

**ORDINANCE NO. 2016-05**

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 70 ENTITLED "RETIREMENT AND PENSIONS", ARTICLE VII. ELECTED OFFICIALS, OF THE CODE OF ORDINANCES, AND IN PARTICULAR, TO REVISE LANGUAGE IN ORDER TO COMPLY WITH CHANGES IN FEDERAL LAW TO BECOME A QUALIFIED RETIREMENT PLAN PURSUANT TO THE INTERNAL REVENUE CODE BY AMENDING DEFINITIONS, ADDING A NEW SECTION, HIALEAH CODE § 70-59 ENTITLED "MILITARY SERVICE", AND ADDING AN NEW DIVISION, DIVISION 5 ENTITLED "FEDERAL TAX PROVISIONS", COMPRISING OF A NEW SECTION, HIALEAH CODE § 70-596 ENTITLED "FEDERAL TAX PROVISIONS APPLICABLE TO THIS PLAN" IN FURTHERANCE THEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, on October 6, 2015, the Department of Treasury, Internal Revenue Service, issued a favorable determination letter that the proposed or restated City of Hialeah Elected Officers' Retirement Trust qualifies as a Governmental plan under section 414(d) of the Internal Revenue Code: and

**WHEREAS**, the favorable determination is conditioned on the adoption of the proposed changes contained in this Amendment and that such adoption should occur on or before January 31, 2016; and

**WHEREAS**, this Amendment will not negatively impact the City of Hialeah Elected Officers' Retirement Trust financially.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** Chapter 70 entitled "Retirement and Pensions", Article VII. Elected Officials, of the Code of Ordinances of the City of Hialeah, Florida, is hereby amended to read as follows:

Chapter 70

**RETIREMENT AND PENSIONS**

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**ARTICLE VII. ELECTED OFFICIALS**

**DIVISION 1. GENERALLY**

**Sec. 70-526. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Beneficiary* means any person receiving a retirement allowance or other benefit from the retirement system for elected officials.

*Benefit* means a retirement allowance or other payment provided by the retirement system.

*Compensation* means salary and emoluments paid to the elected officer by the city. Salary and emoluments shall include the city-provided salary and any city-provided car allowance and expense allowance, but shall not include premiums for any life insurance, health insurance or any other perquisites provided by the city. For purposes of determining an elected officer's retirement benefits under section 70-591 below, compensation shall be determined in compliance with section 415(c)(3) of the Internal Revenue Code and section 1.415(c)(2) of the Income Tax Regulations.

*Contribution* means the sum of all amount contributed by the city on behalf of an elected officer except when describing the elected officer contribution.

*Elected officer* means a councilmember or mayor as elected in accordance with the Charter as it exists or as it may be amended. Elected officer benefits vest after eight years of service

*Elected officer absent from service* means any member ceasing to be an elected officer during any term of office wherein such elected officer entered or enters and served or serves in the armed forces of the United States during any period which the United States was or shall be engaged in war and who thereafter was or shall be appointed or again elected to the same elected office prior to discharge from such service in the armed forces.

*Eligible retirement plan* means any of the following types of plans that accept an eligible rollover distribution; (1) a qualified plan described in section 401(a) of the Internal Revenue Code; (2) an annuity plan described in section 403(a) of the Internal Revenue Code; and (3) an individual retirement account or individual retirement annuity described in section 408(a) and 408(b) of the Internal Revenue Code, respectively. Additionally, effective January 1, 2002, an eligible retirement plan shall also mean: (1) an annuity contract described in section 403(b) of the Internal Revenue Code or (2) an eligible plan under section 457(b) of the Internal Revenue 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 plan. Regarding 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 section 408A(b) of the Internal Revenue Code.

*Eligible rollover distribution* means 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: (1) 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 10 years or more; (2) any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; and (3) the 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 Internal Revenue Code, respectively, or transferred to a defined contribution plan qualified under section 401(a) of the Internal Revenue Code that agrees to separately account for such amount.

*Pension* means a series of periodic payments for the life of the elected officer.

*Retirement* means a councilmember or mayor who no longer serves as an elected officer of the city.

*Service* means an elected officer who has been an elected officer for a period of eight years or more.

*Trustee* means the city treasurer.

USERRA means the Uniformed Services Employment and Reemployment Rights Act, as amended from time to time.

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DIVISION 3. BENEFITS

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**Sec. 70-594. Military service.**

- (a) Notwithstanding any provision of this plan to the contrary, effective as of December 12, 1994, contributions, benefits and service credit regarding qualified military service (as defined in section 414(u) of the Internal Revenue Code will be provided according to section 414(u) of the Internal Revenue Code and USERRA.
- (b) For years beginning after December 31, 2008, (1) a member receiving a differential wage payment, as defined in section 3401(h)(2) of the Internal Revenue Code, shall be treated as an employee of the city; (2) the differential wage payment shall be treated as compensation; and (3) the plan shall not be treated as failing to meeting the requirements of any provisions described in section 414(u)(1)(C) of the Internal Revenue Code by reason of any contribution or benefit which is based on differential wage payment.
- (c) If a member's death or disability occurs on or after January 1, 2007, if the member dies while performing qualified military service (as defined in section 414(u) of the Internal Revenue Code, the survivors of the member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan as if the member had resumed and then terminated service or employment with the city on account of death.

DIVISION 4. CITY ATTORNEYS

**Sec. 70-594595. City attorneys-option to join retirement system.**

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DIVISION 5. FEDERAL TAX PROVISIONS

**Sec. 70-596. Federal tax provisions applicable to this plan.**

- (a) No pension provided hereunder shall be assignable and 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 members and their beneficiaries, and until those liabilities are satisfied, all city contributions will remain in the fund for the benefit of the members or beneficiaries if the plan is terminated or city contributions cease.
- (b) Upon termination of the plan or on the complete discontinuance of contributions under the plan, each member shall have non-forfeitable, 100% vested rights to benefits accrued to date of the termination or discontinuance to the extent funded at that time.
- (c) Notwithstanding any other provisions of this plan to the contrary, all distributions from the plan shall conform to the regulations issued under section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit provision of section 401(a)(9)(G) of the Internal Revenue Code. Further, such regulation shall override any plan that is inconsistent with section 401(a)(9) of the Internal Revenue Code.
- (d) Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan shall satisfy the following conditions:
  - (1) If the retirement income is payable before the member's death:
    - a. It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½, or the calendar year in which member retires.
    - b. The distributions shall commence not later than the calendar year defined above; and (i) shall be paid over the life of the member or over the lifetimes of the member, and spouse, designated beneficiary, issue or dependent, or (ii) shall be paid over the period extending not beyond the life expectancy of the member and spouse, designated beneficiary, issue or dependent.

Where a form of retirement income payment has commenced according to the preceding paragraphs and the member dies before the member's entire interest in the plan has been

distributed, the remaining portion of such interest in the plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.

- (2) If the member's death occurs before the distribution of the member's interest in the plan has commenced, the member's entire interest in the plan shall be distributed within five years of the member's death, unless it is to be distributed according to the following rules:
  - a. The member's remaining interest in the plan is payable of the member's 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 of expectancy of the spouse, designated beneficiary, issue or dependent; and
  - c. Such distribution begins within one year of the member's death unless the member's spouse, is the sole designated beneficiary, in which case the distribution need not begin before the date on which the member would have attained the age of 70½ and if the member's spouse or dies before the distribution to the spouse begins, this section shall be applied as if the spouse were the member.
- (e) In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, for the plan years beginning on or after January 1, 1996, the annual compensation of each elected officer taken into account under the plan shall not exceed the annual compensation limit of section 401(a)(17) of the Internal Revenue Code, as adjusted for increases in the cost-of-living.
- (f) Notwithstanding any other provisions of this plan, the retirement benefit of a member shall be reduced to the extent that it exceeds amounts specified in section 415(b)(1) of the Internal Revenue Code (as adjusted under section 415(d)(1)(A), as applicable (the "Defined Benefit Dollar Limitation"). To the extent applicable to this plan, for purposes of applying the limits of section 415, a retirement benefit that is payable in any form other than a straight life annuity and that is not subject to section 417(e)(3) must be adjusted to an actuarially equivalent straight life annuity that equals: (1) for limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity (if any) payable under the plan at the same annuity starting date, and the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using an interest rate of five percent (5%) and the applicable mortality table under section 417(c)(3); (2) for limitation years beginning before July 1, 2007, the annual amount of a straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount: (a) the interest rate and mortality table or other tabular factor specified in the plan for adjusting benefits in the

same form; and (b) a five percent (5%) interest rate assumption and the applicable mortality table. To the extent applicable to this plan, for purposing of applying the limits of section 415 of the Internal Revenue Code, a retirement benefit that is payable in any form other form other than a straight life annuity and that is subject to section 417(c)(3) must be adjusted to an actuarially equivalent straight life annuity that equals: (1) if the annuity starting date is in a plan year, beginning after 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, using whatever of the following produces the greater annual amount: (a) the interest rate and the mortality table or other tabular factor specified in the plan for adjusting benefits in the same form; (b) a five and one-half percent (5.5%) interest rate assumption and the applicable mortality table; and (b) the applicable interest rate under section 417(c)(3) and the applicable mortality table divided by 1.05; (2) if the annuity starting date is in the plan year beginning in 2004 or 2005, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit payable, using whichever of the following produces the greater annual amount: (i) the interest rate and mortality table or other tabular factor specified in the plan for adjusting benefits in the same form and (ii) five and one-half percent (5.5%) interest, and the applicable mortality table; but if the annuity starting date is on or after the first day of the plan year beginning in 2004 and before December 2, 2004, and the plan applies, the transition rule is section 101(d)(3) of PFEA '04 in lieu of the rule in (ii), which is the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, determined according to Notice 2004-78. To the extent applicable to this plan, the Defined Benefit Dollar Limitation shall be adjusted in the case of the payment of a benefit to a member under section 70-591 above commencing prior to age 62. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year commencing prior to July 1, 2007, the Defined Benefit Dollar Limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under this section for years of membership less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified or utilized in the plan and the mortality table (or other tabular factor specified or utilized in the plan; or (2) a five percent (5%) interest rate assumption and the applicable mortality table as defined or utilized in the plan.

The plan does not have immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement. To the extent applicable to this plan, if the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of straight life annuity commencing a the member's annuity starting date that is the actuarial equivalent of the

Defined Benefit Dollar Limitation (adjusted under this section for years of participation less than 10, if required) with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for the annuity starting date as defined or utilized in the plan (and expressing the member's age based on completed calendar months as of the annuity starting date).

The plan has immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement. To the extent applicable to this plan, if the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007 and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the member's annuity starting date is the lesser of the limitation determined under this section and the Defined Benefit Dollar Limitation (adjusted under this section for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this section.

To the extent applicable to this plan, if the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under this section for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified or utilized in the plan and the mortality table (or other tabular factor) specified or utilized in the plan; or (2) a five percent (5%) interest rate assumption and the applicable mortality table as defined or utilized in the plan.

The plan does not have immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement. To the extent applicable to this applicable to this plan, if the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent to the Defined Benefit Dollar Limitation (adjusted under this section for years of participation less than 10, if required), with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for that annuity starting date as defined or utilized in the plan (and expressing the member's age based on completed calendar months as of the annuity starting date).

The plan has immediately commencing straight life annuity payable at both age 65 and the age of commencement benefit commencement. To the extent applicable to this plan, if the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the member's annuity starting date is the lesser of the limitation determined under this section and the Defined Benefit Dollar Limitation (adjusted under this section for years of participation less than 10 if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the member's starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this section. For this purpose, the adjusted immediately commencing straight life annuity under this plan at the member's annuity starting date is the actual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical member who is age 65 and has the same accrued benefit as the member.

- (g) The limitation year is the calendar year.
- (h) A member's normal retirement benefit is non-forfeitable upon attainment of normal retirement age, as provide in section 411(a) of the Internal Revenue Code.
- (i) *Rollover of distributions.* This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision herein to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover, as provided in section 401(a)(31) of the Internal Revenue Code. Effective as of January 1, 2008, a non-spouse beneficiary may make a direct rollover only to an "inherited" individual retirement account as described in section 408(b) of the Internal Revenue Code. If a non-spouse beneficiary receives a distribution from the plan, the distribution is not eligible for a 60-day (non-direct) rollover.

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**Section 2: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

**Section 3: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 4: Inclusion in Code.**

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered, as appropriate, to conform to the uniform numbering system of the Code.

**Section 5: Severability Clause.**

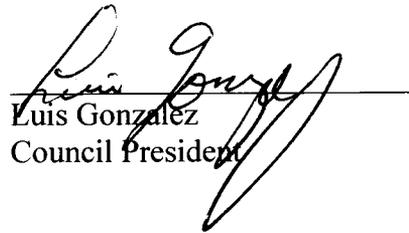
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 6: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

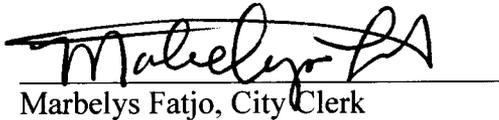
PASSED AND ADOPTED this 26 day of January, 2016.

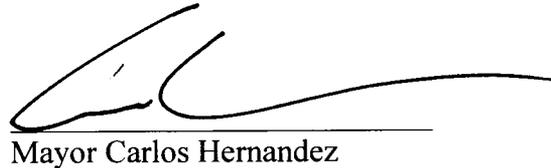
THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
Luis Gonzalez  
Council President

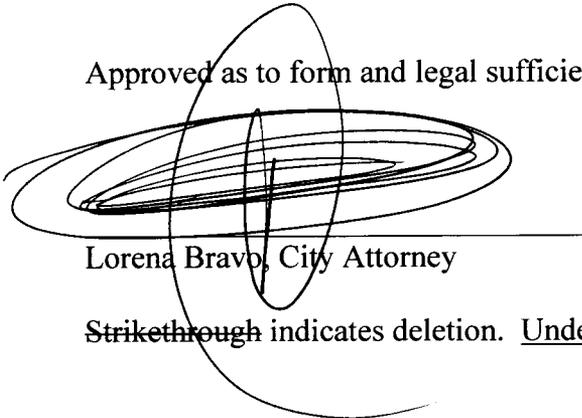
Attest:

Approved on this 1 day of February, 2016.

  
Marbelys Fatjo, City Clerk

  
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

  
Lorena Bravo, City Attorney

Ordinance was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Cue-Fuente, Garcia-Martinez, Hernandez, Gonzalez, Lozano and Casáls-Muñoz voting "Yes".

~~Strikethrough~~ indicates deletion. Underline indicates addition.