

ORDINANCE NO. 1080 – 2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS AMENDING THE FOLLOWING DELINEATED CODE SECTIONS CONTAINED IN "THE MIAMI SPRINGS RETIREMENT ORDINANCE" IN ORDER TO COMPLY WITH THE PROVISIONS OF THE INTERNAL REVENUE CODE; BY PROVIDING ADDITIONAL DEFINITIONS IN CODE SECTION 35-04, DEFINITIONS; SUPPLEMENTING THE PROVISIONS CONTAINED IN CODE SECTION 35-18, MILITARY SERVICE CREDIT; BY CORRECTING CERTAIN LANGUAGE AND PROVIDING AN ADDITIONAL PROVISION IN CODE SECTION 35-20, NORMAL RETIRMENT; BY REVISING AND SUPPLEMENTING PROVISIONS CONTAINED IN CODE SECTION 35-30.1, LIMITATION ON BENEFITS; BY SUBSTANTIALLY MODIFYING AND UPDATING PROVISIONS CONTAINED IN CODE SECTION 35-30.2, DISTRIBUTIONS IN PLAN YEARS BEGINNING AFTER DECEMBER 3, 1984; BY CREATING NEW CODE OF ORDINANCE SECTION 35-30.4, MISCELLANEOUS; BY SUPPLEMENTING AND FURTHER EXPLAINING PROVISIONS CONTAINED IN CODE SECTION 35-46, DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; EFFECTIVE DATE

WHEREAS, the City of Miami Springs "Retirement Ordinance" is under the constant review of the its Board of Trustees, plan administrators, and legal counsel to the Board; and,

WHEREAS, at various times, as might be occasioned by changes in the law or other factors, those responsible for the System put its provisions under review; and,

WHEREAS, the review of the "General Employees Retirement System" is sometimes performed by outside government agencies; and,

WHEREAS, as a result of a recent review, the "General Employees Retirement System" has received a Determination Letter from the Internal Revenue Service which requires certain amendments to the "Retirement Ordinances" in order to comply with the Internal Revenue Code; and,

WHEREAS, Counsel for the Board and the Retirement System have provided the required amendatory provisions to the City for review and City Council approval; and,

WHEREAS, the City Council of the City of Miami Springs has determined that the enactment of the required amendatory provisions is in the best interests of the City and its "General Employees Retirement System;"

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS:

Section 1. That the following delineated Code Sections of "The Miami Springs Retirement Ordinance" are hereby amended as follows:

ARTICLE I. – EMPLOYEES' RETIREMENT SYSTEM

Sec. 35-01. – Short title.

Sections 35-01 through 35-45 may be cited as "The City of Miami Springs Retirement Ordinance."

Sec. 35-04. – Definitions.

For purposes of §§ 35-01 – 35-45, the following words and phrases shall have the following meanings ascribed to them respectively.

(A) thru (N) unchanged

(O) Qualified Military Service. Any service in the uniformed service (as defined in Chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service (Section 414(u)(5) of the Internal Revenue Code).

(OP) *Regular interest.* The rate or rates of interest per annum, compounded annually, as the Board of Trustees shall from time to time adopt for purposes of the definition of the term "actuarial equivalence."

(PQ) *Retirant.* Any member who retires with a pension payable from funds of the retirement system.

(QR) *Retirement.* A member's withdrawal from the employ of the City with a pension payable from funds of the retirement system.

(RS) *Retirement system or system.* The City of Miami Springs employee's retirement system, created and established by §§ 35-01—35-45.

(T) USERRA. Uniformed Services Employment and Reemployment Rights Act (P.L. 103-353).

Sec. 35-18. - Military service credit.

(A)

(B)

(C) USERRA. Notwithstanding any provision of this plan to the contrary, effective as of December 12, 1994, contributions, benefits and service

credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code of 1986, as amended, USERRA, and the Florida Statutes, as applicable.

(D) Death Benefits. In the case of a death or disability occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan as if the participant had resumed and then terminated employment by the City on account of death.

(E) Differential Wage Payments. For years beginning after December 31, 2008, (i) an individual receiving a differential wage payment, as defined in Section 3401(h)(2) of the Internal Revenue Code, shall be treated as an employee of the employer making the payment, (ii) the differential wage payment shall be treated as compensation, and (iii) the plan shall not be treated as failing to meet the requirements of any provision described in Section 414(u)(1)(C) of the Internal Revenue Code by reason of any contribution or benefit which is based on the differential wage payment.

Sec. 35-20. - Normal retirement.

(A)

(B)

(C)

(D)

(1)

(2)

(a)

(b)

(c)

(d)

1.

2.

3. Any form of payment selected by a retired member must comply with the minimum distribution requirements of the IRC Internal Revenue Code Section 401(Aa)(9), and is subject to the requirements of subsection 29 thereof, e.g., payments must commence by age 70½.

4.

(E) Compliance with Internal Revenue Code Sections 414(k) and 414(i).

To the extent required under the Internal Revenue Code, the DROP under the retirement system shall be treated as a defined contribution plan to the extent that the member's benefits under the retirement system are based on the

member's DROP account. The amount of "annual additions" (as such term is defined in Section 415(c)(2) of the Internal Revenue Code and Treasury Regulations Section 1.415(c)-1(b)) which may be allocated under the DROP to a member's DROP account for a "limitation year" may not exceed the maximum permissible amount under Section 415(c)(1) of the Internal Revenue Code and Treasury Regulations Section 1.415(c)-1(a)(1) (the "Annual Maximum Amount"). For purposes hereof, the term "limitation year" means the twelve-month period beginning on October 1. In addition, for purposes of determining a member's Annual Maximum Amount, the member's compensation shall be determined in compliance with Treasury Regulations Section 1.415(c)-2.

Sec. 35-30.1. - Limitation on benefits.

In no event may a member's annual benefit exceed the lesser of:

- (A) Ninety One hundred sixty thousand dollars (adjusted for cost of living in accordance with Internal Revenue Code (IRC) section 415(d), but only for the year in which such adjustment is effective), or
- (B) One hundred percent of the average annual compensation for the member's three highest paid consecutive years; however, benefits of up to \$10,000.00 a year can be paid without regard to the 100 percent limitation if the total retirement benefits payable to a member under all defined benefit plans (as defined in Internal Revenue Code IRC Section 414(j)) maintained by the City for the present and any prior year do not exceed \$10,000.00 and the City has not at any time maintained a defined contribution plan (as defined in IRC section 414(i)) in which the employee was a member.
- (C) If the member has less than ten years of service with the City (~~as defined in IRC section 415(b)(5) and as modified by IRC section 415(b)(6)(D)~~), the applicable limitation in division (A) or division (B) above shall be reduced by multiplying such limitation by a fraction, not to exceed one. The numerator of such fraction shall be the number of years, or part thereof, of service with the City; the denominator shall be ten years.
- (D) For purposes of this section, the *Annual benefit* means a benefit payable annually in the form of a straight life annuity with no ancillary or incidental benefits and with no member or rollover contributions. To the extent that ancillary benefits are provided, the limits set forth in divisions (A) and (B) above will be reduced actuarially, using an interest rate assumption equal to the greater of five percent or the interest rate used in the most recent annual actuarial valuation to reflect such ancillary benefits.
- (E) If distribution of retirement benefits begins before age 62, the dollar limitation as described in division (A) shall be reduced actuarially using an interest rate assumption equal to the greater of five percent or the interest rate used in the most recent annual actuarial valuation; however, for plan years ending on or before December 31, 2001, retirement benefits shall not be reduced below \$75,000.00 if payment of benefits begins at or after age 55 and not below the actuarial equivalent of \$75,000.00 if payment of benefits begins before age 55.

If retirement benefits begin after age 65, the dollar limitation of division (A) shall be increased actuarially using an interest assumption equal to the lesser of five percent or the interest rate used in the most recent annual actuarial valuation. For purposes of this section the *Average annual compensation for a member's three highest paid consecutive years* shall mean the member's greatest aggregate compensation during the period of three consecutive years in which the individual was an active member of the system.

- (F) Notwithstanding any other provisions of this plan, the retirement benefit of a member shall be reduced to the extent that it exceeds the amounts specified in Section 415 of the Internal Revenue Code.

Sec. 35-30.2. - Distributions in plan years beginning after December 3, 1984.

Notwithstanding anything herein to the contrary, a member's benefits shall commence no later than April 1 of the calendar year following the later of (i) the calendar year in which he or she attains age 70 ½ or (ii) the calendar year in which he or she retires (the "Required Beginning Date"). All distributions from the plan (including the DROP) shall conform to the regulations issued under Section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit provision of Section 401(a)(9)(G) of the Internal Revenue Code. Further, such regulation shall override any plan or DROP provision that is inconsistent with Section 401(a)(9) of the Internal Revenue Code. Further, such regulation shall override any plan or DROP provision that is inconsistent with Section 401(a)(9) of the Internal Revenue Code.

Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan shall satisfy the following conditions: Commencing with the first plan year beginning after December 31, 1984, the entire interest of a member shall either be distributed to him not later than April 1 of the calendar year in which he attains age 70½ or the calendar year in which he retires, whichever is later. In the alternative, distribution shall commence no later than the above specified commencement date and be distributable over a period of time not exceeding the limitations hereinafter set forth:

- (A) If the retirement income is payable before the member's death:

(1) It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 ½, or the calendar year in which the member retires;

(2A) The distribution shall not commence later than the calendar year defined above; and (i) shall be paid over the life of the member or over the lifetimes of the member and the member's spouse, issue or dependent, or (ii) shall be paid over the period extending not beyond the life expectancy of the member and spouse, issue or dependent. Distributions to a member shall not extend beyond the life of the member or the lives of the member and his designated beneficiary, or over a period not extending beyond the life

~~expectancy of the member or the life expectancy of the member and his designated beneficiary.~~

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before his entire interest in the plan has been distributed, the remaining portion of such interest in the plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.

(B) If the member's death occurs before the distribution of his interest in the plan has commenced, the member's entire interest in the plan shall be distributed within five years of the member's death, unless it is to be distributed in accordance with the following rules:

(1) The member's remaining interest in the plan is payable to his spouse, issue or dependent;

(2) The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and

(3) Such distribution begins within one year of the member's death unless the member's spouse is the sole designated beneficiary, in which case the distribution need not begin before the date on which the member would have attained age 70 ½ and if the member's spouse dies before the distribution to the spouse begins, this section shall be applied as if the spouse were the member. ~~If distribution has commenced to a member, and such member dies before receiving his entire interest, the remainder of such interest shall be distributed over a period at least as rapidly as under the method of distribution in effect prior to such member's death (e.g., remainder of period certain basis).~~

(C)

Sec. 35-30.4. Miscellaneous.

(A) Upon the termination of the plan or on the complete discontinuance of contributions under the plan, each member shall have nonforfeitable, 100% vested rights to benefits accrued to date of the termination or discontinuance to the extent funded at that time.

(B) No pension provided hereunder shall be assignable or subject to part of the corpus or income of the fund be used for, or diverted to, purposes other than for the exclusive benefit of members and their beneficiaries and until those liabilities are satisfied, all city contributions will remain in the fund for the benefit of the members or beneficiaries in the event the plan is terminated or city contributions cease.

Sec. 35-46. – Direct transfers of eligible rollover distributions.

- (A) General. This division applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the system to the contrary that would otherwise limit a distributee's election under this division, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (B) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Direct rollover. A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee. Effective as of January 1, 2008, a non-spouse Beneficiary may make a direct rollover only to an "inherited" individual retirement account as described in Section 408(b) of the Internal Revenue Code. If a non-spouse Beneficiary receives a distribution from the Plan, the distribution is not eligible for a 60-day (non-direct) rollover.

Distributee. A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse. Effective as of January 1, 2008, an Employee's or former Employee's non-spouse Beneficiary is a distributee with regard to the interest of the Employee or former Employee.

Eligible retirement plan. An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in Section 403(b) of the Internal Revenue Code and an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan.

Eligible rollover distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income.

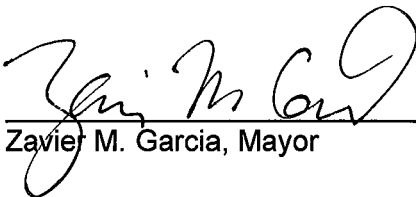
Section 2. Repeal of Conflicting Provisions. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. Effective Date. That this Ordinance shall take effect immediately upon adoption.

PASSED ON FIRST READING this 27th day of April, 2015, on a motion made by Vice Mayor Best and seconded by Councilman Bain.

PASSED AND ADOPTED ON SECOND READING this 27th day of May, 2015, on a motion by Councilman Bain and seconded by Councilman Petralanda.

Vice Mayor Best	<u>YES</u>
Councilman Bain	<u>YES</u>
Councilwoman Buckner	<u>YES</u>
Councilman Petralanda	<u>YES</u>
Mayor Garcia	<u>YES</u>



Zavier M. Garcia, Mayor

ATTEST:



Erika Gonzalez-Santamaria, CMC, City Clerk

APPROVED AS TO LEGALITY AND FORM:



Jan K. Seiden, City Attorney



Words ~~stricken through~~ shall be deleted. Underscored words constitute the amendment proposed. Words remaining are now in effect and remain unchanged.