

**ORDINANCE NO. 1081- 2015**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI SPRINGS AMENDING THE FOLLOWING DELINEATED CODE SECTIONS CONTAINED IN THE "POLICE AND FIREMAN PENSION PLAN" IN ORDER TO COMPLY WITH THE PROVISIONS OF THE INTERNAL REVENUE CODE; BY PROVIDING ADDITIONAL DEFINITIONS IN CODE SECTION 35-51, DEFINITIONS; BY SUPPLEMENTING PROVISIONS AND CORRECTING LANGUAGE CONTAINED IN CODE SECTION 35-53, BENEFIT AMOUNTS AND ELIGIBILITY; BY PROVIDING ADDITIONAL SUBSTANTIVE PROVISIONS IN CODE SECTION 35-54, OPTIONAL FORMS OF BENEFITS; BY SUPPLEMENTING A PROVISION IN CODE SECTION 35-55, MEMBER CONTRIBUTIONS; BY ADDING ADDITIONAL PROVISIONS IN CODE SECTION 35-58, REPEAL OR TERMINATION OF SYSTEM; BY REVISING, SUPPLEMENT, AND ADDING PROVISIONS IN CODE SECTION 35-59 MISCELLANEOUS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; EFFECTIVE DATE**

**WHEREAS**, the City of Miami Springs "Police and Fireman Pension Plan" 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 plan put its provisions under review; and,

**WHEREAS**, the review of the plan is sometimes performed by outside government agencies; and,

**WHEREAS**, as a result of a recent review, the "Police and Fireman Pension Plan" has received a Determination Letter from the Internal Revenue Service which requires certain amendments to the plan ordinances in order to comply with the Internal Revenue Code; and,

**WHEREAS**, Counsel for the Board and the Plan 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 "Police and Fireman Pension Plan":

**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 "Police and Fireman Pension Plan" are hereby amended as follows:

**ARTICLE II. - POLICE AND FIREMAN PENSION PLAN**

**Sec. 35-50. - Establishment of plan.**

There is established a pension plan for police officers and regular full-time firemen.

For purposes of §§ 35-50—35-59, the following words and phrases shall have the following meanings ascribed to them respectively.

(A) Actuarial assumptions. The assumptions used for determining the actuarial equivalence of benefits under this system, specifically the mortality rates from the 1983 Group Annuity Mortality Table for males (except in the case of disability retirees, the mortality rates are set forward five years) and a discount rate of 8%.

~~(BA)~~

~~(CB)~~

~~(DC)~~

~~(ED)~~

~~(FE)~~

~~(GF)~~

~~(HG)~~

~~(IH)~~

~~(JI)~~

~~(KJ)~~

~~(LK)~~

~~(ML)~~

~~(NM)~~

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

**Sec. 35-53. - Benefit amounts and eligibility.**

(A) thru (E) unchanged

(F) Vesting

(1) .....

(2) .....

(3) .....

(4) Payments shall be made pursuant to paragraph (1)(a) above only upon

the written request of the member in the form and manner determined by the Board.

(G) . . . . .

(H) . . . . .

(I) . . . . .

(J) *Limitation on benefits.*

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

(a) ~~Ninety thousand~~ One hundred sixty thousand dollars (adjusted for cost of living in accordance with IRC section 415(d), but only for the year in which such adjustment is effective), or

(b) One hundred percent of the member's 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 an employee under all defined benefit plans (as defined in IRC section 414(j)) maintained by the employer for the present and any prior year do not exceed \$10,000.00 and the employer has not at any time maintained a defined contribution plan (as defined in IRC section 414(i)) in which the employee was a participant.

(2) . . . . .

(3) . . . . .

(4) If distribution of retirement benefits begins before age 62, the dollar limitation as described in division (J)(1)(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,~~ 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 (J)(1)(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.

(5) For this division (J) 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.

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

(K) . . . . .

(L) Deferred retirement option plan ("DROP")

(1) . . . . .

(2) Compliance with Internal Revenue Code Sections 414(k) ad 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 member's DROP account 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.

- (M) Death Benefits for Death during Qualified Military Service. 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.
- (N) 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. 35-54. - Optional forms of benefits.

- (A) . . . . .  
(B) . . . . .  
(C) . . . . .  
(D) . . . . .

(E) 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.

Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan shall satisfy the following conditions:

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

- (a) 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;
- (b) The distribution shall commence not 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 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.

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.

- (2) 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:
  - (a) The member's remaining interest in the plan is payable to his spouse, issue or dependent;
  - (b) 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
  - (c) 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.

#### Sec. 35-55. - Contributions.

##### *(A) Member contributions.*

(1) *Amount.* Members of the system shall make regular contributions to the fund equal to nine percent of their respective earnings. The contribution rate shall be subject to division (C) below. The City agrees to assume and pay member contributions in lieu of direct contributions by the members, such contributions shall accordingly be paid into the system in behalf of the members. The City shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code, pick up members contributions required to be made by members on earnings paid with respect to payroll periods upon this section

becoming effective. No member subject to such agreement shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the City directly to the system. All such contributions by the City shall be deemed and considered as member accumulated contributions and subject to all provisions of this system pertaining to accumulated contributions of members.

Sec. 35-58. - Repeal or termination of system.

(A).....

(B).....

(C).....

(D).....

(E) No pension provided hereunder shall be assignable or any 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.

(F) 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 Chapters 175 and 185, Florida Statutes, as applicable.

Sec. 35-59. - Miscellaneous.

(A)

(B)

(C)

(D)

(E)

(F)

(1).....

(2).....

(a).....

(b) *Eligible retirement plan.* An eligible retirement plan is an individual retirement account described in section 408(a) 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.

- (c) *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.
- (d) *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" rollover.

(3) Retiree medical premiums for public safety officers. The system may allow a public safety officer to elect a tax free distribution of up to \$3,000 annually directly to a retiree medical plan for long term care insurance on a pre-tax basis, so long as the public safety officer separates from service either at the plan's normal retirement age or due to his or her disability. Insurance premiums may be paid for the public safety officer, his spouse or his dependents while he is alive, but once he is deceased, the benefit ceases and may not be used by his spouse or beneficiaries to pay for their insurance premiums. Insurance premium payments may only be made directly to the insurance company. "Public safety officers" include law enforcement officers, firefighters, chaplains, rescue crew members or ambulance crew members.

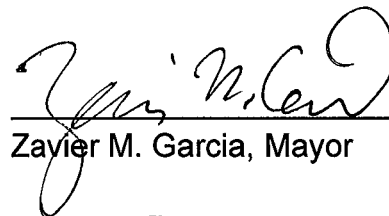
**Section 2. Repeal of Conflicting Provisions.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

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

**PASSED ON FIRST READING** this 27<sup>th</sup> day of April, 2015, on a motion made by Councilman Bain and seconded by Councilwoman Buckner.

**PASSED AND ADOPTED ON SECOND READING** this 27<sup>th</sup> day of May, 2015, on a motion made by Vice Mayor Best 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, MMC, City Clerk

APPROVED AS TO LEGALITY AND FORM:

  
Jan K. Seiden, City Attorney

