

Chapter 67, FIRE AND POLICE DEPARTMENTS

[HISTORY: Adopted by the City Council of the City of Binghamton as indicated in article histories.
Amendments noted where applicable.]

GENERAL REFERENCES

Police/Community Relations Advisory Board -- See Ch. 18.

Department of Public Safety -- See Ch. 40.

ARTICLE I, Fire Fighters' Relief and Pension Fund [Adopted 10-5-1970 (Part D of the 1970 Code)]

§ 67-1. Definitions.

Unless otherwise specified in this article, the words and terms in this section mentioned shall be defined and construed as follows:

BOARD OF TRUSTEES -- The Board of Trustees of the Fire Fighters' Relief and Pension Fund hereby created.

EXCISE MONEYS -- Any and all fees or moneys paid by any person or public officer to the City Treasurer or to any other officer of said City for the granting of licenses or permission to sell strong and spirituous liquors, ale, wine or beer in said City and any moneys paid for taxes upon the business of trafficking in or selling or dealing in strong or spirituous liquors, ale, wine or beer in said City under the provisions of any law of this state authorizing the granting of any such license or permission.

FIRE COMMISSIONER -- The Fire Commissioner of the City of Binghamton, his or her successors in office, and the person, persons or officers hereafter designated by any statute to have charge and control of the Fire Department of said City.

FIRE DEPARTMENT -- Includes:

- A. All officers and members (both "paid" and "call" persons) of the Fire Department of said City now in office who shall comply with the provisions of this article.
- B. All officers and members (both "paid" and "call" persons) of the Fire Department of said City, hereafter appointed by the Fire Commissioner, who shall comply with the provisions of this article; and, whenever the Fire Commissioner shall see fit, he or she may by proper order require that thereafter all such new appointees shall be examined by a physician and surgeon selected by the said Board of Trustees, and be found to be in sound health and physical condition and able to perform his or her full duty as such officer or member, and also pay into said fund a sum as set from time to time to cover the expenses of such examination and other expenses.

FUND -- The Fire Fighters' Relief and Pension Fund hereby established.

LENGTH OF SERVICE -- Continuous and consecutive service, which shall be computed from the time when the officer or member began to receive pay for such service direct from the City of Binghamton; provided, however, that call persons shall be credited thereon with the same proportion of time upon the salary received by each while (serving as) such call persons as would be credited to a regular person of the same rank.

§ 67-2. Establishment and composition of fund.

There shall be and hereby is established in the City of Binghamton a Fire Fighters' Relief and Pension Fund for the Fire Department of said City which shall consist of:

- A. All securities, property and moneys, which, upon the passage of this article, or any time subsequent thereto, shall be paid into said fund by the Binghamton Firemen's Benevolent Association of Binghamton, New York.
- B. All moneys which may be hereafter received or collected from the tax on foreign fire insurance companies, or agents thereof, doing business in the City of Binghamton, excepting the amount payable to the Firemen's Association of the State of New York. The authority granted by this article

to the Fire Fighters' Relief and Pension Fund for the Fire Department of the City of Binghamton to collect or receive any moneys from the tax on foreign insurance companies doing business in the City of Binghamton shall expire on and after the first day of January 1962.

- C. All fines, penalties and forfeitures imposed upon and collected from any officer or member of said Fire Department by way of discipline, collectible from pay or salary.
- D. All rewards, fees, gifts or emoluments other than salary that may be paid or given for or on account of services rendered by any such officer or member; except such as shall be allowed by said Fire Commissioner to be retained by such officer or member, or as may be given to endow a medal or other form of competitive reward.
- E. All sums of money or property that may be contributed by gifts, or raised by entertainments given for that purpose.
- F. An assessment of 2% per month on the salaries of all officers and members of said Department; which said sum or assessment shall be deducted monthly by the City Treasurer from the salary of each and every officer and member of said Department and paid by such City Treasurer into and for the benefit of said fund.
- G. The Common Council may, from time to time, by ordinance, authorize and direct the payment into said fund of an amount not exceeding 2% of all excise moneys belonging to the City of Binghamton.
- H. The Common Council may also, by ordinance, authorize and direct the payment into said fund of any penalties recovered for violation of any ordinance of the City and the moneys so paid shall be used for the purposes for which said fund is created.
- I. Any and all other sums authorized or provided by law. (Laws 1961, Ch. 634, § 1.)

§ 67-3. Organization and operation of Board of Trustees.

- A. The Mayor, the Comptroller, the City Treasurer, the Fire Commissioner and three members or officers of the Fire Department (to be elected annually in the month of December by the members of the Fire Department who are members of the fund), and their successors in office, shall be and are hereby constituted the Board of Trustees of said fund. The Mayor shall be Chair, the City Treasurer shall be Treasurer, and one of the Trustees chosen from the Fire Department shall be the Secretary of said Board. Said Secretary shall be designated by a majority vote of the Board of Trustees. Each of such officers of the Board of Trustees shall serve without compensation. The Corporation Counsel of the City shall be the legal advisor of such Board of Trustees and shall likewise serve without additional compensation therefor. Said Board of Trustees shall have the exclusive control, management and distribution of said fund, and the said Treasurer shall be the custodian thereof. Said fund shall be kept by said City Treasurer separate and apart from any other funds under his or her custody. The sureties on the official bond of said City Treasurer shall be liable for the safekeeping and due accounting by said Treasurer of the moneys and securities belonging to said fund. Said Treasurer of said Board of Trustees is hereby declared to be the Treasurer of the Fire Department of said City of Binghamton for the purpose of receiving and collecting the tax on foreign insurance companies or agents within the scope and meaning of Insurance Law § 9104, and of any and all acts supplementary thereto or amendatory thereof. The Board of Trustees is hereby authorized to adopt rules and regulations for its government and for the conduct of the annual election of the members of said Board chosen from the Fire Department. Said Board shall hear and determine all applications for relief or pension under this article. It shall cause to be kept a full and complete record of all its proceedings and meetings. Said Board of Trustees may take by gift, grant,

bequest or devise and hold free from taxation, any real or personal property, the annual income of which shall not exceed in the aggregate the sum of \$30,000. No payments whatever shall be made or allowed by said Board of Trustees as rewards, gratuities or compensation to any person for salary or services, rendered to or for such Board of Trustees, unless otherwise authorized by this article. Said Board of Trustees shall have charge of and administer said fund and invest the same, or any part thereof, as hereinafter prescribed. Said Board of Trustees is empowered to make all necessary contracts, and institute all necessary and proper actions or proceedings and make payments from said fund of relief or pensions as provided by this article and not otherwise.

- B. In the month of December 1941, and in the month of December of each year thereafter, the members of the Fire Department who are members of the fund shall elect three of its members or officers who are members of said fund, as such Trustees, who shall enter upon the discharge of their duties on the first Tuesday of January thereafter, and hold office for one year and until their successors are elected and qualified. A majority of said Board of Trustees shall constitute a quorum.

§ 67-4. Retirement from service; payment of pension.

- A. Any officer or member of the Fire Department who, upon examination by the surgeon of the Department duly certified under oath, may be found disqualified physically or mentally for the performance of his or her duties in the Department by reason of disease or disability caused or induced by the active performance of the duties of his or her position, without fault or misconduct on his or her part, or of length of service of not less than 20 years as a paid member of said Fire Department, may, during the continuance of such disability, be retired by the Fire Commissioner. If such officer or member objects to being so retired, he or she may demand an examination as to such disability by three competent physicians or surgeons of good repute and standing, one to be selected by the Fire Commissioner, one by such officer or member, and the third by the two physicians or surgeons thus chosen. The three so selected shall examine such officer or member; the finding of a majority of such examiners shall be final as to the ability or disability at that time of such officer or member to perform his or her full duty; and if found able, he or she shall be returned to duty at the same salary and rank then paid and held by him or her.
- B. Every officer or member of said Department who may have become permanently incapacitated from performing full duty as such officer or member by reason of age or of disease or disability caused or induced by injury, without fault or misconduct on his or her part, or by length of service of at least eight years as a paid member of said Fire Department, may, on his or her own application, be retired from service by the Fire Commissioner, provided the applicant has been examined by three physicians or surgeons selected as aforesaid and their sworn certificate signed by a majority of such examiners filed with the Fire Commissioner, showing that the applicant is permanently disqualified from performing his or her duties in said Department.
- C. Any officer or member retired under Subsection A or B of this section shall remain under the orders of the Fire Commissioner, who may order him or her at any time to do any duty of which he or she is capable and which may be deemed to be for the best interests of said Department. While so serving, he or she shall be paid the same salary as that received by the other members of the Department of the same rank.
- D. Every officer or member of said Department who shall have served therein for 20 consecutive years or more shall, upon his or her own application, without examination or certification, be retired from membership therein.
- E.
- F. Except as otherwise prescribed by this article, a pension shall be granted and paid to each person retired under the provisions of this section to the amount of 1/2 of the salary paid to such person at

the time of his or her retirement. However, such amount shall not be less than \$125 a month, and shall be payable in monthly installments. No officer or member of said Department shall be entitled to any allowance as pension during the time he or she shall be receiving full salary from said Fire Department.

§ 67-5. Death of members; pension to survivors.

- A. The surviving spouse (provided that said surviving spouse was the spouse of a member of this fund on the date of his or her retirement), minor child or children, or dependent parent or parents of (1) any officer or member of said fund, who has reached the rank of first grade fire fighter and who has died while a member of said fund; (2) any officer or member of said fund below the rank of first grade fire fighter who has been killed in the actual performance of his or her duty or who has died from any injury caused by an accident, or from disease which was caused directly by the performance of his or her duty; or (3) any officer or member of said fund retired under the provisions of Chapter 403 of the Laws of 1912 and as amended; shall be awarded an allowance or pension from said fund by said Board of Trustees; the amount of such allowance or pension shall be:
- (1) To the surviving spouse of such officer or member, the sum of \$60 per month.
 - (2) To the child or children of such officer or member, under the age of 18 years, if there be no surviving spouse, or if the surviving spouse dies, the sum of \$25 per month.
 - (3) If there be both surviving spouse and children, each child shall be allowed the sum of \$5 per month; provided, however, that the whole amount paid to the surviving spouse and minor child or children of any officer or member shall not exceed \$35 per month, collectively; and the Board of Trustees shall have the right to cancel any pension that may have been granted to the child or children of any surviving spouse who shall remarry, and such cancellation shall not be subject to review or reversal by any court.
 - (4) To the dependent parent or parents of such officer or member who dies leaving no surviving spouse or children under 18 years of age, the sum of \$25 per month shall be paid; but no more than the aforesaid maximum sum of \$25 per month shall be paid in case both parents survive.
- B. The payment in all cases shall commence within one week after the date of death of any officer or member of said fund.

§ 67-6. Termination of survivors' pension.

Pensions granted to a surviving spouse shall terminate when the surviving spouse shall remarry, and pensions granted to children shall terminate whenever they shall respectively marry or arrive at the age of 18 years.

§ 67-7. Pensions obligatory.

It shall be obligatory on said Board of Trustees to grant or allow pensions pursuant to the provisions of this article.

§ 67-8. Persons eligible for benefits.

If any officer or member of the Fire Department now in office shall refuse to comply with the provisions of this article, or shall withhold his or her consent to the assessment upon his or her salary provided in § 67-2 of this article, neither he or she nor his or her family or dependents shall be eligible to any of the benefits of said fund. Assent to the provisions of this article shall be presumed as a condition precedent to the acceptance of office on the part of all persons hereafter appointed as officers or members of said Fire Department.

§ 67-9. Payment of pensions.

Said Board of Trustees shall pay the pensions as allowed and fixed herein from said pension fund; and said Board of Trustees may, in its discretion, pay the pension of any minor child or children to the surviving parent, or to their general or testamentary guardian, or to the person or persons who shall have the care and

custody of said minor child or children. The decisions of said Board of Trustees as to what is deemed for the best interests of said minor child or children may be reviewed by the surrogate of the County of Broome, and payment according to his or her determination of the pensions herein provided for shall be a full discharge for the moneys so paid.

§ 67-10. Payments and investments.

Payments from said fund shall be made by the Treasurer only upon warrants signed by the Chair of the Board of Trustees and countersigned by its Secretary. No warrant shall be drawn except by order of the Board of Trustees duly entered in the record of its proceedings. Said Board of Trustees is hereby authorized to deposit said fund, or any part thereof, in any of the banks of the City of Binghamton upon receiving adequate security therefor, or to invest the same in the bonds or other obligations of the City, or in the bonds of the United States or of this state issued pursuant to law, or to invest the same in such securities as savings banks of this state are authorized by law to invest in. All income, interest or dividends derived from said investments of said fund shall constitute a part thereof. The Treasurer shall deposit the moneys belonging to said fund in the bank or banks designated by the Board of Trustees.

§ 67-11. Annual reports.

In the month of January of each and every year, the Board of Trustees shall make a report in writing to the Common Council of the condition of said fund, in which report there shall be clearly set forth a complete itemized statement of all receipts and disbursements during such year, giving the name of each and every person, corporation or association from whom any money or property has been received or to whom any money or property has been delivered or paid on account of said fund together with the total amounts thereof.

§ 67-12. Collection of foreign insurance tax.

It shall be the duty of the Treasurer of said Board of Trustees within 60 days after the first day of February in each and every year, to furnish the Corporation Counsel of the City of Binghamton a complete list of all insurance companies, or their agents, who shall not then have paid to said Treasurer the whole of the tax on foreign insurance companies, or agents thereof, as prescribed by law; whereupon the said Corporation Counsel shall forthwith institute whatever legal proceedings may be necessary to compel such delinquent companies, or their agents, to make proper payment to said Treasurer of such overdue tax.

§ 67-13. Suits and settlements thereof.

The Corporation Counsel of said City shall, under the direction of said Treasurer, take charge of the prosecution and defense of all suits or proceedings instituted by or against the Board of Trustees on account, or in the discharge, of their said trust in relation to said fund; and the Treasurer thereof is hereby authorized to settle or compromise any suit or judgment for less than the amount of the same, with the consent of said Board of Trustees.

§ 67-14. Officers receiving money to pay same to Treasurer.

Any officer or board of officers of the City who shall realize, receive or derive any money which, under the provisions of law, constitutes a part of said fund is hereby directed to pay over the same on the first day of the month succeeding the receipt and collection thereof, to the Treasurer of the said Board of Trustees to be used and applied as a part of said fund.

§ 67-15. Exemption of relief and pensions from execution.

All relief and pensions granted under the provisions of this article, and property purchased from the proceeds thereof, shall be exempt from execution, attachment, or any process whatever. The said fund shall be sacredly kept and held secure, and distributed and applied for the purpose of pensioning the persons named herein, and for no other purpose whatsoever.

§ 67-16. Falsification and perjury.

Any person who shall wilfully or knowingly swear falsely in any oath or affirmation in obtaining or procuring any relief or pension, or the payment thereof, under the provisions of this article, shall be guilty of perjury.

§ 67-17. Board of Trustees to serve without additional compensation.

No member of such Board of Trustees shall be paid or receive any additional compensation for his or her services as a member of such Board. No officer or member of said Fire Department shall be entitled to any allowance as pension or relief during the time he or she shall be receiving full salary from said Department.

§ 67-18. Inspection of records and accounts.

The books, records, accounts, transactions, receipts, disbursements, investments and other assets of said Board of Trustees and all matters relating to the care, custody, collection and safeguarding of said fund, shall, upon demand, at any time during business hours, be subject to the visitation and inspection of the Binghamton Firemen's Benevolent Association, of Binghamton, New York, an organization of the paid members of the Fire Department of said City heretofore duly incorporated under the Membership Corporations Law. Such visitation and inspection may be made by the Board of Directors, or a committee thereof, or by a committee appointed at a regular or special meeting of said association.

§ 67-19. Investigation of illegal retirements.

Upon proof being offered, by any person, that any officer or member of the Fire Department has been illegally retired from service therein or is receiving a pension from said fund under circumstances not authorized or contemplated by this article, it shall be the duty of said Board of Trustees, and they shall have full power, jurisdiction and authority, to investigate and take proof of the facts and circumstances relating thereto; and, if such facts shall be established, to restore such officer or member to active service in such Department and relieve such fund from the payment of any further pension on account thereof. In making such investigation such Board shall act in a judicial capacity and it shall be conducted in accordance with proper rules and regulations prescribed therefor. Upon any such investigation any member of such Board may administer oaths and issue subpoenas for witnesses, and any false swearing shall be deemed to be perjury and punishable as such.

§ 67-20. When effective.

This article shall take effect immediately; provided, however, that § 67-2G, relative to the excise moneys apportioned to said fund, shall not become effective until January 1, 1913.

§ 67-21. Members of Department not members of pension system.

Notwithstanding any inconsistent provisions of this article, no member of the Fire Department appointed on or after the first day of January 1935 shall, pursuant to this article, be a member of the relief and pension system or be required to pay any money or part of any monthly pay, salary or compensation to the Relief and Pension Fund, and no such member of the Fire Department, his or her surviving spouse, children, or parents, shall be entitled to receive, granted or paid any relief, pension, allowance or money from said Relief and Pension Fund.

§ 67-22. Termination of pension fund.

Upon the death of all of the members of the Fire Department entitled to any pension, allowance, or money from said pension fund, and upon the death of all persons, now or hereafter in being, who are or shall hereafter be entitled to receive any pension, allowance or money from said fund as surviving spouse, child or parent, pursuant to the provisions of the fire fighters' relief and pension fund law, the said fund shall terminate as such, and the said fund shall thereupon revert to and become the property of the City of Binghamton.

§ 67-23. Termination of service due to superannuation.

- A. Notwithstanding any other provisions of this pension fund, no member of the fire bureau who is or hereafter attains the age of 62 years shall continue to serve as a member of such bureau but shall be retired and placed on the pension rolls of the Department; provided, however, that any member who is not eligible for retirement at age 62 shall continue to serve as a member only until such time as he or she becomes eligible for such pension service retirement.
- B. Termination of service shall take effect on the first day of the calendar month next succeeding his or her attainment of age 62; a member who on September 1, 1964, has already attained age 62 shall retire on or before December 31, 1964.

ARTICLE II, Police Pension Fund [Adopted 10-5-1970 (Part E of the 1970 Code)]

§ 67-24. Definitions.

Except as otherwise herein defined, the words and terms hereafter mentioned in this section shall be construed and defined as follows wherever they occur in this article:

BOARD OF TRUSTEES -- The Board of Trustees of the Police Officers' Relief and Pension Fund hereby established.

FUND -- The Police Officers' Relief and Pension Fund hereby established.

MAYOR -- Any person or officer duly designated to perform the principal executive duties of said City.

POLICE COMMISSIONER -- Includes the Commissioner of Police of the City of Binghamton, his or her successor or successors in office, and the person, persons or officers hereafter designated by any statute to have charge and control of the Police Department of said City.

POLICE DEPARTMENT -- The Chief of Police, Chief of Detectives, Detective Sergeants, the Police Captains, Sergeants, patrol officers and police officers and all other members of the police force and chauffeurs of the police force of said City of Binghamton, now in office or hereafter appointed to office by said Commissioner of Police, his or her successor or successors in office.

§ 67-25. Establishment and sources of fund.

A relief pension fund for members of the Police Department of the City of Binghamton may be created and established by the Common Council, by majority vote, with the approval of the Mayor, which fund shall consist of:

- A. The sum of \$8,500 which shall be included in the annual tax budget of said City and raised by tax as are other moneys in each and every year hereafter. The City of Binghamton is hereby authorized and empowered to raise and levy taxes for this purpose in the same manner as are taxes for the other general expenses of said City and the proper City officers, boards and agents are hereby authorized and directed to take the necessary actions and proceedings in order that the said sum be thus raised.
- B. All lost, abandoned, unclaimed or stolen money and property, or the proceeds thereof, remaining in the possession of the Police Department of said City for one year, and the then Commissioner or other head of said Department is hereby authorized and directed to sell publicly, after reasonable notice, such property and to account to the treasurer of said fund for the proceeds.
- C. Money and property that may be given, devised or bequeathed to said fund.
- D. Two per centum of the salaries earned by all the members of the Police Department of said City, which said per centum shall be deducted from each payment of salary to members of said Department by the financial officers of said City and paid by such officers into said fund.

§ 67-26. Organization and operation of Board of Trustees.

- A. The Mayor, the City Treasurer, the Commissioner of Police, and three members or officers of the Police Department (to be elected annually in the month of December by such Department) and their

successors in office shall be and hereby are constituted the Board of Trustees of said fund. The Mayor shall be Chair, the City Treasurer shall be Treasurer and one of the Trustees elected by the Police Department shall be elected by said Board as Secretary thereof, and each of such officers of the Board of Trustees shall serve without compensation. The Corporation Counsel of the City shall be the legal adviser of such Board of Trustees and shall have charge of all actions or proceedings brought by or against such Board or members thereof and shall likewise serve without additional compensation therefor. Said Board of Trustees shall have the exclusive control, management and distribution of said fund and the City Treasurer shall be custodian thereof. Said fund shall be kept by the City Treasurer separate and apart from any other funds under his or her custody. The sureties on the official bond of said City Treasurer shall be liable for the safe-keeping and due accounting by such Treasurer of the moneys and securities belonging to said fund. The Board of Trustees is hereby authorized to adopt rules and regulations for its government and for the conduct of the annual election of the members of said Board of Trustees chosen from the Police Department. Said Board shall hear and determine all applications for relief or pension under this article. It shall cause to be kept a full and complete record of all of its proceedings and meetings. Said Board of Trustees may take by gift, grant, bequest or devise and hold free from taxation, any real or personal property, the annual income of which shall not exceed in the aggregate the sum of \$30,000. No payment whatever shall be made or allowed by said Board of Trustees as rewards, gratuities or compensation of any person for salary or services rendered to or for such Board of Trustees unless otherwise authorized by this article. Said Board of Trustees shall have charge of and administer said funds and invest the same or any part thereof as hereinafter prescribed. Said Board of Trustees is empowered to make all necessary contracts, institute all necessary and proper actions or proceedings and make payments from said fund of relief or pensions as provided by this article and not otherwise.

- B. In the month of December in each year the Police Department shall elect three of its members or officers as such Trustees, who shall enter upon the discharge of their duties on the first Tuesday of January thereafter and hold office for one year and until their successors are elected and qualified. In the meantime the Board of Trustees now in office and elected pursuant to the provisions of the City ordinance hereinafter mentioned, shall continue to be the Trustees of said fund and have all the powers herein granted to the Trustees of said fund. A majority of such Board of Trustees shall constitute a quorum.

§ 67-27. Pension eligibility and payment.

Every officer or member of the Police Department who has attained the rank of first grade, or who has served in said Department for five years or more, shall be paid from said fund on his or her retiring from said service, in said Department by reason of resignation, death or any other cause, the sum of \$300; provided, however, that no such payment or any part thereof shall be made to any such officer or member who, at the time of such retirement, is receiving or entitled to receive a pension under the provisions of § 67-28 of this article.

§ 67-28. Retirement from service for disability.

Any officer or member of the Police Department who, upon examination by the surgeon of the Department duly certified under oath, may be found disqualified, physically or mentally, for the performance of his or her duties in the Department by reason of long service or disease or disability caused or induced by the active performance of the duties of his or her position, without fault or misconduct on his or her part, may during the continuance of such disability, be retired by the Commissioner of Police. If such officer or member objects to being so retired, he or she may demand an examination as to such disability by three competent physicians or surgeons of good repute and standing, one to be selected by the Commissioner of Police, one by such officer or member and the third by the two physicians or surgeons thus chosen. The three [physicians] so selected shall examine such officer or member, and the finding of a majority of such examiners shall be final as to the ability or disability at that time of such officer or member to perform his or her full duty, and if found able he or she shall return to duty at the same salary and rank then paid and held by

him or her. Any officer or member retired under the preceding provisions of this section, unless he or she has served at least 20 years in said Department, shall, however, remain under the orders of the Police Commissioner, who may order him or her at any time to do such duty of which he or she is capable as may be decided to be for the best interests of said Department, and while so serving he or she shall be paid the same salary as that received by the other members of the Department of the same rank. Every officer or member of said Department who may have become permanently incapacitated from performing full duty as such officer or member by reason of age or of disease or disability caused or induced by injury or by long service and exposure while in the line of his or her duty, without fault or misconduct on his or her part may, on his or her own application, be retired from service by the Commissioner of Police, provided the applicant has been examined by three physicians or surgeons selected as aforesaid, and their sworn certificates signed by a majority of such examiners, filed with the Commissioner of Police, showing that the applicant is permanently disqualified from performing his or her duties in said Department. Every officer or member of said Department who shall have served therein for 20 years consecutively or more, shall upon his or her own application, without examination or certification be retired from membership therein. A pension shall be granted and paid to each person retired under the provisions of this section to the amount of 1/2 of the salary received by such applicant at the time of retirement. However, such amount shall not be less than \$125 a month, payable monthly. No officer or member of said Department shall be entitled to any allowance as pension during the time he or she shall be receiving full salary from said Police Department. Pensions granted under this section shall be for the life of the pensioner.

§ 67-29. Death of members; pension to survivors.

Said Board of Trustees shall also grant, authorize and direct the payment of pensions payable out of said fund as follows:

- A. To the surviving spouse of any officer or member of said [Police] Department who shall have been killed in the actual performance of duty, or who shall have died from the effects of injury received while in the discharge of duty, or who shall hereafter die after having served at least one year continuously in said Department, or to the surviving spouse of a person retired under the provisions of § 67-28, provided that said surviving spouse was the spouse of said person on the date of his or her retirement, the sum of \$720 per annum, if there be no child or children under 18 years of age of said officer or member living, or if there be such child or children under the said age aforesaid, then the sum may be divided between said surviving spouse or child or children, in such proportion or in such manner as said Board of Trustees may direct.
- B. To any child or children under 18 years of age of any deceased officer or member mentioned in the preceding subsection, who died leaving no surviving spouse, or, if a surviving spouse, then after his or her death, to such child or children the sum of \$300 per annum to be apportioned among such children as the Board of Trustees may direct.
- C. To any dependent father, or to any dependent mother, if she be a widow, of any deceased officer or member mentioned in Subdivision A of this section, who died leaving no surviving spouse or child under 18 years of age, the sum of \$300 per annum.

§ 67-30. Termination of survivors' pension.

Pensions granted to the surviving spouse shall terminate when the surviving spouse remarries, and pensions granted to children shall terminate whenever they marry or become 18 years of age.

§ 67-31. Persons eligible for benefits.

If any officer or member of the Police Department now in office shall refuse to comply with the provisions of this article or shall withhold his or her consent to the assessment upon his or her salary as herein provided, neither he or she nor his or her family or dependents shall be eligible to any of the benefits of said fund.

Assent to the provisions of this article shall be presumed as a condition precedent to the acceptance of office on the part of all persons thereafter appointed as officers or members of the Police Department.

§ 67-32. Payment of pensions.

Said Board of Trustees shall pay the pensions as allowed and fixed herein from said pension fund and said Board of Trustees may in its discretion pay the pension of any minor child or children to the surviving parent, or their general or testamentary guardian, or to the person or persons who shall have the care and custody of said child or children. The decisions of said Board of Trustees as to what is for the best interests of said minor child or children may be reviewed by the surrogate of the County of Broome and payment according to his or her determination of the pensions herein provided for shall be a full discharge for the moneys so paid.

§ 67-33. Payments and investments.

All payments from said fund shall be made by the City Treasurer only upon warrants signed by the Chair of the Board of Trustees and countersigned by its secretary, and no warrant should be drawn except by order of the Board of Trustees duly entered in the record of its proceedings. Said Board of Trustees is hereby authorized to deposit said fund or any part thereof, in any of the banks of the City of Binghamton upon receiving adequate security therefor or to invest the same in the bonds or other obligations of the City or in the bonds of the United States or of this state issued pursuant to law, or to invest the same in such securities as savings banks of this state are authorized by law to invest in. All income, interest or dividends derived from said investments of said fund shall constitute a part thereof. The City Treasurer shall deposit the moneys belonging to said fund in the bank or banks designated by said Board of Trustees.

§ 67-34. Annual report.

In the month of January of each and every year, the Board of Trustees shall make a report in writing to the Common Council of the condition of said fund, in which report there shall be clearly set forth a complete itemized statement of all receipts and disbursements during such year, giving the name of each and every person, corporation or association from whom any money or property has been received or to whom any money or property has been delivered or paid on account of said fund, together with the total amount thereof.

§ 67-35. Suits and proceedings; settlement.

The Corporation Counsel of said City shall, under the direction of said Treasurer, take charge of the prosecution and defense of all suits or proceedings instituted by or against the Board of Trustees on account or in the discharge of their said trust in relation to said fund; and the Treasurer thereof is hereby authorized to settle or compromise any suit or judgment for less than the amount of the same with the consent of said Board of Trustees.

§ 67-36. Officers receiving money to pay same to Treasurer.

Any officer or board of officers of the City who shall realize, receive or derive any money which, under the provisions of law, constitute a part of said fund are hereby directed to pay over to the same on the first day of the month succeeding the receipt and collection thereof to the Treasurer of the said Board of Trustees to be used and applied as a part of said fund.

§ 67-37. Falsification and perjury.

Any person who shall willfully or knowingly swear falsely in any oath or affirmation in obtaining or procuring any relief or pension, or the payment thereof, under the provisions of this article shall be guilty of perjury.

§ 67-38. Board of Trustees to serve without additional compensation.

No member of such Board of Trustees shall be paid or receive any additional compensation for his or her services as a member of such Board. No officer or member of said Police Department shall be entitled to any allowance as pension or relief during the time he or she shall be receiving full salary from said Department.

§ 67-39. Investigation of illegal retirements.

Upon proof being offered by any person that any officer or member of the Police Department has been illegally retired from service therein or is receiving a pension from said fund under circumstances not authorized or contemplated by said article, it shall be the duty of said Board of Trustees, and they shall have full power, jurisdiction and authority, to investigate and take proof of the facts and circumstances relating thereto; and, if such facts shall be established, to restore such officer or member to active service in such Department and relieve such fund from the payment of any further pension on account thereof. In making such investigation such Board will act in a judicial capacity and it shall be conducted in accordance with proper rules and regulations prescribed therefor. Upon any such investigation any members of such Board may administer oaths and issue subpoenas for witnesses and any false swearing shall be deemed to be perjury and punishable as such.

§ 67-40. Members of Department not members of pension system.

Notwithstanding any inconsistent provisions of this article, no member of the Police Department appointed on or after March 1, 1935, shall, pursuant to this section, be a member of the pension system or be required to pay any money or part of any monthly pay, salary or compensation to the pension fund and no such member of the Police Department, his or her surviving spouse, children or parents shall be entitled to receive, granted or paid any pension, allowance or money from said pension fund.

§ 67-41. Termination of pension fund.

Upon the death of all of the members of the Police Department entitled to any pension, allowance, or money from said pension fund, and upon the death of all persons, now or hereafter in being, who are or shall hereafter be entitled to receive any pension, allowance, or money from said fund as surviving spouse, child or parent, pursuant to the provisions of the Police Pension Fund Law, the said fund shall terminate as such, and the said fund shall thereupon revert to and become the property of the City of Binghamton.

§ 67-42. Filing applications with retroactive effect.

The Board of Trustees of the Police Pension Fund is hereby authorized and empowered, in its discretion, to accept for filing an application of a former officer or member of the Police Department for pension benefits under the Police Pension Fund Law of the City of Binghamton, who neglected or failed to make such application prior to his or her ceasing to remain a police officer or member of the Police Department, and who would otherwise have been entitled to benefits under said law had he or she filed his or her application for retirement while still a police officer or member of the Police Department. The Board of Trustees is hereby authorized and empowered, in its discretion, to hear and determine and grant such an application with retroactive effect, in the same manner as it would have been empowered to do had such application been filed on the day prior to the date that said applicant ceased to remain a police officer or member of the Police Department.

§ 67-43. Termination of service due to superannuation.

- A. Notwithstanding any other provisions of this pension fund, no member of the police force who is or hereafter attains the age of 62 years shall continue to serve as a member of such force but shall be retired and placed on the pension rolls of the Department; provided, however, that any member who is not eligible for retirement at age 62 shall continue to serve as a member only until such time as he or she becomes eligible for such pension service retirement.
- B. Termination of service shall take effect on the first day of the calendar month next succeeding his or her attainment of age 62; a member who on September 1, 1964, has already attained age 62 shall retire on or before December 31, 1964.

ARTICLE III, Increased Take-Home Pay [Adopted 10-5-1970 (Sub-Part XVIII of the 1970 Code)]

§ 67-44. Election to come under provisions.

The City of Binghamton does hereby elect to come under the provisions of Chapter 746 of the Laws of 1960, and provide a plan for increased take-home pay for members of the City of Binghamton fire fighters' and police officers' pension funds, which shall not be inconsistent with the provisions, limitations, restrictions and payroll periods of the plan for increased take-home pay provided by Chapter 339 of the Laws of 1960, entitled "An act to amend the retirement and social security law, in relation to the addition of pensions providing for increased take-home pay, death benefits, and reopening of a plan for retirement at age 55, an act to amend the retirement and social security law, in relation to authorizing the provision of added pensions providing for increased take-home pay and death benefits for officers and employees of participating employers in the New York State employees' retirement system," and any acts amendatory thereof.

ARTICLE IV, Mandatory Termination of Service [Adopted 10-5-1970 (Sub-Part XXI of the 1970 Code)]

§ 67-45. Termination of service due to superannuation.

No member of the Fire Bureau or the Police Department, who is or hereafter attains the age of 62 years, shall continue to serve as a member of such Bureau or Department but shall be retired and placed on the pension rolls of the Bureau or Department; provided, however, that any member who is not eligible for retirement at age 62 shall continue to serve as a member only until such time as he or she becomes eligible for such pension service retirement. Termination of service shall take effect upon the first day of the calendar month next succeeding his or her attainment of age 62; a member who on September 1, 1964, has already attained age 62 shall retire on or before December 31, 1964.

ARTICLE V, Disability Benefits for Fire Fighters [Adopted by L.L. No. 3-1972 (Sub-Part XXXVII of the 1970 Code)]

§ 67-46. Persons subject to provisions; standards established.

- A. Notwithstanding the provisions of § 207-a of the General Municipal Law, any paid officer or member of the Fire Department of the City of Binghamton hereafter injured in the performance of his or her duties shall be subject to the provisions of this article.
- B. Any paid fire fighter, which term as used in this article shall mean any paid officer or member of the Fire Department of the City of Binghamton who is injured in the performance of his or her duties so as to necessitate medical or other lawful remedial treatment, shall be paid the full amount of his or her regular salary or wages until his or her disability, arising therefrom, has ceased or for a period not exceeding six months, whichever event first occurs.
- C. No such payments of salary or wages shall be made after six months shall have expired and such fire fighter has not made application to the New York State Employees Retirement System. However, in the event such fire fighter has made application to the New York State Employees Retirement System, for disability retirement, such regular salary or wages shall nevertheless be continued until disability or other retirement benefits are paid to such fire fighter. In the event disability retirement benefits are paid to such fire fighter, the City shall thereafter pay such fire fighter the difference between the disability retirement benefit and the regular salary or wages which he or she currently would be receiving in the position from which he or she was retired.
- D. In the event such fire fighter is not eligible for or is not granted accidental disability retirement allowance and is nevertheless, in the opinion of the health authorities or medical advisor of the City, unable to perform his or her regular duties as a result of such injury or sickness, but is able, in their opinion, to perform specified types of light duty, payment of regular salary or wages shall be discontinued with respect to such fire fighter if he or she shall refuse to perform such light duty if the same is available and offered to him or her by an officer having power to assign duties to him or her. However, such light duty shall be consistent with his or her status as a fire fighter and shall enable

him or her to be continued to be entitled to his or her regular salary or wages, including increases thereof and fringe benefits, to which he or she would have been entitled if he or she were able to perform his or her regular duties.

- E. Such fire fighter may be transferred to a position in the same or another agency or department of the City pursuant to the provisions of the regulations of the civil service commission provided the fire fighter shall consent thereto.
- F. If such a fire fighter is not eligible for or is not granted accidental disability retirement, he or she shall not be entitled to further payment of regular salary or wages after he or she shall have attained the mandatory retirement age applicable to him or her or shall have attained the age or performed the period of service specified for the termination of his or her service.
- G. Where such a fire fighter is transferred to another position or retires or is retired under any procedure, he or she shall thereafter, in addition to any retirement allowance or pension to which he or she is then entitled, continue to be entitled to such medical treatment or hospital care necessitated by reason of such injury or illness.
- H. Notwithstanding any provisions of law to the contrary, a cause of action shall accrue to the City for reimbursement in such sum or sums actually paid as salary or wages and/or for medical treatment and hospital care as against any third party against whom the fire fighter shall have a cause of action for the injury sustained or illness caused by such third party.

ARTICLE VI, Supplemental Retirement Allowances for Members of Retirement Systems [Adopted by L.L. No. 7-1974 (Sub-Part XLI of the 1970 Code); amended in its entirety by L.L. No. 9-1977]

§ 67-47. Adoption of statutory provisions.

The City Council of the City of Binghamton does hereby elect and adopt the extension of the Retirement and Social Security Law, Sections 78 and 378, in relation to supplemental programs for pensioners and beneficiaries in order to grant additional allowances.

§ 67-48. When election effective.

This election shall become effective with the payroll period beginning the first day of January 1977.

ARTICLE VII, Police Officer or Member Violations of Election Law [Adopted 5-19-1980 by L.L. No. 3-1980 (Sub-Part XLVII of the 1970 Code)]

§ 67-49. Statutory provision superseded and abolished.

Section 144 of the Second Class Cities Law is hereby superseded and as superseded is abolished.

ARTICLE VIII, Requests for Police Assistance [Adopted 4-20-1981 by L.L. No. 5-1981 (Sub-Part LV of the 1970 Code)]

§ 67-50. Authority to exercise certain powers of Mayor.

The Chief of Police of the City of Binghamton, or, in the event the Chief of Police is absent or disabled, the individual duly authorized to act in his or her behalf, is hereby authorized and empowered to exercise the powers granted to the Mayor of the City of Binghamton pursuant to § 209-m of the General Municipal Law.

ARTICLE IX, Pension Payments to Retired Officers and Members of Police and Fire Bureaus [Adopted 5-17-1999 by L.L. No. 4-1999EN (Sub-Part XLIV of the 1970 Code)]

§ 67-51. Increase in supplemental payment.

All officers and members of the Police and Fire Bureaus of the City of Binghamton, who have heretofore retired, pursuant to the provisions of Chapter 668 of the Laws of 1917, shall be entitled to an increase in supplement pension payments of 5% for 1999.

§ 67-52. Provision of funds.

Funds for such pension increases shall be provided out of budget lines P9026.8 and P9025.8 (Police and Fire Pension Trust Funds, respectively).

ARTICLE X, Supplemental Pension Payments for Surviving Spouses [Adopted 11-20-2000 by L.L. No. 1-2000 (Sub-Part XLVI of the 1970 Code)]

§ 67-53. Cost-of-living increase.

All surviving spouses of police officers and fire fighters eligible for supplemental pension benefits under § 162 of the Retirement and Social Security Law shall be entitled to a cost-of-living increase, as established by the United States Bureau of Labor Statistics, in supplemental pension payments for 2001.

§ 67-54. Provision of funds.

Funds for such pension increases shall be provided for in the budget lines P9026.8 and P9025.8 (Police and Fire Pension Trust Funds, respectively).