

ORDINANCE NO. 2018-4193

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE FIREFIGHTERS' RELIEF AND PENSION FUND TO COMPLY WITH APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE AND REGULATIONS THEREUNDER; AMENDING THE RELATED SPECIAL ACTS OF THE CITY BY AMENDING ARTICLE VII, ENTITLED "FIREFIGHTERS' RELIEF AND PENSION FUND," BY AMENDING SECTIONS 36, 37, 42, and 43; 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 36 of Article VII of the Related Special Acts of the City of Miami Beach, is amended as follows:

**Sec. 36. - Purpose of Act; supplementary to other Acts.**

The purpose of this Act is to implement the provisions of chapter 19112, Acts of Florida, 1939, and to provide means whereby ~~firefighters~~ Firefighters of the City of Miami Beach, Florida, may receive benefits from the funds provided for that purpose by Chapter 19112, Acts of Florida, 1939. This Act shall be deemed to supplement any other pension plan of the City of Miami Beach insofar as benefits to ~~firefighters~~ Firefighters are concerned, and nothing herein shall be construed to in any way affect the operation or benefits of any other pension plan of the City of Miami Beach, Florida. Sections 5, 6, 7, 8, 9 and 10 of Chapter 19112, Acts of Florida, 1939, shall continue to apply to the City of Miami Beach except as otherwise specifically provided for in this Act.

**Section 2.** Section 37 of Article VII of the Related Special Acts of the City of Miami Beach, is amended as follows:

**Sec. 37. - 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~~ Duty shall mean actual service as a ~~firefighter~~ Firefighter with ~~regular status~~ Regular Status in the fire division of the City of Miami Beach, or absent from duty on an approved leave of absence, all as of the time under consideration.
- (d) Board shall ~~to~~ mean the Board of Trustees of the Miami Beach Firefighters' Relief and Pension Fund, as provided for herein.
- (e) City shall mean the City of Miami Beach, Florida.
- (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 Firefighter or former Firefighter. In addition, effective for distributions made after December 31, 2001, the Firefighter's or former Firefighter's surviving spouse or former spouse who has an interest in the Firefighter'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 fire division of the City (i) by reason of disability or (ii) on or after his or her Normal Retirement Age and who is also a "public safety officer" as defined in Section 402(1)(4)(C) of the Code and any applicable guidance thereunder.
- (k) Eligible Retirement Plan shall mean, effective for distributions made after December 31, 2001, 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; (iii) an individual retirement account or individual retirement annuity described in Section 408(a) or 408(b) of the Code, respectively; (iv) effective for plan years after December 31, 2001, an annuity contract described in Section 403(b) of the Code; and (v) effective for plan years after December 31, 2001, 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, effective for distributions made after December 31, 2001, 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) effective for plan years after December 31, 2001, 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.

- (m) Firefighters include the fire chief, officers, inspectors, enginemen, firefighters, and such other employees of the fire division of the City as the Board shall determine to be engaged directly in fire fighting or fire prevention work, shall be deemed Firefighters for the purposes of this Act.
- (n) Fund shall mean the Miami Beach ~~Firefighter's~~ Firefighters' Relief and Pension Fund, as provided for herein.
- (o) Fund Year shall mean the calendar year.
- (p) Normal Retirement Age shall mean attainment of age 50; provided, however, that "normal retirement age" shall be adjusted to be the same as such term used in the City Pension Fund for Firefighters and Police Officers in the City of Miami Beach, as amended from time to time.
- (q) Participant shall mean every Firefighter of the City eligible to have moneys credited to his Account and to receive benefits therefrom under the Fund and this Act.
- (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 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 Plan 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) Qualified Military Service means 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).
- ~~(t)~~(u) Regular Status shall have the meaning ascribed to it by Chapter 18696, Acts of Florida, 1937, commonly known as the Civil Service Act, and the Personnel Rules of the City.
- ~~(u)~~(v) Retired or Separated Participant shall mean any Participant who has separated from service as a Firefighter and has an Account Balance with the Fund.
- ~~(v)~~(w) Service shall mean all time served as a Firefighter of the City for which regular compensation is made by the City, and all time during which a Participant is absent on military Leave. It shall include all Leaves with pay, but shall not include Leaves during which no regular compensation is paid by the City.



(wx) State shall mean the state of Florida.

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

(x)(z) Valuation Date shall mean June 30 of each year and each other date(s) as the Board may deem necessary.

**Section 3. Section 38 of Article VII of the Related Special Acts of the City of Miami Beach, is provided for reference purposes:**

**Sec. 38. - Creation of fund; origin of moneys.**

There is hereby created in the City of Miami Beach, Florida, a special fund to be known as the Miami Beach Firefighters' Relief and Pension Fund, into which shall be paid all moneys previously received by the City of Miami Beach under the provisions of Chapter 19112, Acts of Florida, 1939, and Ordinance Number 558 of the City of Miami Beach, which moneys are now held in trust under Pension Ordinance Number 498 of the City of Miami Beach, and all moneys which subsequently inure to the City of Miami Beach under the provisions of Chapter 19112, Acts of Florida, 1939. Immediately upon taking office, the Board shall request, and the Board of Trustees of the Miami Beach Employees Retirement System shall make payment to the Miami Beach Firefighters' Relief and Pension Fund of the accumulated moneys referred to above and held in trust under Ordinance Number 498.

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 by Internal Revenue Service Revenue Ruling 91-4.

**Section 4. Section 39 of Article VII of the Related Special Acts of the City of Miami Beach, is provided for reference purposes:**

**Sec. 39. - Board of trustees creation; composition; terms of office; officers; proceedings; compensation.**

There is hereby created a board of trustees of the Miami Beach Firefighters Relief and Pension Fund, which Board shall consist of the fire chief, the director of human resources, the assistant City manager or other responsible officer or employee of the City appointed by him, and two employees of the fire division to be elected from among the Participants of the Fund by such Participants. The fire chief, director of human resources and the assistant City manager shall serve so long as they continue to hold their respective offices, and upon replacement their successors shall succeed to their positions as trustees. The first election of trustees from among the Participants shall be for one office as trustee for a one-year term, and one office as trustee for a two-year term; thereafter elections shall be for overlapping terms of two-years. The Board shall annually elect from

its membership a chairman and secretary who shall keep complete minutes of all proceedings of the Board, and all actions of the Board shall be by majority vote, a quorum being present. Trustees shall receive no compensation as such.

**Section 5. Section 40 of Article VII of the Related Special Acts of the City of Miami Beach, is provided for reference purposes:**

**Sec. 40. - Board of trustees - power and authority.**

The Board shall have power and authority as follows:

- (a) To have exclusive charge of the investment of any assets in the Fund not needed for the Fund's current obligations, and to invest and reinvest such assets in accordance with the written investment policy adopted by the Board pursuant to paragraph (b) below. Board members must discharge their duties with respect to the Fund solely in the interest of the Participants and beneficiaries for the exclusive purpose of: (i) providing benefits to Participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the 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 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 is authorized to acquire and retain in the 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 approve loans and claims, and to authorize payments from the Fund by warrants signed by the chairman and secretary of the Board.
- (d) 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, not in conflict with the wording or clear intent of this Act.
- (e) To authorize expenditures in connection with preliminary research and technical services, accounting, auditing and general administration of the Fund.
- (f) To do such other things as may be necessary to implement and provide for the proper functioning of the Fund.

**Section 6. Section 41 of Article VII of the Related Special Acts of the City of Miami Beach, is provided for reference purposes:**

**Sec. 41. - Reserved.**

**Section 7. Section 42 of Article VII of the Related Special Acts of the City of Miami Beach, is amended to read:**

**Sec. 42. - Individual Accounts of Firefighters.**

Individual Accounts shall be established for every (a) Firefighter of Regular Status at the effective date of this Act, (b) Firefighter who has been retired under any City pension plan since the adoption of Chapter 19112, Acts of Florida, 1939, or (c) Firefighter who attains Regular Status subsequent to the adoption of this Act. To each Account there shall be credited, as of the date of each payment to the Fund by the State, an amount of such payment which bears the same ratio thereto that the years of Service of each Participant bears to the years of Service of all Participants. After adjustments by the proration of the costs of previous court action, and preliminary expense, this method of crediting Accounts of individuals Participants shall be applied to the present accumulated moneys as of the date of each payment thereof; and to all subsequent payments to the Fund by the State after proper provisions have been made for the payment of administrative expenses for the ensuing year. There shall be an annual determination of interest earned by the investments of the Fund, and such interest earnings shall be prorated to each of the Accounts of the Participants in the same proportion as the invested funds of the Account of each Participant bears to the total funds invested on behalf of the Fund. As of each Valuation Date there shall be allocated and credited to the Accounts of Participants who are Firefighters of Regular Status as of such date, their share of nonvested forfeitures of terminated Participants arising during the prior twelve months, to be made in the same proportion as is the case above with regard to payments by the State.

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

Except as set forth in this Section 42 and Section 43(d), no further credits shall be made to a Participant's Account after he or she shall have retired under any other pension plan of the City or after he or she shall have separated from service with the City or otherwise ceased to be a Participant in the Fund. However, until completely distributed to him, 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 42. A Participant shall continue to receive allocations of contributions and forfeitures after he ceases to be on Regular Status if such contributions and forfeitures are attributable to a period when he was on Regular Status. Each Participant shall remain a Participant in the Fund until his or her Account has been fully distributed.

Notwithstanding any provision of this Act to the ~~contrary~~, contrary, the maximum amount allocated to the Participant's Account for any calendar year under this Act shall not exceed the limitations set forth in Section 415 of the Code, as applicable, and any regulations issued thereunder. For purposes of Section 415 of the Code, the Limitation Year shall be the same as the Fund Year and, effective for Limitation Years beginning on or after July 1, 2007. Compensation shall have the same meaning as provided in Treasury Regulations section 1.415-(c)-2, including that, effective for plan years beginning on or after July 1, 2001. Compensation shall include amounts which would have been included in a Participant's gross income but for an election under Section 132(f)(4) of the Code.



**Section 8. Section 43 of Article VII of the Related Special Acts of the City of Miami Beach, is amended to read:**

**Sec. 43. - Rights and benefits generally of Participants.**

The Fund shall provide benefits to Participants therein as follows:

- (a) The Board may approve loans to a Participant not to exceed the lesser of (i) his or her total vested Account Balance or (ii) five hundred dollars. Loans shall be made available to all such Participants on a reasonably equivalent basis and no loan shall be made available under this Fund unless it satisfies all of the requirements of Section 72(p) the Code for treatment as a tax-free loan. Reasonable periods of time shall be allowed for the repayment of such loans; provided that all loans must be repaid within 5 years unless such loan is used to acquire a principal residence of the Participant in which case a 10-year repayment schedule is allowed. Interest shall be charged with respect to the loan amount at the rate of six percent per annum on the unpaid balance. Such loans shall be made contingent upon the right of the Board to effect repayment by withholding subsequent credits, or by deducting from existing credits the amount of any loan which is in default in its repayment; and the Board may refuse to make subsequent loans to Participants who so default.
- (b) If a Participant shall separate from service with the fire division of the City for any reason whatsoever prior to Normal Retirement Age, except as provided in (c) and (d) below, he shall be entitled to a distribution from the Fund equal to his vested Account Balance at that time.
- (c) If a Participant shall die while on Active Duty, he shall be 100% vested in his 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, the Account Balance shall be paid to the Participant's estate.
- (d) If a Participant, who has been, or who shall hereafter be "retired from service" or disability under any other pension plan of the City he shall be 100% vested in his entire Account and he shall be paid the entire amount of his Account Balance, and he shall further be entitled to receive a pro-rata share of the payment to the Fund by the State next following the date of such retirement, such sum to be the amount as provided for in Section 42 of this Act and the Participant shall be entitled to receive such amount at the time of the payment to the Fund by the State.
- (e) 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.
- (f) 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 43(f). 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.

- (g) Settlement as provided in subsection (b), (c), and (d) of this Section 43 shall be full acquittal of all claims of a Participant against the Fund, and he shall thereupon cease to be a Participant in the Fund.
- (f) Each Participant shall be fully (100%) vested in the entire amount in his Account as it exists on June 30, 1983. Any subsequent increases in Participant's Account, whether from allocation 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 (b), (c), or (d) above shall be forfeited by the Participant and reallocated to remaining Participants as provided in Section 42 of this Act.

- (i) A Participant shall receive his benefit in a single cash lump sum.
- (j) Notwithstanding anything herein to the contrary, 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 70½; or (ii) the calendar year in which he or she 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 commence 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 70½, or the calendar year in which the Participant retires;
  - (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 it is to be distributed in accordance with the following rules:

- (A) The Participant's remaining interest in the Fund 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 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, 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. If a non-spouse Beneficiary receives a distribution from the Fund, the distribution is not eligible for a "60-day" (non-direct) rollover.
- (ii) With respect to distributions after December 31, 2006, 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 Revenue Service guidance. If the Participant dies before his or her Required Beginning Date 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.
- (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 43.
- (m) Notwithstanding any provision of this Act to the contrary:
  - (i) Effective for plan years beginning after December 12, 1994, contributions, benefits and service credit with respect to ~~qualified military service~~Qualified Military Service will be provided in accordance with Code Section 414(u);
  - (ii) In the case of a death occurring on or after January 1, 2007, if a Participant dies while performing ~~qualified military service (as defined in Code Section 414(u))~~Qualified Military Service the survivors of the Participant are entitled to any additional benefits (other than benefit accruals relating to the period of ~~qualified military service~~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 an Participant who dies or becomes Disabled on or after January 1, 2007, while performing ~~qualified military service (as defined in Code Section 414(u))~~Qualified Military Service 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 an 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 on his Account under the Fund, shall file with the Board the information that it shall require to establish his rights and benefits under the Fund.

**Section 9. Section 44 of Article VII of the Related Special Acts of the City of Miami Beach, is provided for reference puposes:**

**Sec. 44. - Rights and benefits 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 10. Section 45 of Article VII of the Related Special Acts of the City of Miami Beach, is provided for reference puposes:**

**Sec. 45. - Responsibility of City.**

The City of Miami Beach shall have no responsibility for the operation of the Fund except those specified herein, and shall bear no expense in connection therewith.

**Section 11. Section 46 of Article VII of the Related Special Acts of the City of Miami Beach, is provided for reference puposes:**

**Sec. 46. - Duties of City attorney.**

The City attorney shall advise the Board in all matters pertaining to their duties in the administration of the Fund, whenever requested; and shall represent and defend the Board in all suits and actions at law, or in equity, that may be brought against it; and shall bring all suits and actions in its behalf that may be determined upon by the Board. Anything herein to the contrary notwithstanding, the Board may elect to employ independent legal counsel as it deems necessary.

**Section 12. Section 47 of Article VII of the Related Special Acts of the City of Miami Beach, is provided for reference puposes:**

**Sec. 47. - Separability; amendment.**

If any provision of this Act is for any reason held unconstitutional, inoperative or void, such holding shall not affect the remaining provisions set forth herein.

As described in Section 36, the provisions of this ordinance 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 13. Section 48 of Article VII of the Related Special Acts of the City of Miami Beach, is provided for reference puposes:**

**Sec. 48. - Repeal of conflicting laws.**

All City laws, acts and ordinances, or parts of City laws, acts or ordinances, in conflict with the provisions of this Act shall be, and the same hereby are, repealed.

**Section 14. Codification.** This Ordinance shall be codified in Article VII 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 16 day of May, 2018.

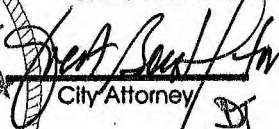
  
Dan Gelber  
Mayor

ATTEST:

78 5/25/18  
Rafael E. Granado  
City Clerk



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
City Attorney

3/2/18  
Date

(Sponsored by Commissioner John/Elizabeth Aleman)

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

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Jimmy L. Morales, City Manager  
DATE: May 16, 2018

1:30 p.m. Second Reading Public Hearing

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE FIREFIGHTERS' RELIEF AND PENSION FUND TO COMPLY WITH APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE AND REGULATIONS THEREUNDER; AMENDING THE RELATED SPECIAL ACTS OF THE CITY BY AMENDING ARTICLE VII, ENTITLED "FIREFIGHTERS' RELIEF AND PENSION FUND," BY AMENDING SECTIONS 36, 37, 42, AND 43; PROVIDING FOR SEVERABILITY; REPEALER CODIFICATION; AND AN EFFECTIVE DATE.

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### **RECOMMENDATION**

The Miami Beach Firefighter's Relief and Pension Fund Ordinance was approved on first reading on April 11, 2018. It is further recommended that the second reading be scheduled for the May 16, 2018 meeting.

### **ANALYSIS**

The proposed amendments to the Miami Beach Firefighter's Relief and Pension Fund have been prepared by the law firm of Holland and Knight and are required for compliance with the Internal Revenue Code. Attached is the Internal Revenue Service (IRS) determination letter dated January 25th, 2017. An Internal Revenue Service "determination letter" is issued in response to a request as to the qualified status of a retirement plan, and applies only to the employer and the plan participants on whose behalf it was issued.

The proposed amendments satisfy the IRS requirements for plan qualification. There are several legal and practical advantages to obtaining a determination letter. One legal advantage is that an IRS determination letter provides a definitive analysis of whether a plan is qualified. It also provides the basis for retroactive relief if the Service later changes its position. One practical advantage of obtaining a determination letter is that the City's auditors will be less likely to question the qualified status of the Plan.

While public employers that sponsor retirement plans are not required to apply for a determination letter, receiving a favorable determination letter provides documentation that the Plan satisfies the applicable qualification standards. The proposed amendments satisfy the IRS requirements for plan qualification. There are several legal and practical advantages to obtaining a determination letter. One legal advantage is that an IRS determination letter provides a definitive analysis of whether a plan is qualified. It also provides the basis for retroactive relief if the Service later changes its position. One practical advantage of obtaining a determination letter is that the City's auditors will be less likely to question the qualified status of the Plan.

### **CONCLUSION**

We have prepared an ordinance incorporating the IRC compliance amendments. The amendments will not result in additional cost to the City since all funding comes from state premium taxes in Ch. 185, Florida Statutes. Because of the nature of the 185 plan benefits, these changes will not have any actuarial impact. The Miami Beach Firefighter's Relief and Pension Fund should be amended as set forth herein.

#### **FINANCIAL INFORMATION**

Because of the nature of the 185 plan benefits, these changes will not have any actuarial impact.

#### **Legislative Tracking**

Human Resources

#### **Sponsor**

Commissioner John Elizabeth Aleman

#### **ATTACHMENTS:**

##### **Description**

- ▣ IRS Determination Letter
- ▣ Ordinance



INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: JAN 25 2017

CITY OF MIAMI BEACH  
C/O SEPEDEH TOFIGH  
701 BRICKELL AVENUE SUITE 3300  
MIAMI, FL 33131

Employer Identification Number:  
59-6000372  
DLN:  
17007040091026  
Person to Contact:  
VINCENT D CASTRIGANO ID# 31364  
Contact Telephone Number:  
(513) 263-4176  
Plan Name:  
MIAMI BEACH FIREFIGHTERS RELIEF AND  
PENSION FUND  
Plan Number: 001

Dear Applicant:

Based on the information you provided, we are issuing this favorable determination letter for your plan listed above. However, our favorable determination only applies to the status of your plan under the Internal Revenue Code and is not a determination on the effect of other federal or local statutes. To use this letter as proof of the plan's status, you must keep this letter, the application forms, and all correspondence with us about your application.

Your determination letter does not apply to any qualification changes that become effective, any guidance issued, or any statutes enacted after the dates specified in the Cumulative List of Changes in Plan Requirements (the Cumulative List) for the cycle you submitted your application under, unless the new item was identified in the Cumulative List.

Your plan's continued qualification in its present form will depend on its effect in operation (Section 1.401-1(b)(3) of the Income Tax Regulations). We may review the status of the plan in operation periodically.

You can find more information on favorable determination letters in Publication 794, Favorable Determination Letter, including:

- The significance and scope of reliance on this letter,
- The effect of any elective determination request in your application materials,
- The reporting requirements for qualified plans, and
- Examples of the effect of a plan's operation on its qualified status.

You can get a copy of Publication 794 by visiting our website at [www.irs.gov/formspubs](http://www.irs.gov/formspubs) or by calling 1-800-TAX-FORM (1-800-829-3676) to request a copy.

This letter considered the 2014 Cumulative List of Changes in Plan Qualification Requirements.

We based this determination letter solely on your claim that the plan meets the

Letter 5274

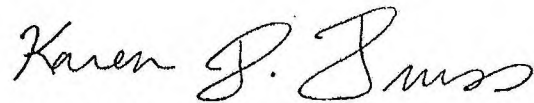
CITY OF MIAMI BEACH

requirements of a governmental plan under Section 414(d) of the Internal Revenue Code.

If you submitted a Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, with your application and asked us to send your authorized representative or appointee copies of written communications, we will send a copy of this letter to him or her.

If you have any questions, you can contact the person listed at the top of this letter.

Sincerely,



Karen D. Truss  
Director, EP Rulings & Agreements

SKD  
11/31/17

INITIAL & DATE

Letter 5274