ORDINANCE NO. 10-46

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 70 ENTITLED "RETIREMENT AND PENSIONS", ARTICLE IV. EMPLOYEES GENERAL RETIREMENT SYSTEM, DIVISION 1. GENERALLY, OF THE CODE OF ORDINANCES AND IN PARTICULAR, REVISING HIALEAH CODE § 70-98 ENTITLED "AMENDMENTS TO RETIREMENT PLAN" TO CONFORM TO STATE LAW GOVERNING COLLECTIVE BARGAINING REQUIREMENTS THROUGH THE ELIMINATION OF LANGUAGE THAT PROVIDES THAT ALL THREE BARGAINING UNITS MUST RATIFY ALL AMENDMENTS TO THE PENSION PLAN AS IT RELATES TO GENERAL EMPLOYEES AND FIREFIGHTERS; 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, the general purpose and intent of this ordinance is in the best interest of the welfare of the community and the proper administration of its government; and

WHEREAS, the specific purpose of this ordinance is to eliminate an unlawful requirement that all three bargaining units ratify all changes to the pension plan; and

WHEREAS, the existing language of Hialeah Code § 70-98 is an unlawful restriction on the collective bargaining rights of the City and its employees in that each bargaining unit is subject to the collective decision of all bargaining units with regard to pension plan changes even if a proposed change only relates to the individual bargaining unit; and

WHEREAS, the general employees consent to this change as provided in Section 13 of Article 43 of the Collective Bargaining Agreement between the City of Hialeah and the Hialeah Civil Service Employees Association, AFSCME Local 161; and

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WHEREAS, the sworn firefighters consent to this change as provided in Section 13 of Article 38 of the Collective Bargaining Agreement between the City of Hialeah and the Hialeah Association of Firefighters, I.A.F.F., Local 1102; and

WHEREAS, pursuant to section 447.309(3), Florida Statutes, it is incumbent upon the Mayor to submit to the City Council, as governing body, a proposed amendment to the Hialeah Code, which is now in conflict with provisions of a collective bargaining agreement; and

WHEREAS, the sworn police officers represented by the Dade County Police Benevolent Association have been notified and with the bargained-for consent of the other bargaining units, the effect of the existing language of Hialeah Code § 70-98 would leave the police officers as the only bargaining unit constrained by a requirement that all pension changes that apply only to the police officers must be approved by all three bargaining units—a result that would be inequitable as well as unlawful; and

WHEREAS, on June 15, 2010, this ordinance was presented to the Retirement Board for its review and provided comment only on the approval process, to wit: that not all Unions agreed.

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 IV. Employees General Retirement System, Division 1. Generally, of the Code of Ordinances of the City of Hialeah, Florida is hereby amended, by revising Hialeah Code § 70-98 entitled "Amendments to retirement plan", to read as follows:

Chapter 70

RETIREMENT AND PENSIONS

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ARTICLE IV. EMPLOYEES GENERAL RETIREMENT SYSTEM

DIVISION 1. GENERALLY

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Sec. 70-98. Amendments to retirement plan.

(a) All amendments to the retirement plan shall be made by ordinance approved by the mayor and the city council.

(b) No ordinance amending this plan shall be submitted to the mayor and city council unless the changes affecting firefighters and general employees have been subject to the collective bargaining requirements set forth in Part II, Chapter 447, Florida Statutes ~~the ordinance shall have been ratified by all bargaining units~~ and has been submitted to the board of trustees for review at least ten days prior to first reading by the city council.

(c) No ordinance amending this plan shall be submitted to the mayor and city council unless such ordinance has first been submitted to the actuary approved by the board of trustees for evaluation.

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith 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 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 10th day of August, 2010.

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

Carlos Hernandez
Council President

Attest:

Approved on this 11th day of August, 2010.

Rafael E. Granado, City Clerk

Mayor Julio Robaina

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

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

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Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes.