

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE POLICE OFFICERS' RELIEF AND PENSION FUND TO COMPLY WITH APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE, AND REGULATIONS THEREUNDER, BY AMENDING THE RELATED SPECIAL ACTS OF THE CITY, BY AMENDING ARTICLE VIII, ENTITLED "POLICE OFFICERS' RELIEF AND PENSION FUND," BY AMENDING SECTIONS 49 THROUGH 60 AND CREATING A NEW SECTION 61; PROVIDING FOR SEVERABILITY; REPEALER CODIFICATION; AND AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

**Section 1.** Section 49 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:

**ARTICLE VIII. POLICE OFFICERS' RELIEF AND PENSION FUND**

**Sec. 49. Purpose of Act; supplementary to other Acts.**

The purpose of this Act is to implement the provisions of Chapter 28230, Laws of Florida, Acts of 1953, and to provide means whereby ~~policemen~~ ~~[police officers]~~ Police Officers of the City of Miami Beach, Florida, may receive benefits from the ~~funds~~ Funds provided for that purpose by Chapter 28230, Laws of Florida, Acts of 1953. This Act shall be deemed to supplement any other pension plan of the City of Miami Beach insofar as benefits to ~~policemen~~ ~~[police officers]~~ Police Officers are concerned, and nothing herein shall be construed to in any way affect the operating of or benefits of any other pension plan of the City of Miami Beach, Florida. Sections 1, 1B, 5, 6, 7, 9, 10, 24, 29 and 30 of Chapter 28230, Laws of Florida, Acts of 1953 shall continue to apply to the City of Miami Beach except as otherwise specifically provided for in this Act.

**Section 2.** Section 50 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:

**Sec. 50. Definitions.**

The following words and phrases shall, for the purposes of this Act, have the meanings hereafter respectively ascribed to them. Other words and phrases shall have meanings as commonly understood with respect to the context; the singular shall include the plural, and the masculine the feminine:

- (a) Account: shall mean the individual account credited on behalf of each Participant with contributions pursuant to this Act, eligible forfeiture contributions and earnings on such contributions.

- (b) Account Balance: shall mean the value of a Participant's Account as of the last Valuation Date.
- (c) Active Duty: shall mean actual service as a Police Officer with regular civil service status in the police department of the City of Miami Beach, or absent from duty on an approved leave of absence, all as of the time under consideration.
- (ad) Board: shall mean the Board of Trustees of the Miami Beach Policemen's [Police Officers'] Relief and Pension Fund as provided for herein.
- (be) City shall mean the City of Miami Beach, Florida.
- ~~(c) Policemen [police officers]: shall mean the chief and any person who has attained regular civil service status in the police department under the official classification of positions in the classified service of the city and who, in the judgment of the board of trustees, performs duties in such department as a peace officer.~~
- (f) Code: shall mean the Internal Revenue Code of 1986, as amended from time to time.
- (g) Designated Beneficiary: shall mean any person, persons or entity designated by a Participant to receive any benefits payable under the Fund in the event of the Participant's death under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-4. If no Designated Beneficiary has been so designated by a Participant prior to the Participant's death, or if no person, persons or entity so designated survives the Participant, the Participant's surviving spouse, if any, shall be deemed to be the Designated Beneficiary; otherwise the Designated Beneficiary shall be the Participant's estate.
- (h) Direct Rollover: shall mean a payment by the Fund directly to the Eligible Retirement Plan specified by the Distributee.
- (i) Distributee: shall mean a Police Officer or former Police Officer. In addition, the Police Officer's or former Police Officer's surviving spouse or former spouse who has an interest in the Police Officer's benefits under the Fund pursuant to a domestic relations order honored by the State or the City (if any) are Distributees with regard to such interest.
- (j) Eligible Retired Public Safety Officer: shall mean a Participant who has retired from the police division of the City (i) by reason of disability or (ii) on or after his Normal Retirement Age and who is also a "public safety officer" as defined in Section 402(l)(4)(C) of the Code and any applicable guidance thereunder.
- (k) Eligible Retirement Plan shall mean any of the following types of plans that accept the Distributee's Eligible Rollover Distribution: (i) a qualified plan described in Section 401(a) of the Code; (ii) an annuity plan described in Section 403(a) of the Code; and (iii) an individual retirement account or individual retirement annuity described in Section 408(a) or 408(b) of the Code, respectively. Additionally, effective January 1, 2002, an Eligible Retirement Plan shall also mean (i) an annuity contract described in Section 403(b) of the Code or and (ii) an eligible plan under Section 457(b) of the 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 Fund.

- (l) Eligible Rollover Distribution: shall mean 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: (i) 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; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and (iii) after-tax amounts unless such amount is transferred to an individual retirement account or individual retirement annuity described in Section 408(a) or 408(b) of the Code, respectively, or transferred to a defined contribution plan qualified under Section 401(a) of the Code that agrees to separately account for such amount.
- (g) ~~Fiscal year: shall mean the period commencing March 1st and terminating the last day of February.~~
- (dm) Fund: shall mean the Miami Beach Policemen's [Police Officers'] Relief and Pension Fund, as provided herein.
- (n) Fund Year shall mean the calendar year.
- (o) Normal Retirement Age: shall mean "normal retirement age" as such term is used in the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach.
- (ep) Participant shall mean any policeman [police officer], as defined herein, Police Officer who is eligible to have moneys credited to his individual account Account and to receive benefits therefrom under the Fund and this Act, and any person who was a policeman [police officer] Police Officer on July 31, 1953 and has separated from the police department.
- (q) Police Officers: shall mean the police chief and any person who has attained regular civil service status in the police department under the official classification of positions in the classified service of the City and who, in the judgment of the Board of trustees, performs duties in such department as a peace officer.
- (r) Qualified Health Insurance Premiums: shall mean premiums for coverage for the Eligible Retired Public Safety Officer (and his or her spouse and dependents, if applicable) under accident and health insurance (including an accident or health plan within the meaning of Section 105(e) of the Code) or a qualified long-term care insurance contract as defined in Section 7702B(b) of the Code.
- (s) Qualified Health Insurance Premium Distribution: shall mean an amount deducted from an Eligible Retired Public Safety Officer's benefit payment under the Fund and paid directly to the insurer providing coverage for which Qualified Health Insurance Premiums are paid. Such amount may not exceed the amount of the Qualified Health Insurance Premiums.
- (t) Retired or Separated Participant: shall mean any Participant who has separated from service as a Police Officer and has an Account Balance with the Fund.
- (fu) Service: shall mean all years and fractions thereof served as an employee of the police department a Police Officer of the City for which compensation is paid by the city City, including probationary time, provisional time when it has been followed by probationary time, all time during which a policeman [police officer] Police Officer is absent on military leave of absence and all leaves of absence

during which compensation is paid by the ~~city~~City; but shall not include leaves of absence during which no compensation is made by the ~~city~~City.

(v) State: shall mean the state of Florida.

(w) Valuation Date: shall mean February 28 of each year and each other date(s) as the Board may deem necessary.

**Section 3. Section 51 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:**

**Sec. 51. Creation of ~~fund~~Fund; origin of moneys.**

There is hereby created in the ~~city~~a ~~fund~~City a special Fund to be known as the Miami Beach Police Officers' Relief and Pension Fund into which shall be paid all moneys previously received by the ~~city~~City under the provisions of Chapter 28230, Laws of Florida, Acts of 1953, and all moneys subsequently received by the City under the provisions of Chapter 28230, Laws of Florida, Acts of 1953. Immediately upon the ~~board~~Board taking office the ~~city~~City shall make payment to the ~~fund~~Fund of the moneys previously received under Chapter 28230, Laws of Florida, Acts of 1953.

No part of the corpus or income of the Fund shall be used for, or diverted to, purposes other than for the exclusive benefit of Participants and other persons entitled to benefits under the Fund and paying the expenses of the Fund not paid directly by any other party. No person shall have any interest in, or right to, any part of the earnings of the assets of the Fund, or any right in, or to, any part of the assets held under the Fund, except as and to the extent expressly provided in this ordinance.

There will be no reversion of the assets of the Fund or City or State contributions, except as permitted under Section 401(a) of the Code and the regulations and rulings issued by the Internal Revenue Service relating to Section 401(a), including Revenue Ruling 91-4.

**Section 4. Section 52 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:**

**Sec. 52. Board of trustees—~~c~~Creation; composition; terms of office; officers; proceedings; compensation.**

There is hereby created a ~~board~~Board of the ~~fund~~Fund, which ~~board~~Board shall consist of five (5) trustees, all of whom shall be ~~participants~~Participants. The trustees shall be elected by the ~~participants~~Participants and shall serve for a period of ~~two~~four (24) years; provided, however, that immediately upon this Act becoming a law there shall be an election and the trustees so elected shall hold office until the last day of February, 1956. Commencing in 1956, elections of trustees shall be held in ~~February~~January of the even-numbered years and trustees elected in such elections shall commence service as trustees on ~~March~~February 1st following such election. Election of trustees shall be by plurality. The ~~board~~Board shall annually elect from its membership a chairman and a secretary who shall keep complete minutes of all proceedings of the ~~board~~Board and all actions of the ~~board~~Board shall be by majority vote, a quorum being present. In the



absence of the chairman, the secretary shall act as chairman. The trustees shall receive no compensation as such.

**Section 5. Section 53 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:**

**Sec. 53. SameBoard of trustees—Power and authority.**

The ~~board~~Board shall have power and authority as follows:

- (a) To have exclusive charge of the investment of any assets in the ~~fund~~Fund not needed for the ~~fund's~~Fund's current obligations, and to invest and reinvest such assets in accordance with the written investment policy adopted by the ~~board~~Board pursuant to paragraph (b) below. Board members must discharge their duties with respect to the ~~plan~~Fund solely in the interest of the ~~participants~~Participants and beneficiaries for the exclusive purpose of: (i) providing benefits to ~~participants~~Participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the ~~plan~~Fund; with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; by diversifying the investments of the ~~plan~~Fund so as to minimize the risk of large losses, unless under the circumstances it is clearly not prudent to do so. Within the limitations of the foregoing standards and investment policy, the ~~board~~Board is authorized to acquire and retain in the ~~fund~~Fund every kind of investment specifically including, but not limited to stocks, bonds, securities, debentures, real estate, mutual funds, trusts and other obligations which persons of prudence, discretion and intelligence acquire or retain for their own account. The intent of this paragraph is to remove any and all investment restrictions which are otherwise imposed by Ch. 175, Florida Statutes, and which may be removed.
- (b) To adopt and periodically update a written investment policy in accordance with Section 112.661, Florida Statutes, as such statute may be amended in the future.
- (c) To convert into cash such securities or savings accounts as may be required for the payment of claims against the ~~fund~~Fund or for necessary operating expenses.
- ~~(d) To approve claims and to authorize payments from the fund by warrants signed by the chairman and the secretary of the board.~~
- ~~(ed)~~ To authorize expenditures in connection with preliminary research and technical services, accounting, auditing, legal services and general administration of the ~~fund~~Fund.
- ~~(fe)~~ To do such other things as may be necessary to implement and provide for the proper functioning of the ~~fund~~Fund.
- ~~(f)~~ To interpret the provisions of this Act where the meaning is not clear or ambiguity exists; and to promulgate necessary rules respecting the operation of the ~~Fund~~Fund, not in conflict with the wording or clear intent of this Act.

**Section 6. Section 54 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:**

**Sec. 54. SameBoard of trustees—Custody of fundFund.**

The custody of all securities, savings accounts and moneys of the fundFund shall be with the boardBoard, which shall make provision for the protection and safekeeping of such securities in a safety deposit box in such depository as may be designated by the boardBoard.

**Section 7. Section 55 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:**

**Sec. 55. Individual accounts of police officersAccounts of Police Officers.**

Individual accountsAccounts shall be established for each person who was a participantParticipant on July 31, 1953, the effective date of Chapter 28230, Laws of Florida, Acts of 1953, and for all persons who became or become participantsParticipants thereafter. To these accountsAccounts there shall be credited from each payment to the fundFund by the cityCity an amount which shall be determined in the manner set forth in section 9-[57] of this Act. Such amount shall be credited at the time each payment to the fundFund by the cityCity is received by the fundFund; provided that the amount to be credited shall be computed as though said amount had been received on March 10th as provided in Chapter 28230, Laws of Florida, Acts of 1953; and further provided that a person who ceases to be a participantParticipant shall also receive a credit on account of the next payment paid to the fundFund by the cityCity after his separation from serviceService. From all other income received by the fundFund there shall be credited to each participantParticipant an amount which shall be computed as of the date such payment is actually received by the fundFund, and which shall be computed in the manner set forth in section 9-[57] of this Act. As of each February 28Valuation Date there shall be allocated and credited to the accounts of participants who are actively employed policemen [police officers]Accounts of Participants who are Police Officers on Active Duty as of such date, their share of nonvested forfeitures of terminated participantsParticipants arising during the prior twelve months, to be made in the same proportion as is the case above with regard to payments by the cityCity.

The Board shall value the Fund's assets as of each Valuation Date and shall allocate to the Account of each Participant his share of the increase or decrease in the fair market value of the Fund's assets.

Except as set forth in this Section 55, No further credits shall be made to a participant's accountParticipant's Account after he the Participant shall have retired under any other pension plan of the city, or after he shall otherwise cease to be a participant, except as otherwise provided in this ActCity, or after the Participant shall have separated from Service with the City or otherwise ceased to be a Participant in the Fund. However, until completely distributed to the Participant, a Participant's Account shall continue to be invested as part of the Fund and shall continue to share in the investment gains and losses of the Fund in accordance with this Section 55. A Participant shall continue to receive allocations of contributions and forfeitures after the Participant ceases to be an actively employed Police Officer if such contributions and forfeitures are attributable to a period when the Participant was an actively employed Police Officer. Each Participant

shall remain a Participant in the Fund until the Participant's Account has been fully distributed.

Notwithstanding any provision of this Act to the contrary, effective January 1, 2002, the maximum amount allocated to the Participant's Account for any calendar year under this Act shall not exceed the lesser of \$40,000 or 100% of Compensation, as set forth in Section 415(c) of the Code, as applicable, and any regulations issued thereunder, and shall be further adjusted for changes in the cost of living in the manner provided by Code Section 415(d).

For purposes of applying Section 415 of the Code under this Fund, "Compensation" means the remuneration paid a Police Officer for services rendered to the City, as determined in accordance with Treasury Regulation Section 1.415(c)-2 and consistent with the following provisions.

(I) Effective for Fund Years beginning on or after January 1, 1998, the Participant's Compensation contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the Compensation the member would receive if he or she were not participating in such program and shall be treated as Compensation for retirement purposes under this Article.

(II) Effective for Fund Years beginning on or after January 1, 1998, the Participant's Compensation does not include:

(1) Any contributions (other than elective contributions described in Internal Revenue Code Sections 402(e)(3), 408(k)(6), 408(p)(2)(A)(i) or 457(b)) made by the Employer to a plan of deferred compensation (including a simplified employee pension described in Code Section 408(k) or a simple retirement account described in Code Section 408(p), and whether or not qualified) to the extent that the contributions are not includible in the gross income of the Participant for the taxable year in which contributed. In addition, any distributions from a plan of deferred compensation (whether or not qualified) are not considered Compensation, regardless of whether such amounts are includible in the gross income of the Participant when distributed.

(2) Any amounts that receive special tax benefits, such as premiums for group term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code Section 125).

(III) For any person who first becomes a Participant in any Fund Year beginning on or after January 1, 1996, Compensation for any Fund Year shall not include any amounts in excess of the Section 401(a)(17) limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation of \$150,000 shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code Section 401(a)(17)(B). For any person who first became a member prior to the first Fund Year beginning on or after January 1, 1996, the limitation on Compensation shall be not less than the maximum compensation amount that was allowed to be taken into account under the Fund as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code Section 401(a)(17). Effective for Fund Years beginning on or after January 1, 2002, Compensation for any Fund Year shall not include any amounts in excess of the Section 401(a)(17) limitation, which limitation of \$200,000 shall be adjusted as required by federal law for

qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code Section 401(a)(17)(B).

(IV) Annual Compensation means Compensation paid during the Fund Year or such other consecutive 12-month period over which Compensation is otherwise determined under the Fund ("determination period"). The cost-of-living adjustment in effect for the calendar year applies to annual Compensation for the determination period that begins with or within such calendar year. Amounts under Code Section 125 exclude any amounts not available to a Participant in lieu of group health coverage (deemed Code Section 125 compensation). An amount will be treated as an amount under Code Section 125 only if the Employer does not request or collect information regarding the Participants' other health coverage as part of the enrollment process for the health plan.

**Section 8. Section 56 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:**

**Sec. 56. Disposition of ~~city's~~City's payment to fundFund.**

From theThe payment to the fund by the city the board shallFund by the City shall be applied by the Board in the following manner and order of priority:

- (a) Pay all costs and expenses of management and operation of the fundFund.
- (b) Set aside such amount as the ~~board~~Board in its discretion estimates will be required for costs and expenses of management and operation of the fundFund during the year following the date of said payment.
- (c) ~~Make a determination of interest earned by the fund as of March 10th of the year in which the payment is received by the city from the state and such sum, together with the amount received by the fund from the city, after adjustments as set forth in this section, shall be credited to the accounts of participants~~Credit to the accounts of Participants the amounts determined in the manner and at the time provided inprovided under Section 57 of this Article, together with the investment income determined under Section 55 of this ActArticle.

**Section 9. Section 57 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:**

**Sec. 57. Ratio of amounts credited to ~~participant's account~~Participant's Account.**

The amounts to be credited to a ~~participant's account~~Participant's Account as provided in this Act shall be in the same ratio to the total amount to be credited to all ~~participants~~Participants as such ~~participant's service~~Participant's Service is to the ~~service~~Service of all ~~participants~~Participants.

**Section 10. Section 58 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:**

**Sec. 58. Rights and benefits of ~~participants~~Participants—Generally.**

The fundFund shall provide benefits to ~~participants~~Participants as follows:

- (a) ~~If a participant shall die, the amount in his account shall be paid to such beneficiary or beneficiaries as he shall have designated in writing to the board. If such participant fails to designate a beneficiary or the designated beneficiary has predeceased the participant, the amount in his account shall be paid to his surviving spouse.~~ Participant shall die while on Active Duty as a Police Officer, the Participant shall be 100% vested in his or her entire Account Balance and his Designated Beneficiary shall be paid the entire amount of his Account Balance. If no Beneficiary is designated by the Participant, or the Beneficiary predeceases the Participant, the entire Account Balance shall be paid to his or her Surviving Spouse. If there be ~~is~~ no surviving spouse Surviving Spouse, the entire amount shall be paid to a person designated by the board for the purpose of defraying final illness and burial expenses, ~~the excess to~~ Account Balance shall be paid to the estate of the deceased ~~p~~Participant.
- (b) If a ~~participant~~ Participant shall have retired for service or ~~disability~~ becomes disabled under any other pension plan of the ~~city~~ City, he or she shall be 100% vested in his or her entire Account and he or she shall be paid the entire amount in his account in a lump sum or in installments at his election. If payment is made by installments such payments shall bear no interest and shall not be made more frequently than quarter annually of his or her Account Balance.
- (c) If a ~~participant~~ Participant shall separate from service as a policeman [~~police officer~~] for the City of Miami Beach Active Duty for any reason whatsoever prior to death, or service or disability retirement Normal Retirement Age, except as provided in (a) and (b) above, he or she shall be entitled to a ~~severance payment~~ distribution from the Fund equal to ~~the~~ his or her vested amount to his ~~credit~~ Account Balance at that time.
- (ed) Payment to a ~~participant~~ Participant as provided in this section Section 58 shall be full acquittal of all claims of a ~~participant~~ Participant against the ~~fund~~ Fund and he or she shall thereupon cease to be a ~~participant~~ Participant in the Fund.
- (de) Each ~~participant~~ Participant shall be fully (one hundred percent) vested in the entire amount in his or her ~~account~~ Account as it exists on February 28, 1983. Any subsequent increases in ~~such account~~ a Participant's Account, whether from allocation of ~~city~~ City payment of premium tax refunds, investment earnings, or any other source, shall be vested in accordance with the following schedule:

Years of Service	Vested Percent
Less than 10	None
10 or over	100

Any nonvested amounts which are not distributable under (a), (b) or (bc)



above shall be forfeited by the ~~participant~~Participant and reallocated to remaining ~~participants~~Participants as provided herein.

- (f) It is the intent of the City to continue the Fund indefinitely. However, in the event of the termination of the Fund, all Participants shall be 100% vested in their entire Account Balances as of such termination date.
- (g) If permitted by the Board, a Participant who is an Eligible Retired Public Safety Officer and is receiving benefits under the Fund may elect to have Qualified Health Insurance Premium Distributions made in accordance with this Section 58(g). Qualified Health Insurance Premium Distributions may be excluded from the gross income of the Eligible Retired Public Safety Officer under Section 402(l) of the Code, subject to the annual dollar limitation therein.
- (h) Once a Participant has separated from Active Duty, the Participant may elect to receive his or her vested benefit as a single cash lump sum or may elect to make withdrawals in his discretion (subject to the required minimum distribution requirements described in Section 58(i) below), from time to time.
- (i) Notwithstanding anything herein to the contrary, effective for Fund Years beginning on or after January 1, 1997, a Participant's benefits under the Fund 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 1/2; or (ii) the calendar year in which he retires. All distributions shall conform to the regulations issued under Section 401(a)(9) of the Code, including the incidental death benefit provisions of Section 401(a)(9)(G) of the Code. Further, such regulations shall override any provision that is inconsistent with Section 401(a)(9) of the Code. Notwithstanding any provision of this Act to the contrary, a form of retirement income payable from this Fund, shall satisfy the following conditions:
  - (i) If the retirement income is payable before the Participant's death:
    - (A) It shall either be distributed or the distribution commenced to the Participant not later than April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2, or the calendar year in which the Participant retires; or
    - (B) The distribution shall commence no later than the calendar year defined above; and (x) shall be paid over the life of the Participant or over the lifetimes of the Participant and his or her spouse, issue or dependent, or (y) shall be paid over the period extending not beyond the life expectancy of the Participant and spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the Participant dies before his entire interest in the Fund has been distributed, the remaining portion of

such interest in the Fund shall be distributed no less rapidly than under the form of distribution in effect at the time of the Participant's death.

(ii) If the Participant's death occurs before the distribution of his interest in the Fund has commenced, Participant's entire interest in the Fund shall be distributed within five years of Participant's death, unless his or her interest is distributed in accordance with the following rules:

(A) The Participant's remaining interest in the Fund is payable to his or her spouse, issue or dependent; and

(B) The remaining interest 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 Participant's death unless the Participant's spouse is the sole designated beneficiary, in which case the distribution need not begin before the date on which the Participant would have attained age 70½ and if the Participant's spouse dies before the distribution to the spouse begins, this section shall be applied as if the spouse were the Participant.

(k) Direct rollovers:

(i) Notwithstanding any provision of this Fund to the contrary that would otherwise limit a Distributee's election under this paragraph, effective January 1, 2002, 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 by the Fund to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(ii) With respect to distributions after December 31, 2009, a non-spouse beneficiary who is a Designated Beneficiary may, by a Direct Rollover, roll over all or any portion of his or her distribution to an individual retirement account the non-spouse beneficiary establishes for purposes of receiving the distribution. In order to be able to roll over the distribution, the distribution otherwise must satisfy the definition of an Eligible Rollover Distribution. Although such non-spouse beneficiary may roll over such distribution, any distribution made prior to January 1, 2010, is not subject to the direct rollover requirements of Code Section 401(a)(31) (including Code Section 401(a)(31)(B), the notice requirements of Code Section 402(f) or the mandatory withholding requirements of Code Section 3405(c)). If a non-spouse beneficiary receives a distribution from the Fund, the distribution is not eligible for a "60-day" rollover. A non-spouse beneficiary may not roll over an amount which is a required minimum distribution, as determined under applicable Treasury Regulations and other Internal Revenue Service

guidance. If the Participant dies before his or her Required Beginning Date (as defined below) and the non-spouse beneficiary rolls over to an individual retirement account the maximum amount eligible for rollover, the non-spouse beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treasury Regulation Section 1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the individual retirement account that receives the non-spouse beneficiary's distribution. The term "Required Beginning Date" means the later of the April 1 following (i) the calendar year in which the Participant attains age 70½ or (ii) the calendar year in which the Participant terminates his employment.

- (iii) If the Participant's named beneficiary is a trust, the Fund may make a Direct Rollover to an individual retirement account on behalf of the trust, provided the trust satisfies the requirements to be a Designated Beneficiary.
- (iv) With respect to distributions made after December 31, 2007, a Distributee may elect to roll over via Direct Rollover an Eligible Rollover Distribution to a Roth individual retirement account described in Code Section 408A(b).
- (l) Upon the death of a Retired or Separated Participant, such Participant's surviving spouse shall have all the distribution options that were available to the Retired or Separated Participant pursuant to this Section 58.
- (m) Notwithstanding any provision of this Act to the contrary:

  - (i) Effective for Fund Years beginning on or after January 1, 1995, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Code Section 414(u);
  - (ii) Effective for deaths occurring on or after January 1, 2007, if a Participant dies while performing qualified military service (as defined in Code Section 414(u)), 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 Fund as if the Participant had resumed and then terminated employment on account of death;
  - (iii) For benefit accrual purposes, the Fund will treat a Participant who dies or becomes Disabled on or after January 1, 2007, while performing qualified military service (as defined in Code Section 414(u)) as if the Participant had resumed employment in accordance with his reemployment rights under USERRA, on the day preceding death or disability (as the case may be) and separated from service on the actual date of such death or disability;

- (iv) For years beginning after December 31, 2008, (1) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as a Participant of the employer making the payment, (2) the differential wage payment is treated as compensation, and (3) the Fund is not treated as failing to meet the requirements of any provision described in Code Section 414(u)(1)(C) by reason of any contribution or benefit which is based on the differential wage payment; and
- (v) Effective as of January 1, 2009, for purposes of being eligible to receive a distribution under the Fund, an individual will be treated as having been terminated from employment during any period the individual is performing service in the uniformed services described in Code Section 3401(h)(2)(A).
- (n) Each Participant, beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or her or on his or her Account under the Fund, shall file with the Board the information that it shall require to establish his or her rights and benefits under the Fund.

**Section 11. Section 59 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:**

**Sec. 59. Same Rights and benefits of Participants—Not subject to encumbrance.**

The rights and benefits provided for herein shall not be subject to attachment, garnishment, execution or any other legal process.

**Section 12. Section 60 of Article VIII of the Related Special Acts of the City of Miami Beach, is amended as follows:**

**Sec. 60. Responsibility of ~~city~~City.**

The City of Miami Beach shall have no responsibility for the operation of the ~~fund~~Fund and shall bear no expense in connection therewith.

**Section 13. New Section 61 is added to Article VIII of the Related Special Acts of the City of Miami Beach, to read as follows:**

**Sec. 61. Tax Qualified Plan.**

The provisions of this Act and the Fund are intended to meet the requirements of a qualified plan under Section 401(a) of the Code and to be tax-exempt under Section 501(a) of the Code. Should any changes be required to comply or to continue to comply with the provisions of Sections 401(a) and 501(a) of the Code, the Board and the City shall take all appropriate steps to make any such required changes to the Fund.

**Section 14. Codification.** This Ordinance shall be codified in Article VIII of the Related Special Acts of the City of Miami Beach.

**Section 15. Effective date.** This Ordinance shall take effect ten days following adoption, except as otherwise specified herein.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

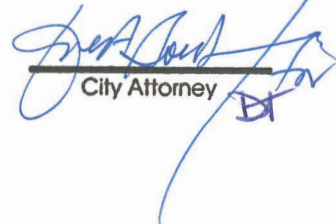
\_\_\_\_\_  
Dan Gelber  
Mayor

ATTEST:

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

(Sponsored by Commissioner John Elizabeth Aleman)

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney

4/9/18  
\_\_\_\_\_  
Date

Underscore denotes new language  
~~Strikethrough denotes deleted language~~