ten years or more.

(2) A distribution to the extent that the distribution is required pursuant to section 401(a)(9) of the Internal Revenue Code.

(3) Any amounts that are not permitted to be treated as eligible rollover distributions by the Internal Revenue Service.

These rules are intended to implement Iowa Code section 411.6B.