

ORDINANCE NO. _____

An Ordinance of the Mayor and City Commission of the City of South Miami, Florida amending the South Miami Pension Plan, providing for an amendment to Section 16-12, Definitions, to comply with current City policy concerning the definitions of annual compensation, final average compensation, department head, employee, full-time employee, participation and part-time employee; amending Section 16-14(f)(1)(b) to allow retired participants to change a beneficiary up to two times at the participant’s cost in compliance with Chapter 2009-97, Laws of Florida; amending the City of South Miami Police Officers Retirement Trust Fund to provide for compliance with Chapter 2009-97, laws of Florida; providing for severability; providing for codification ; and providing for an effective date.

WHEREAS, the current language in the pension ordinance does not comply with city policy concerning the definition of Annual Compensation, Final Average Compensation, Department Head, Employee, Full-time Employee, Participation and Part-Time Employee; and

WHEREAS, an amendment to the City code is necessary to coordinate the pension ordinance language and the city policy; and

WHEREAS, the 2009 Florida Legislature enacted Chapter 2009-97, Law of Florida, which mandates certain amendments to the City of South Miami Pension Plan and City of South Miami Police Officers’ Retirement Trust Fund; and

WHEREAS, recent changes to State statutes require several amendments to the Plan in order to maintain eligibility for receipt of state premium tax revenues; and

WHEREAS, an amendment to the City code is necessary to permit such new obligations and conditions; and

1 **WHEREAS**, the trustees of the City of South Miami Pension Plan and City of
2 South Miami Police Officers' Retirement Trust Fund have requested and approved the
3 amendments provided herein as being in the best interests of the participants and
4 beneficiaries and improving the administration of the plan, and

5 **WHEREAS**, the City Mayor and City Commission has received and reviewed an
6 actuarial impact statement related to these change and attached as such; and

7 **WHEREAS**, the City Commission deems it to be in the public interest to provide
8 these changes to the pension plan and to the pension plan for its police officer
9 employees;

10 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY**
11 **COMMISSION OF THE CITY OF SOUTH MIAMI, FLORIDA, THAT:**

12 **Section 1.** That the foregoing whereas clauses are hereby ratified and
13 confirmed as being true and correct and are hereby made a specific part of this
14 Ordinance upon adoption hereof.

15 **Section 2.** Section 16-12 of the Code of Ordinances of the City of South
16 Miami, Florida, is hereby amended as follows:

17 Sec. 16-12. Definitions.

18

19 *Annual Compensation shall mean regular wages and salaries, including*
20 *hazardous pay, overtime pay, vacation, sick leave, holiday pay, clothing*
21 *allowance, educational incentive and extra duty pay.*

22

23 ...

24

25 *Department Head shall be defined in Article II Section 2.5 of the City Code*
26 *as designated therein including: the title of Assistant City Manager,*

1 Department Head and Police Chief, who are responsible directly to the city
2 manager, for operation of an established City department.

3
4 *Employee* shall mean any person employed full-time by the Employer on a
5 regular, permanent basis. Elected officials ~~and any person whose~~
6 ~~customary employment is for twenty (20) hours or less in any one week, or~~
7 ~~for five (5) months or less in any calendar year~~ shall be excluded. The city
8 manager, ~~and city clerk~~ and Department Heads shall be included within
9 the definition of Employee, however such positions shall be allowed to opt
10 out (in writing) of this pension plan.

11
12 *Employer* shall mean City of South Miami.

13
14 *Final average compensation* shall mean the Participant's annual
15 compensation, ~~as determined by the Employer, acting in a uniform and~~
16 ~~nondiscriminatory manner~~ excluding accruals such as vacation, holiday
17 pay, sick leave and compensation time averaged over the last three-year
18 period ending on the Participant's retirement date, date of disability, date
19 of termination of employment or the date of termination of the plan,
20 whichever is applicable. For police officers, final average compensation
21 shall mean the greater of:

22
23 (1) The average of the Participant's five (5) best years of annual
24 compensation during the last ten (10) years of service or

25
26 (2) The average of the Participant's annual compensation over
27 the Participant's last three (3) years, as described above.

28
29 Full time employee shall mean an Employee who works 32 hours a week
30 or more on a continuing basis and is eligible to receive all benefits and
31 rights as provided by the Personnel Rules and Regulations.

32 ...

33
34 *Participation date* shall mean date of participation in this Plan by a Full
35 time employee.

36
37 Part time employee shall mean employees who work less than 32 hours a
38 week. Part time employees are not eligible to receive a pension benefit
39 through the City.

40
41 ...

Section 3. Section 16-14(f)(1)(b) of the Code of Ordinances of the City of

South Miami, Florida, is hereby amended as follows:

Sec. 16-14. Pension benefits and retirement date.

(f) *Optional forms of payment.*

(1) A participant entitled to a normal or early service retirement benefit shall have the right at any time prior to the date upon which the first payment is received to elect to have the benefit payable under one of the options provided in this section. The participant shall be permitted to revoke any such election and to elect a new option at any time prior to the receipt of the first payment. Election of the retirement option shall be on a form prescribed by the board of trustees.

...

b. *Joint and last survivor option.* A participant may elect to receive a reduced benefit for life and to have the same benefit (or a designated fraction of the benefit) continued after the participant's death and during the lifetime of a designated joint pensioner. The participant shall have the option of electing to receive the payment of a benefit of seventy-five (75) percent, sixty-six and two-thirds ($66 \frac{2}{3}$) percent, or fifty (50) percent of the participant's monthly retirement allowance to be paid at the participant's death to a joint pensioner designated by the participant at the time of or prior to retirement, such benefit to be payable during the lifetime of the joint pensioner. The reduced retirement benefit shall be the actuarial equivalent of the amount of the retirement compensation otherwise payable to the participant. A designated joint pensioner may be any natural person, but need not be the spouse of the participant. In the event that the designated joint pensioner dies, before the participant's benefit payments begin, this option shall be canceled automatically and a retirement income shall be payable to the member in the form of a life annuity as if the election had never been made. A retired participant may change his or her joint pensioner up to two times without the approval of the Board or the current joint pensioner. The retiree member need not provide proof of the good health of the joint pensioner being removed, and the designated survivor being removed need not be living. Any increase in liability to the Plan associated with the new designation, as determined by the Fund's actuary, shall be borne by the retiree.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

Section 4. Section 16-33 of the South Miami Code of Ordinances is hereby amended to read as follows:

Sec. 16-33. Membership of board; term; officers; meetings; quorum.

(a) There is hereby created a seven-member board of trustees of the city police officers' retirement trust fund, which board shall consist of three (3) police officers as defined herein and in F.S. § 185.02(11), who shall be elected by a majority of the police officers who are participants of the fund, appointed as a ministerial act by the city commission and shall serve as trustee for period of two (2) years; unless he or she sooner leaves the employment of the city as a police officer, whereupon a successor shall be elected in the same manner as an original appointment. Each police officer trustee may succeed himself or herself in office; ~~employees of the police department to be selected by the police participants and appointed by the city commission, the police chief, the finance director, the mayor, three of whom, who may be a resident or an employee of the city shall be appointed by the city commission, and shall serve as trustee for a period of two (2) years, unless sooner replaced by the city commission at whose pleasure the trustee shall serve, and a resident of the city (to be appointed by the city commission) seventh trustee that shall be selected by a majority of the other six trustees, and appointed as a ministerial duty by the city commission. The seventh trustee shall have the same rights as each of the other six (6) trustees appointed or elected as herein provided, shall serve as trustee for a period of two (2) years and may succeed himself or herself in office the city manager as a nonvoting, ex officio member of said board. Effective November 1, 2006, the membership of the board shall consist of five (5) members and all prior terms shall expire. Two (2) of whom, unless otherwise prohibited by law, shall be appointed by the city commission, and shall serve as trustee for a period of two (2) years, unless sooner replaced by the city commission at whose pleasure the trustee shall serve, and may succeed himself or herself as a trustee. Two (2) of whom shall be police officers as defined herein and in F.S. § 185.02(11), who shall be elected by a majority of the police officers who are participants [of] the fund, and shall serve as trustee for period of two (2) years, unless he or she sooner leaves the employment of the city as a police officer, whereupon a successor shall be elected in the same manner as an original appointment. Each police officer trustee may succeed himself or herself in office. The fifth trustee shall be selected by a majority of the previous four (4) trustees, and appointed as a ministerial~~

1 duty by the city commission. The fifth trustee shall have the same rights as
2 each of the other four (4) trustees appointed or elected as herein provided,
3 shall serve as trustee for a period of two (2) years, and may succeed
4 himself or herself in office.
5

6 (b) ~~At the first election of trustees, effective November 1, 2006, there~~
7 ~~shall be elected one (1) police officer to serve as trustee for a two-year~~
8 ~~term; and one (1) police officer to serve as trustee for a one-year term.~~
9 ~~Thereafter, each year, one (1) police officer shall be elected to serve as~~
10 ~~trustee for a two-year term.~~ The board shall annually elect from its
11 membership a chairman and secretary. The chairman, when present, shall
12 preside at all meetings. The secretary shall keep complete minutes of all
13 proceedings of the board and shall comply with requirements of F.S. §
14 185.06(3). At each quarterly meeting a report detailing the assets and
15 liabilities of the fund as of the date of such meeting shall be presented. All
16 elections of the board shall be by a majority vote, a quorum being present.
17 ~~Three (3)~~Four (4) or more trustees shall constitute a quorum. Trustees
18 shall receive not compensation as such but may be reimbursed for any
19 expenses related to board business.
20

21 **Section 5.** Section 16-37 of the South Miami Code of Ordinances is hereby

22 amended to read as follows:

23 Sec. 16-37. Powers of board.
24

25 The board shall have the power and authority as follows:
26

27 (a) To invest and reinvest monies of the fund. In making such
28 investments they shall be governed by F.S. ch. 185 relating to the
29 investment of fiduciary funds, except that the allocation of assets shall not
30 be less than forty (40) percent in fixed income investments at market. The
31 board may, however, invest up to ~~ten (10)~~twenty-five (25) percent of the
32 assets in international securities.
33

34 ...
35

36 (f) The board shall identify and publicly report any direct or indirect
37 holdings it may have in any scrutinized company, as defined in Florida
38 Statutes, Section 215.473, and proceed to sell, redeem, divest, or
39 withdraw all publicly traded securities it may have in such company
40 beginning January 1, 2010 and shall thereafter be prohibited from
41 purchasing or holding such securities. The divestiture of any such security

1 must be completed by September 30, 2010. In accordance with Ch. 2009-
2 97, Laws of Florida, no person may bring any civil, criminal, or
3 administrative action against the board or any employee, officer, director,
4 or advisor of such board based upon the divestiture of any security
5 pursuant to this paragraph.

6
7 **Section 6.** Section 16-42 of the South Miami Code of Ordinances is hereby

8 amended to read as follows:

9 Sec. 16-42. Benefits.

10
11 No participant shall receive benefits from the fund in excess of the amount
12 credited to his account. Subject to this provision a participant shall receive
13 benefits as follows:

14 ...

15
16
17 (f) *Death of a participant:* Upon the death of a participant prior to
18 retirement, there shall be paid to the beneficiary last designated by him all
19 the monies credited to the participant's account plus four (4) per cent
20 interest, compounded annually, for the period commencing with the
21 December 31st immediately preceding, but not including, the day of death
22 of the participant. In the event a participant dies on or after January 1,
23 2007, while performing Uniformed Services Employment and
24 Reemployment Act (USERRA) Qualified Military Service, the beneficiaries
25 of the participant shall be entitled to any benefits (other than benefit
26 accruals relating to the period of qualified military service) as if the
27 participant had resumed employment and then died while employed.

28
29
30 (g) Change of beneficiary. Each participant shall have the right
31 to name a beneficiary and to change his beneficiary designation
32 from time to time. Any such exercise of rights shall become
33 effective immediately upon proper execution of the beneficiary
34 designation form provided by the board as a standard form under
35 this plan. A retired participant may change his or her designated
36 beneficiary up to two times without the approval of the Board or the
37 current designated beneficiary. The retired member need not
38 provide proof of the good health of the designated beneficiary being
39 removed, and the designated beneficiary being removed need not
40 be living. Any increase in liability to the Plan associated with the

new designation, as determined by the Fund's actuary, shall be borne by the retiree.

Section 7. If any section, clause, sentence or phrase of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this ordinance.

Section 8. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are repealed.

Section 9. This Ordinance shall take effect upon adoption.

PASSED AND ADOPTED this _____ day of _____, 2010.

ATTEST:

APPROVED:

CITY CLERK

MAYOR

1st Reading –
2nd Reading –

READ AND APPROVED AS TO FORM AND SUFFICIENCY:

COMMISSION VOTE:
Mayor Stoddard:
Vice Mayor Newman:
Commissioner Palmer:
Commissioner Beasley:
Commissioner Harris:

CITY ATTORNEY