AN ORDINANCE AMENDING THE POLICE OFFICERS AND FIREFIGHTERS RETIREMENT PLAN OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING ARTICLE II, DEFINITIONS, ARTICLE VI, RETIREMENT BENEFITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE, PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it has been determined that the City of North Miami Beach pension plan for police officers and firefighters requires certain technical amendments to bring it into conformity with the federal Internal Revenue Code, Economic Growth and Tax Relief Reconciliation Act of 2001, and the Pension Protection Act of 2006; and

WHEREAS, the Retirement Plan's Actuary has recommended a change in mortality table; and

WHEREAS, the Retirement Plan must be amended to specifically provide for the recently established federal regulations; and

WHEREAS, the City Council has received an actuarial impact statement concerning these amendments; and

WHEREAS, the amendment changing the mortality table has been approved by a majority of the Plan's active participants voting in a referendum and the remaining amendments required for Internal Revenue Code compliance do not require such approval,

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of North Miami Beach, Florida:

Section 1. The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. Article II, Definitions, of the Retirement Plan for Police Officers and Firefighters of the City of North Miami Beach is hereby amended by adding the following underlined language and deleting the stricken language:

> **Actuarial Equivalent** as used herein means equality in value of the aggregate amounts expected to be received under different forms of payment. Actuarially-equivalent amounts will be determined for all purposes based on the 1994 Group Annuity Reserving Table, projected by 2002, based upon a fixed blend 50% male mortality rates – 50% female

mortality rates, per IRS Revenue Ruling 2001-62 with interest 8.0% where the disabled Member's age shall be set forward five (5) years for all calculations.~~1951 Group Annuity Mortality Table projected by Scale C to 1965 with interest at 8.0% where the Participant's age shall be set back one (1) year and the Beneficiary's age shall be set back four (4) years for all calculations.~~

Basic Compensation for Police Officers means, as per the State Statute, the total cash remuneration paid to a police officer for services rendered~~.~~ , and shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in Section 6.08(C) hereof, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Code.

Basic Compensation for Firefighters means the regular fixed monthly compensation actually paid to a participant by Metropolitan Dade County~~.~~ , and shall include any elective deferral (as defined in Code Section 402(g)(3)), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in Section 6.08(C) hereof, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Code.

Section 3. Section 6.07, Lump Sum Payment of Small Retirement Income, of the Retirement Plan for Police Officers and Firefighters of the City of North Miami Beach is hereby amended by adding the following underlined language and deleting the stricken language:

Notwithstanding any provision of the Plan to the contrary, if the monthly retirement income payable to any person entitled to any benefit hereunder is less than $100 or if the single-sum value of the accrued retirement income is less than $~~3,500~~ 1,000 as of the date of retirement or termination of service, whichever is applicable, the Retirement Committee may, in the exercise of its discretion, specify that the actuarial equivalent of such retirement income be paid in a lump sum or in monthly installments for a period certain of not more than 60 months.

Section 4. Section 6.08(C), Application of Code Section 415 Limitations, of the Retirement Plan for Police Officers and Firefighters of the City of North Miami Beach is hereby amended by adding the following underlined language and deleting the stricken language:

(C) Application of Code Section 415 Limitations

~~Defined contribution plan limits of IRC Section 415(e) and regulations thereunder, and combined plan limits of IRC Section 415(e) and regulations thereunder, are hereby incorporated by reference to the extent that such provisions may apply to this plan.~~

~~as a result of this allocation of forfeitures, a reasonable error in mating a member's compensation or other facts and circumstances to ch Regulation 1.415-6(b)(6) shall be applicable, the annual additions er this plan would cause the maximum annual additions to be eeded for any member, the administrator shall (1) return any employee tributions credited for the "limitation year" to the extent that the return uld reduce the excess amount in the member's accounts; (2) hold any cess amount" remaining after the return of any employee contributions "Section 415 suspense account"; (3) use the "Section 415 suspense ount" in the next limitation year (and succeeding limitation years if ssary) to reduce employer contributions for that member if that mber is covered by the plan as of the end of the limitation year; or (4) ce employer contributions to the plan for such limitation year by the unt of the "Section 415 suspense account" allocated and reallocated ng such "limitation year". For purposes of this section, "excess unt" for any member for a limitation year shall mean the excess, if of (1) the annual additions which would be credited to his account er the terms of the plan without regard to the limitations of IRC ion 415 or (2) the maximum annual additions determined pursuant to revious paragraph.~~

~~purposes of this section, "Section 415 suspense account" shall mean nallocated account equal to the sum of "excess amounts" for all bers in the plan during the limitation year. The "Section 415 nse account" shall not share in any earnings or losses of the fund.~~

~~oregoing shall not apply if Section 415 of the Internal Revenue Code is inapplicable to this Plan either by statute or regulation.~~

) Definitions Used in this Section

"Annual Pension" means the sum of all annual benefits payable in rm of a single life annuity or qualified joint and survivor annuity from fined benefit plans (whether or not terminated) maintained by the City, ded that effective for limitation years beginning after December 31, the Plan shall not be combined or aggregated with any other plan for ses of applying Section 415(b)(1)(B) of the Code to such other plan urposes of applying the limitations of Code Section 415. Benefits le in any other form shall be adjusted to the larger of:

(a) the Actuarial Equivalent of a single life annuity beginning at me age, computed using the interest rate and mortality basis (or other r factor) used for Actuarial Equivalence for the particular form of ent under the Plan, or

(b) the actuarial equivalent of a single life annuity beginning at me age, computed using a 5.00% interest rate (or for any form of ent subject to IRC Section 417(e)(3), the Applicable Interest Rate) and pplicable Mortality Table.

nnual Pension shall not be adjusted for any benefit that is payable on nt of the death or disability of the Member as defined in Section)(2)(H)(I) of the Code.

"Dollar Limitation" means the adjusted value of $160,000 (or such amount as may be in effect on the last day of the calendar year nt to Section 415(d) of the IRC) based on the age of the Member the benefit begins as follows:

Age:	Adjustment of Dollar Limitation:
Over 65	The smaller of: (a) the Actuarial Equivalent of the limitation for age 65, computed using the interest rate and mortality basis (or other tabular factor) used for Actuarial Equivalence for Late Retirement Income under the Plan, or (b) the actuarial equivalent of the limitation for age 65, computed using a 5.00% interest rate and the Applicable Mortality Table. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.
62 to 65	No adjustment.
Less than 62	No adjustment for qualified Police Officers and Firefighters as defined in Section 415(b)(2)(G) of the code; otherwise: The greater of: (a) the Actuarial Equivalent of the limitation for age 62, computed using the interest rate and mortality basis (or other tabular factor) used for Actuarial Equivalence for Early Retirement Income under the Plan, or (b) the actuarial equivalent of the limitation for age 62, computed using 5.00% interest rate and the Applicable Mortality Table. Dollar Limitation determined in accordance with this paragraph shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

(3) The term "limitation year" is the 12 month period which is used for application of the limitations under Section 415 of the Code and shall be the calendar year.

(B) This Section 6.08(C) will not be applicable if Annual Pension benefits do not exceed $10,000 multiplied by a fraction whose value cannot exceed one, the numerator of which is the Member's period of service measured by total Vested Service, and the denominator of which is 10, provided the Member has never participated in a defined contribution plan maintained by the City.

(C) Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury that become effective no sooner than January 1 of each year. As a result of such an adjustment, a Retirement Income that had been limited by the provisions of this Section 3.6 in a previous Plan Year may be increased with respect to future payments to the lesser of the adjusted Dollar Limitation amount or the amount of Retirement Income that would have been payable under this Plan without regard to the provisions of this Section 3.6.

(D) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Section 6.08(C) and the provisions of Section 415 of the Code and regulations hereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code.

(E) In no event shall the amount of Retirement Income considered under this Plan exceed the amount of a benefit that is non-discriminatory under Code Section 401(a)(4).

(F) In no event shall distributions to the 25 most highly-compensated active and former Members (as that term is defined in Code Section 414(q)) exceed the amount that would be paid to such individual under a straight-life annuity that is the Actuarial Equivalent of the Member's accrued benefit and the Member's other benefits under the Plan, except that the preceding restriction on the amount of distribution to the 25 most highly-compensated Members ("Restricted Member") will not apply if any of the following requirements have been met for each Restricted Member:

(1) After payment of the benefits otherwise provided under this Plan to such Restricted Member, the value of plan assets equals or exceeds 110 percent of the value of current liabilities as defined in Code Section 412(l)(7);

(2) The value of the benefits otherwise provided under this Plan to such Restricted Member is less than one percent of the value of current liabilities, as defined in Code Section 412(l)(7), before distribution of such benefit; or

(3) The value of such Restricted Member's benefits does not exceed $5,000.

Section 4. Section 6.08A, Annual Compensation Limits Provided by Section 401(A)(17) of the Internal Revenue Code, of the Retirement Plan for Police Officers and Firefighters of the City of North Miami Beach is hereby amended by adding the following underlined language and deleting the stricken language:

~~Notwithstanding any other provision of this Retirement Plan to the contrary, a participant's annual compensation in excess of the limitations set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. However, for those participants who commence participation in the Retirement Plan prior to the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount that was allowed to be taken into account under the Retirement Plan as in effect on July 1, 1993.~~

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual Compensation of each Member taken into account under the Plan

shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is $150,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the Plan to the limitation under Section 401 (a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

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Section 5. Section 6.08B, Required Distributions, of the Retirement Plan for Police Officers and Firefighters of the City of North Miami Beach is hereby created by adding the following underlined language:

S.6.08B REQUIRED DISTRIBUTIONS

(A) Required Beginning Date:

Notwithstanding any other provision of the Plan, payment of a Member's benefits under the Plan shall commence not later than the later of:

(a) April 1 of the calendar year that next follows the calendar year in which the Member attains or will attain the age of 70½ years; or

(b) April 1 of the calendar year that next follows the calendar year in which the Member retires;

(B) Time and Manner of Distribution.

(1) Required Beginning Date. The Member's entire interest will be distributed, or begin to be distributed, to the Member no later than the Member's Required Beginning Date.

(2) Death of Member Before Distributions Begin. If the Member dies before distributions begin, the Member's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the Member's surviving spouse is the Member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age 70½, if later.

(b) If the Member's surviving spouse is not the Member's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Member died.

(c) If there is no designated beneficiary as of September 30 of the year following the year of the Member's death, the Member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

(d) If the Member's surviving spouse is the Member's sole designated beneficiary and the surviving spouse dies after the Member but before distributions to the surviving spouse begin, this Paragraph

6.08B(B)(2), other than Subparagraph 6.08B(B)(2)(a), will apply as if the surviving spouse were the Member.

For purposes of this Paragraph 6.08B(B)(2) and Subsection 6.08B(E), distributions are considered to begin on the Member's Required Beginning Date (or, if Subparagraph 6.08B(B)(2)(d) applies, the date distributions are required to begin to the surviving spouse under Subparagraph 6.08B(B)(2)(a)). If annuity payments irrevocably commence to the Member before the Member's Required Beginning Date (or to the Member's surviving spouse before the date distributions are required to begin to the surviving spouse under Subparagraph 6.08B(B)(2)(a)), the date distributions are considered to begin is the date distributions actually commence.

(3) Form of Distribution. Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Subsections 6.08B(C), 6.08B(D) and 6.08B(E). If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the Member's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

(C) Determination of Amount to be Distributed Each Year.

(1) General Annuity Requirements. If the Member's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(a) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Subsections 6.08B(D) or 6.08B(E);

(c) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(d) payments will either be nonincreasing or increase only as follows:

(i) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(ii) to the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in Subsection 6.08B(D) dies or is no longer the Member's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

(iii)to provide cash refunds of member contributions upon the Member's death; or

(iv)to pay increased benefits that result from a Plan amendment.

(2) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the Member's Required Beginning Date (or, if the Member dies before distributions begin, the date distributions are required to begin under Subparagraph 6.08B(B)(2)(a) or Subparagraph 6.08B(B)(2)(b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's Required Beginning Date.

(3) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the Member in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(D) Requirements For Annuity Distributions That Commence During Member's Lifetime.

(1) Joint Life Annuities Where the Beneficiary Is Not the Member's Spouse. If the Member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a nonspouse beneficiary, annuity payments to be made on or after the Member's Required Beginning Date to the designated beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Member using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Member and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(2) Period Certain Annuities. Unless the Member's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Member reaches age 70, the applicable distribution period for the Member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the Member as of the Member's birthday in the year that contains the annuity starting date. If the Member's spouse is the Member's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Member's applicable distribution period, as determined under this Paragraph 6.08B(D)(2), or the joint life and last survivor expectancy of the Member and the Member's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the Member's and spouse's attained ages as of the Member's and spouse's birthdays in the calendar year that contains the annuity starting date.

(E) Requirements For Minimum Distributions Where Member Dies Before Date Distributions Begin.

(1) Member Survived by Designated Beneficiary. If the Member dies before the date distribution of his or her interest begins and there is a designated beneficiary, the Member's entire interest will be distributed, beginning no later than the time described in Subparagraph 6.08B(B)(2)(a) or Subparagraph 6.08B(B)(2)(b), over the life of the designated beneficiary or over a period certain not exceeding:

(a) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or

(b) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(2) No Designated Beneficiary. If the Member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Member's death, distribution of the Member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the Member dies before the date distribution of his or her interest begins, the Member's surviving spouse is the Member's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this Subsection 6.08B(E) will apply as if the surviving spouse were the Member, except that the time by which distributions must begin will be determined without regard to Subparagraph 6.08B(B)(2)(a).

(F) Definitions.

(1) Designated beneficiary. The individual who is designated as the beneficiary under Section 6.4 of the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(2) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph 6.08B(B)(2).

(3) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

Section 6. Section 6.08C, Retroactive Annuity Start Dates, of the Retirement Plan for Police Officers and Firefighters of the City of North Miami Beach is hereby created by adding the following underlined language:

S.6.08C RETROACTIVE ANNUITY START DATES

In the event an Member elects a retroactive annuity starting date, such Member's future periodic payments shall be the same as the future periodic payments, if any, that would have been paid with respect to the Member had payments actually commenced on the retroactive annuity starting date. Such Member must receive a make-up payment to reflect any missed payment or payments for the period from the retroactive annuity starting date to the date of the actual make-up payments (with an appropriate adjustment for interest from the date the missed payment or payments would have been made to the date of the actual make-up payment). An Member cannot elect a retroactive annuity starting date that precedes the date upon which the Member could have otherwise started receiving benefits. If an Member elects a retroactive annuity starting date, the actuarial assumptions as of the retroactive annuity starting date shall be used to determine such Member's benefits. However, if the exceptions for benefits subject to Code Section 417(e) and 415 are not complied with in accordance with the final regulations, the actuarial assumptions as of the date distributions begin shall be used.

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 7. If any section, subsection, clause or provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given affect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 8. It is the intention of the City Council of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or relettered to accomplish this intention and the word "Ordinance" may be changed to "Section", "Article" or other appropriate word as the codifier may deem fit.

Section 9. This Ordinance shall take effect upon adoption.

APPROVED BY TITLE ONLY on first reading this **17th day of February, 2009.**

APPROVED AND ADOPTED on second reading this 3rd day of March, 2009.

ATTEST:

SOLOMON ODENZ
CITY CLERK

RAYMOND F. MARIN
MAYOR

(CITY SEAL)

APPROVED AS TO FORM

DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Mayor and City Council