

ORDINANCE NO. 95-17

AN ORDINANCE AMENDING THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH TO PROVIDE FOR COMPLIANCE WITH RECENT CHANGES TO THE INTERNAL REVENUE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE.

WHEREAS, the Mayor and City Council desire to amend the North Miami Beach General Employees Retirement Plan to comply with recent changes in the Internal Revenue Code.

NOW, THEREFORE,

BE IT ORDAINED by the City Council of the City of North Miami Beach, Florida.

Section 1. The foregoing recitals are true and correct.

Section 2. Article II of the Retirement Plan for General Employees of the City of North Miami Beach is hereby amended by adding the following language thereto:

Highly Compensated Employee means an employee described in IRC Section 414(q) and the regulations thereunder, and generally means an employee who performed service for the City during the "determination year" and is one or more of the following groups:

- (1) Employees who at any time during the "determination year" or "look-back year" were five percent owners of the City.
- (2) Employees who received "415 Compensation" during the "look-back year" from the City in excess of \$75,000.00.
- (3) employees who received "415 Compensation" during the "look-back year" from the City in excess of \$50,000.00 and were in the "top paid group" of employees for the plan year.
- (4) Employees who during the "look-back year" were officers of the City (as that term is defined within the meaning of the regulations under IRC Section 416) and received "415 Compensation" during the look-back year" from the City greater than 50 percent of the limit in effect under IRC Section 415 (b)(1)(A) for any such plan year. The number of officers shall be limited to the lesser of (i) 50

employees; or (ii) the greater of 3 employees or 10 percent of all employees. If the City does not have at least one officer whose annual "415 Compensation" is in excess of 50 percent of the IRC Section 415(b)(1)(A) limit, then the highest paid officer of the City will be treated as a highly compensated employee.

(5) Employees who are in the group consisting of the 100 employees paid the greatest "415 Compensation" during the "determination year" and are also described in (2),(3) or (4) above, when these paragraphs are modified to substitute "determination year" for "look-back year".

The "determination year" shall be the plan year for which testing is being performed, and the "look-back year" shall be the immediately preceding twelve-month period.

"Top paid group" means the top 20 percent of the employees who performed services for the City during the applicable year ranked according to the amount of "415 Compensation" received from the City during such year. For the purpose of determining the number of active employees in any year, the following employees shall be excluded, however, such employees shall be considered for the purpose of identifying the particular employees in the "top paid group".

1. Employees with less than six (6) months of service;
2. Employees who normally work less than 17-1/2 hours per week;
3. Employees who normally work less than six (6) months during a year; and
4. Employees who have not yet attained age 21.

The foregoing exclusions set forth in this section shall be applied on a uniform and consistent basis for all purposes for which the IRC Section 414(q) definition is applicable.

"Family member" means, with respect to an affected participant, such participant's spouse, such participant's lineal descendants and ascendants and their spouses, all as described in IRC Section 414(q)(6)(B).

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

Section 3. Section 6.01 of the Retirement Plan for General Employees of the City of North Miami Beach is hereby amended to add the following language as subsection (e):

§6.01 NORMAL RETIREMENT

(e) Notwithstanding any of the foregoing, distributions under the plan shall commence not later than the "required beginning date", in accordance with IRC Section 401(a)(9).

Section 4. Article VI of the Retirement Plan for General Employees of the City of North Miami Beach is hereby amended to add Section 6.08C, which provides as follows:

§6.08 TEMPORARY LIMITATIONS ON BENEFITS REQUIRED BY THE INTERNAL REVENUE SERVICE

(C) APPLICATION OF CODE SECTION 415 LIMITATIONS

Defined contribution plan limits of IRC Section 415(c) 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.

If, as a result of this allocation of forfeitures, a reasonable error in estimating a member's compensation or other facts and circumstances to which regulation 1.415-6(b)(6) shall be applicable, the annual additions under this plan would cause the maximum annual additions to be exceeded for any member, the administrator shall (1) return any employee contributions credited for the "limitation year" to the extent that the return would reduce the excess amount in the member's accounts; (2) hold any "excess amount" remaining after the return of any employee contributions in a "Section 415 suspense account", (3) use the "Section 415 suspense account" in the next limitation year (and succeeding limitation years if necessary) to reduce employer contributions for that member if that member is covered by the plan as of the end of the limitation year, or (4) reduce employer contributions to the plan for such limitation year by the amount of the "Section 415 suspense account" allocated and reallocated during such "limitation year". For purposes of this section, "excess amount" for any member for a limitation year shall mean the excess, if any, of (1) the annual additions which would be credited to his account under the terms of the plan without regard to the limitations of IRC Section 415 or (2) the maximum annual additions determined pursuant to the previous paragraph.

For purposes of this section, "Section 415 suspense account" shall mean an unallocated account equal to the sum of "excess amounts" for all members in the plan during the limitation year. The "Section 145 suspense account" shall not share in any earnings or losses of the fund.

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

Section 5. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

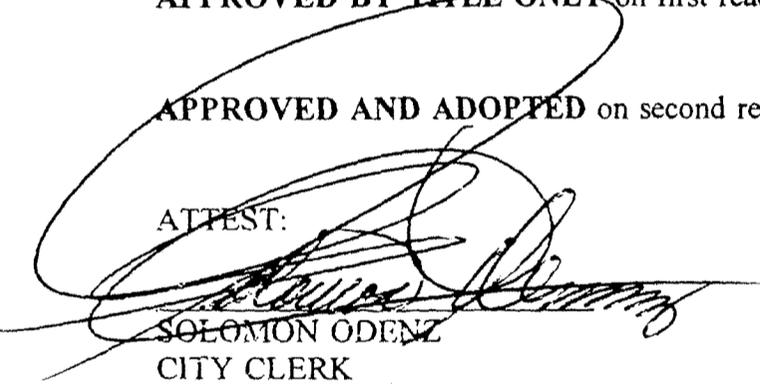
Section 6. If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 7. 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.

APPROVED BY TITLE ONLY on first reading this 17th day of October 1995.

APPROVED AND ADOPTED on second reading this 7th day of November 1995.

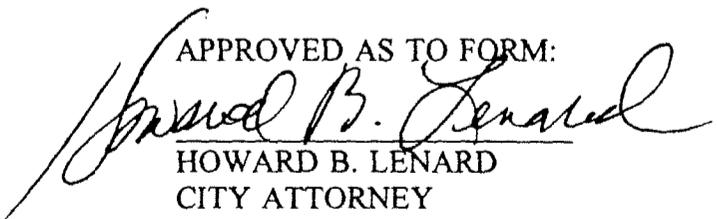
ATTEST:


SOLOMON ODENZ
CITY CLERK


JEFFREY A. MISHCON
MAYOR

(CITY SEAL)

APPROVED AS TO FORM:


HOWARD B. LENARD
CITY ATTORNEY

SPONSORED BY: Mayor and City Council
General Employees Retirement Board

NOTE: Underlining denotes additions and cross-outs denote deletions.