ORDINANCE NO. 1385

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 15 OF THE CODE OF ORDINANCES, ENTITLED "PERSONNEL, PENSION, AND RETIREMENT" BY AMENDING ARTICLE V, ENTITLED "NORTH MIAMI POLICE PENSION PLAN," TO COMPLY WITH THE INTERNAL REVENUE CODE BY AMENDING SECTION 15-101 "DEFINITIONS"; SECTION 15-103 "MISCELLANEOUS PROVISIONS", SECTION 15-132 "DEATH BENEFITS", AND SECTION 15-137 "DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS"; PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the North Miami Police Plan (the "Plan") has received a determination letter from the Internal Revenue Service which requires amendments to the Plan to comply with the Internal Revenue Code (Exhibit "A"); and

WHEREAS, the City of North Miami has determined that amending the Plan to comply with the Internal Revenue Code is in the best interests of the employees and citizens of the City.

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

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Amendment to City Code.** Chapter 15 of the City of North Miami Code of Ordinances, entitled "Personnel, Pensions and Retirement" is hereby amended by amending sections 15.101, 15-103, 15-132 and 15-137 to read as follows:

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Chapter 15 – **PERSONNEL, PENSIONS AND RETIREMENT**

Article V. North Miami Police Pension Plan

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Sec. 15-101. – Definitions.

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Compensation means total compensation payable to an employee working the full normal working period for his position and shall include contributions made by the city on behalf of a member in satisfaction of the member's mandatory contributions to the system. Effective January 1, 1989, the compensation of an employee for purposes of this article shall not exceed two hundred thousand dollars ($200,000.00) per year adjusted for cost of living increases in accordance with [section] 415(d) of the Code. Except as otherwise provided in the preceding sentence, for the plan years beginning on or after January 1, 1996, the annual compensation of each employee taken into account under the plan shall not exceed the annual compensation limit in section 401(a)(17) of the Code, as adjusted by the commissioner for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. For years beginning after December 31, 2008, (i) an individual 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 employer making the payment, (ii) the differential wage payment shall be treated as compensation, and (iii) the plan shall not be treated as failing to meet the requirements of any provision described in Section 414(u)(1)(C) of the Internal Revenue Code by reason of any contribution or benefit which is based on the differential wage payment.

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Sec. 15.103. – Miscellaneous provisions.

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(a) *Amendments and termination.*

(1) This article establishing the system and fund and amending prior ordinances pertaining to retirement benefits for sworn police personnel, and subsequent ordinances pertaining to such system and fund, may be modified, terminated or amended, in whole or in part; provided that if this article or any subsequent ordinance shall be amended or repealed in its application to any person benefiting pursuant to this article, the amount of benefits which at the time of any such alteration, amendment or repeal shall have accrued to the member or beneficiary shall not be reduced thereby, except to the extent that the assets of the fund may be determined to be inadequate.

(2) Recommendations for changes in this system may be made to the city council by the board of trustees after approval by a majority vote of the board of trustees.

(3) If this article shall be repealed, the board shall continue to administer the system in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future person entitled to receive benefits under one (1) of the options provided for in this article who are designated by any of such members. In the event of repeal, there shall be full vesting (one hundred (100) percent) of benefits accrued to the date of repeal and the assets of the system and shall be allocated in an equitable manner to provide benefits on a

proportionate basis to the persons so entitled to benefits in accordance with the provisions of this article, with prior preference being directed towards the return of prior vested benefits and accumulated contributions. The allocation of assets of the system in event of repeal of this article shall be carried out through the payment of the benefits provided under this article as they become due, or by the transfer of such assets to any retirement system replacing this system, provided that the full vesting of benefits under the system are provided and filly maintained under such new retirement system. Any funds remaining in the assets of this system after all the vested benefits provided under this article have been paid shall revert to the general fund of the city. Any allocation of assets made in accordance with the provisions under this article shall be final and binding on all persons entitled to benefits under the system.

(4) Limitation of benefits on early termination. If the system is terminated for any reason other than failure to obtain Internal Revenue Service approval then notwithstanding any provision of this article to the contrary, during the first ten (10) years after the effective date of this article, and if full current costs had not been made at the end of the first ten (10) years, until the full current costs are met, the benefits provided by the city's contributions for the members whose anticipated annual benefit at normal retirement date exceeds one thousand five hundred dollars ($1,500.00) and who at the effective date of the system were among the twenty-five (25) highest paid employees of the city will be subject to the conditions set forth in the following provisions:

a. The benefit payable to a member described in this section or his beneficiary shall not exceed the greater of those benefits purchasable by the greater of twenty thousand dollars ($20,000.00), or an amount equal to twenty (20) percent of the first fifty thousand dollars ($50,000.00) of the member's annual compensation multiplied by the number of years from the effective date of this agreement to the earlier of:
   1. The date of termination of the system;
   2. The date the benefit of the member becomes payable; or
   3. The date of a failure on the part of the city to meet the full current costs of the system;

   or the present value of the maximum benefit provided in section 4022(b)(3)(B) of the act.

b. If the system is terminated or the full current costs thereof have not been met at any time within ten (10) years after effective date, the benefits which any of the members described in this section may receive from the city's contribution shall not exceed the benefits set forth in section (c)(4) of this section. If at the end of the first ten (10) years the full current costs are not met, the restrictions will continue to apply until the full current costs are funded for the first time. If a member described in this section leaves the employ of the city or withdraws from membership in the system when the full current costs have been met, the benefits which he may receive

from the city contributions shall not at any time within the first ten (10) years after the effective date exceed the benefits set forth above except as provided in the case of a lump sum distribution described below. These conditions shall not restrict the ~~fill~~ full payment of any survivor's benefits on behalf of a member who dies while in the system and the full current costs have been met. These conditions shall not restrict the current payment of full retirement allowance called for by the system for any retired member while the system is in full effect and its full current costs have been met, provided an agreement, adequately secured, guarantees the repayment of any part of the distribution that is or may become restricted.

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Sec. 15.132. - Death benefits.

(a) *Service-connected death.* Upon the service-connected death of a member there shall be paid to such deceased member's surviving spouse, if any, for life, an amount equal to fifty (50) percent of the final compensation paid to the member as determined from the average monthly wages paid to the deceased member during the twelve (12) months immediately preceding death. If there is no surviving spouse, this benefit shall be paid to the surviving minor children of the member during their minority or for a period of fifteen (15) years, whichever is greater. Absent a surviving spouse and surviving minor children, this benefit shall be paid to a beneficiary, designated by the member, for the beneficiary's life or a period of fifteen (15) years, whichever is less. This benefit shall be paid monthly commencing on the first day of the month following the death of the member. I addition to the foregoing benefit, there shall also be paid monthly to each surviving child of the deceased member under the age of eighteen (18) during that child's minority ten (10) percent of the final compensation paid to the deceased member. The total death benefit to be paid shall not, in any event, exceed one hundred (100) percent of the member's final compensation. A service-connected death is a death incurred while an employee is performing, directly or indirectly, services for the city. Death benefits paid to a surviving spouse shall not be effected by remarriage, provided the city continues to receive excise tax monies as provided in F.S. § 185.08. Notwithstanding the provisions described above in this subsection (a), in the event of the service-connected death of a member who is eligible for normal retirement, the benefit payable may not be less than the member's accrued pension benefit, and such benefit may not be payable for less than ten (10) years. An annual, compounded cost-of-living adjustment ("COLA") of three (3) percent shall be paid to any beneficiary receiving a service-connected death benefit pursuant to this subsection.

(b) *Non Service-connected death.* Upon the nonservice-connected death of a member, there shall be paid to the beneficiaries of that member a lump sum consisting of the member's accumulated contributions, which are attributable to the time period through September 30, 1982, plus the actuarially reduced equivalent of the normal retirement benefit

multiplied by the vesting percent attributable to the deceased member. Determination as to whether a death is nonservice-connected shall be made by the board of trustees after examination of findings and recommendations of the medical committee and from other evidence presented to the board.

(c) *Death During Qualified Military Service.* In the case of a death or disability occurring on or after January 1, 2007, if a participant dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code), the survivors of the participant 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 participant had resumed and then terminated employment by the City on account of death.

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Sec. 15-137. - Direct transfers of eligible rollover distributions.

(a) *General.* This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the system to the contrary that would otherwise limit a distributee's election under subsection 15-133(2) and subsection 15-134(2) or (5), a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) *Retiree medical premiums for public safety officers.* The plan may allow a public safety officer to elect a tax free distribution of up to $3,000 annually directly to a retiree accident or medical plan or long-term care insurance contract on a pre-tax basis, so long as the public safety officer separates from service either at the plan's normal retirement age or due to his or her disability. Insurance premiums may be paid for the public safety officer, his spouse or his dependents while he is alive, but once he is deceased, the benefit ceases and may not be used by his spouse or beneficiaries to pay for their insurance premiums. Insurance premiums payments may only be made directly to the provider of the accident or health plan or qualified long-term care insurance contract. "Public safety officers" include law enforcement officers, firefighters, chaplains, rescue crew members or ambulance crew members.

(~~b~~c) Definitions.

(1) *Eligible rollover distribution:* An eligible rollover distribution is 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: any distribution that is one (1) 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 ten (10) years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income.

(2) *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. Effective for distributions made after December 31, 2001, an eligible retirement plan shall also mean an annuity contract described in section 403(b) of the Internal Revenue Code and 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.

(3) *Distributee*: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse is a distributee with regard to the interest of the spouse. Effective as of January 1, 2008, an employee's or former employee's non-spouse beneficiary is distributee with regard to the interest of the employee or former employee.

(4) *Direct rollover:* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee. 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 3. **Severability.** Should this Ordinance or any part thereof be declared invalid by a Court of competent jurisdiction, the invalidity of any part of this Ordinance shall not otherwise affect the validity of the remaining provisions of this Ordinance, which shall be deemed to have been enacted without the invalid provision.

Section 5. **Codification.** The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a 5 - 0 vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this 14th day of April, 2015.

PASSED AND ADOPTED by a 5 - 0 vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this 28th day of April, 2015.

DR. SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Keys

Seconded by: Galvin

Vote:

Mayor Smith Joseph, D.O., Pharm.D	X (Yes)	___ (No)
Vice Mayor Carol Keys, Esq.	X (Yes)	___ (No)
Councilperson Scott Galvin	X (Yes)	___ (No)
Councilperson Philippe Bien-Aime	X (Yes)	___ (No)
Councilperson Marie Erlande Steril, MSW	X (Yes)	___ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.