

ORDINANCE NO. 6432

AN EMERGENCY ORDINANCE AMENDING AND RESTATING ORDINANCE NO. 6432, ADOPTED SEPTEMBER 2, 1959, PROVIDING FOR THE CREATION OF A MIAMI FIRE FIGHTERS' RELIEF AND PENSION FUND, AS PROVIDED BY CHAPTER 175, FLORIDA STATUTES, THEREBY INCORPORATING ALL AMENDMENTS EFFECTED SINCE THE ORIGINAL PASSAGE OF ORDINANCE NO. 6432, AND FURTHER AMENDING SAID ORDINANCE TO ENSURE CONFORMANCE WITH ALL APPLICABLE LAWS; CONTAINING A REPEALER PROVISION AND A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Ordinance No. 6432 adopted September 2, 1959, created the Miami Fire Fighters' Relief and Pension Fund (the "Fund"); and

WHEREAS, certain amendments to said Ordinance are now necessary in order to add certain definitions and other provisions and to ensure that the form of the Ordinance and the operation and administration of the Fund are consistent with applicable law;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and finds contained in the Preamble to this Ordinance are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

Section 2. Ordinance No. 6432, adopted September 2, 1959, is hereby amended and restated in the following particulars:

SECTION 1. INTRODUCTION.

The purpose of this ordinance is to implement the provisions of Chapter 19112, Acts of Florida, 1939 and Chapter 175, Florida Statutes, and to provide means whereby Fire Fighters of the City of Miami,

Florida may receive benefits from the funds provided for that purpose by

Chapter 19112, Acts of Florida, 1939 and Chapter 175, Florida Statutes. The fund hereby created

shall be in addition to any other pension plan of the City of Miami, Florida and nothing herein shall in any way affect the operation of, or the benefits under, any other pension plan of the City of Miami, Florida that presently exists.

SECTION 2. DEFINITIONS.

The following words and phrases shall, for the purpose of this ordinance, have the meanings indicated below.

- (a) "**Account**" means the account credited with contributions under Section 3 and earnings on those contributions.
- (b) "**Active Duty**" means service for which an employee receives compensation as a Fire Fighter with Permanent Status in the Fire Department of the City.
- (c) "**Beneficiary**" means any person, persons or entity designated by a Participant to receive any benefits payable in the event of the Participant's death. If no Beneficiary designation is in effect at the Participant's death, or if no person, persons or entity so designated survives the Participant, the Participant's surviving spouse, if any, shall be deemed to be the Beneficiary; otherwise the Beneficiary shall be the Participant's estate.
- (d) "**Board**" means the Board of Trustees named to supervise and administer the Fund, as provided in Section 7.
- (e) "**City**" means the City of Miami, Florida, and the lands under its jurisdiction from time to time, as determined by law.
- (f) "**Code**" means the Internal Revenue Code of 1986, as from time to time amended.
- (g) "**Credit**" means, with respect to any Participant, each calendar month during which he is on Active Duty for at least 15 days.
- (h) "**Fire Fighter**" means anyone defined as a firefighter in Chapter 175.032 Florida Statutes, as amended.
- (i) "**Fund**" means the Miami Fire Fighters' Relief and Pension Fund, as provided for herein.
- (j) "**Fund Year**" means the calendar year, which shall be the fiscal year on which the Fund's records shall be kept.

- (k) **"Leave"** means (I) any period during which an employee is absent due to (i) service in the uniformed services of the United States; (ii) the birth or adoption of a child, or caring for a child, spouse or parent who has a serious health condition or (iii) his own serious health condition if Credit or Vesting Service, as the case may be, is required to be given for such periods under the Uniformed Services Employment and Reemployment Rights Act of 1994 or the Family and Medical Leave Act of 1993, respectively, and (II) any other period of leave as approved on a non-discriminatory basis by the Board.
- (l) **"Participant"** means every Fire Fighter in Permanent Status.
- (m) **"Permanent Status"** means employment as a Fire Fighter who has been regularly appointed, after serving a probationary period not to exceed two years, to a position which normally involves continuous year-round service.
- (n) **"State"** shall mean the State of Florida.
- (o) **"Trustee"** means any member of the Board.
- (p) **"Valuation Date"** means the first business day of any calendar quarter and such other dates as the Board may deem necessary.
- (q) **"Vesting Service"** means, with respect to a Participant, each calendar month as a Participant for which he receives compensation from the City for at least 15 days; and each calendar month during which he is absent on a Leave for at least 15 days; provided, however, Vesting Service shall not include any Leave within the meaning of paragraph (k)(II) of Section 2 which exceeds five years.

SECTION 3. FUNDING.

- (a) **Contributions.** The City shall contribute to the Fund each year an amount equal to the amount it receives under the provisions of Chapter 175, Florida Statutes, as amended. The City shall

make its contributions to the Fund as soon as possible but in no event later than five days of its receipt of such amount. The City shall not be required to levy any additional taxes on its residents to make any contributions to the Fund.

- (b) **Payment of Costs, Expenses and Fees.** All costs, expenses and fees of administering the Fund shall be paid from the assets of the Fund in such fashion as the Board shall determine.
- (c) **Exclusive Benefit Rule.** 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 Participants and other persons entitled to benefits under the Fund and paying the expenses of the Fund not paid directly by any other party. No person shall have any interest in, or right to, any part of the earnings of the assets of the Fund, or any right in, or to, any part of the assets held under the Fund, except as and to the extent expressly provided in this ordinance.
- (d) **Custody of Fund Assets.** The Board shall hold all assets of the Fund in trust solely for use in paying the benefits provided by this ordinance and paying the expenses of the Fund as described in paragraph (b) of this Section 3. The Board shall deposit all assets of the fund held in cash in a National or State chartered financial institution whose deposits are Federally insured. The Board shall keep all securities and evidences of ownership of other assets of the Fund in a safe deposit box or shall deposit them with a corporate custodian. Current inventories of such securities and other assets shall be kept as a part of the permanent records of the Board, which will be audited annually by a Certified Public Accountant.

SECTION 4. PARTICIPATION.

- (a) **Participation.** An Account shall be established for each Participant on the effective date of this ordinance and for each Fire Fighter who attains Permanent Status subsequent to the passage of this ordinance.

- (b) **Termination of Participation.** Every Fire Fighter who becomes a Participant shall remain a Participant until his Account is fully distributed to him. If a former Fire Fighter on the reemployment register due to a layoff is rehired within three years of his layoff, the Board may, in its sole discretion, give him credit for his prior Vesting Service; provided, however, the Board shall exercise its discretion in a uniform and non-discriminatory manner with respect to all persons similarly situated.

SECTION 5. ALLOCATION TO ACCOUNTS

- (a) **Allocation of Contributions.** As of each Valuation Date, all contributions made by the City since the preceding Valuation Date shall be allocated among the Participants' Accounts. The allocation shall be made solely in the proportion the total number of months of Credit accrued by each Participant in the immediately preceding calendar year bears to the total months of Credit of all Participants in that calendar year with no credit given on account of a Participant's seniority, rank or compensation.

- (b) **Allocation of Forfeitures.** As of the last Valuation Date in each Fund Year, and at such other Valuation Dates as the Board may determine, all amounts forfeited under paragraphs (a) and (d) of Section 6 since the preceding date as of which forfeitures were allocated shall be prorated and credited to the Accounts of the individual Participants in the same manner as the City's

contributions allocated under paragraph (a) of this Section 5.

- (c) **Allocation of Accounts.** A Participant may elect, in a time and manner determined by the Board, to allocate such portion of any contributions and forfeitures made to his Account under paragraphs (a) and (b) of this Section 5 and such portion of his existing Account as the Board may, in its sole discretion, determine, to a separate investment account established by the Board pursuant to paragraph (e)(II) of Section 7. Any allocations made pursuant to this paragraph (c) shall become effective as of the first Valuation Date after the expiration of any notice period established by the Board.
- (d) **Allocation of Investment Gains.** The Board shall value the Fund's assets as of each Valuation Date and shall allocate to the Account of each Participant his share of the increase or decrease in the fair market value of the Fund's assets. If a separate investment account has been established by the Board pursuant to paragraph (e)(II) of Section 7, it shall be valued separately from the rest of the Fund and the Board shall allocate to the Account of each Participant his share of the increase or decrease in the fair market value of the separate investment account's assets. The Participant's share of the increase or decrease in the fair market value of the Fund or the separate investment account shall bear the same ratio to the total amount of the increase or decrease in the Fund or the separate investment account, as the case may be, as the value of the portion of the Participant's Account invested in the Fund or the separate investment account bears to the total value of the Fund or the separate investment account, as the case may be.

- (e) **Allocations After Termination.** Except as otherwise provided in this paragraph (e), no amounts shall be credited to a Participant's Account under paragraphs (a) and (b) of this Section 5 after he ceases to be on Active Duty. However, until completely distributed to him, the Account of a Participant not on Active Duty shall continue to be invested as part of the Fund and shall continue to share in the investment gains and losses of the Fund in accordance with the provisions of paragraph (d) of this Section 5. A Participant shall continue to receive allocations of contributions and forfeitures under paragraphs (a) and (b) of this Section 5 after he ceases to be on Active Duty if such contributions and forfeitures are attributable to a period when he was on Active Duty.
- (f) **Determination of Account Value.** Whenever an event requires the determination of the value of a Participant's Account, the value shall be computed as of the Valuation Date coincident with or immediately following the date of the determination.
- (g) **Maximum Allocation Limitation.** Notwithstanding any provision of this ordinance to the contrary, the maximum amount allocated to the Participant's Account for any calendar year under the provisions of paragraphs (a) and (b) of this Section 5 shall not exceed the limitations set forth in Section 415 of the Code and any regulations issued thereunder.

SECTION 6. BENEFITS.

A Participant shall receive a benefit from the Fund upon his termination of employment, disability, retirement or death in accordance with this Section 6. However, no Participant shall receive a benefit from the Fund in excess of the amount credited to his Account.

- (a) **Termination of Employment.** Except as otherwise provided in this Section 6, if a Participant terminates his employment with the Fire Department for any reason whatsoever prior to completing nine years of Vesting Service, he shall receive a benefit equal to the vested portion of his Account determined as follows:

<u>Years of Vesting Service</u>	<u>Vested Portion of Account</u>
Less than 3 years	25%
3 years but less than 6 years	50%
6 years but less than 9 years	75%
9 or more years	100%

The portion of the Participant's Account which is not vested on his termination of employment shall be forfeited and allocated to the Accounts of all remaining Participants in accordance with the provisions of paragraph (b) of Section 5. Notwithstanding the foregoing, a Participant shall be 100% vested in, and have a nonforfeitable right to, his entire Account on the termination of the Fund or the complete discontinuation of the City's contributions to the Fund.

- (b) **Death.** If a Participant dies before payment of his benefits begin, the entire amount of his Account shall be paid to his Beneficiary. The Board may require and rely upon such proof of death and such evidence of the right of any Beneficiary or other person to receive the value of the Account of a deceased Participant as the Board may deem proper and its determination of the right of that Beneficiary or other person to receive payment shall be conclusive.
- (c) **Retirement or Disability.** A Participant who retires by reason of length of service or disability under any other pension plan of the City shall receive the entire amount of his Account.

- (d) **Forfeiture for Cause.** Notwithstanding anything in this ordinance to the contrary, if a Participant is convicted of a specified offense, the provisions of Chapter 112.3173, Florida Statutes, as amended, shall apply and he shall forfeit all rights to receive a benefit from the Fund in accordance with the provisions of such Chapter. For purposes of this paragraph (d), "convicted" and "specified offense" shall have the meanings given to them in Chapter 112.3173.
- (e) **Form of Benefit.** A Participant shall receive his benefit in a single lump sum unless he elects to take it in one of the following optional forms:
- (I) Equal annual payments over a period, designated by the Participant, not to exceed the life expectancy of the last to survive of the Participant and his Beneficiary. In the event the Participant dies before all installments have been paid, the remaining balance in his Account shall be paid in an immediate lump sum to his Beneficiary, if still living, or if the Participant does not have a Beneficiary or if the Beneficiary has predeceased the Participant, to the Participant's estate. Upon written request of the Participant (or his Beneficiary in the event of the Participant's death), the Board may permit the Participant (or his Beneficiary, as the case may be) to withdraw all or any portion of his unpaid Account after payment of the benefit has commenced.
- (II) A combination of a lump sum and annual installments as provided in subparagraph (I) above.

A written notice of election to receive payments in an optional form must be filed with the Board upon a form prescribed by the Board, and must be sworn to by the person entitled to receive such monies.

(f) **Payment of Benefits.** Benefits under this Section 6 shall be payable as soon as possible following the Valuation Date coincident with or next following the Participant's termination of employment with the Fire Department unless the Participant elects, in a time and manner determined by the Board, to have his benefits commence as of a later Valuation Date. However, in no event shall benefits commence after the first Valuation Date coincident with or immediately following the later of the Participant's 65th birthday or his termination of employment with the Fire Department. Payment of a Participant's Account as provided in this Section 6 shall be in full settlement of all claims of a Participant against the Fund.

(g) **Required Distributions.** In no event shall the provisions of this ordinance operate so as to allow the distribution of a Participant's Account to begin after the later of the April 1 following (i) the calendar year in which he attains age 70½ or (ii) the calendar year in which he terminates his employment (the "required beginning date"). In the event a Participant is required to begin receiving payments while in service under the provisions of this paragraph (g), the Participant may elect to receive payments while in service in accordance with option (I) or (II) as follows:

- (I) A Participant may receive one lump sum payment on or before his required beginning date equal to his entire Account balance and annual lump sum payments thereafter of amounts accrued during each calendar year; or
- (II) A Participant may receive annual payments of the minimum amount necessary to satisfy the minimum distribution requirements of Section 401(a)(9) of the Code. Such minimum amount will be determined on the basis of the joint life expectancy of the Participant and his Beneficiary. Such life expectancy will not be recalculated.

An election under this paragraph (g) shall be made by a Participant by giving written notice to the Board within the 90 day period prior to his required beginning date. Upon the Participant's

subsequent termination of employment, payment of his Account shall be made in accordance with the provisions of this Section 6. In the event a Participant fails to make an election under this paragraph (g), payment shall be made in accordance with subparagraph (II) above.

- (h) **Distribution Limitation.** Notwithstanding any other provision of this ordinance, all distributions from the Fund shall conform to the regulations issued under Section 401(a)(9) of the Code, including the incidental death benefit provisions of Section 401(a)(9)(G) of the Code. Further, such regulations shall override any provision of this ordinance that is inconsistent with Section 401(a)(9) of the Code.

- (i) **Direct Rollover of Certain Distributions.** Notwithstanding any provision of this ordinance to the contrary that would otherwise limit a distributee's election under this paragraph (i), 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 by the Fund to an eligible retirement plan specified by the distributee in a direct rollover. The following definitions apply to the terms used in this paragraph (i):
 - (I) **"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 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 includible in gross income;

 - (II) **"Eligible retirement plan"** means 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. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity;

- (III) **"Distributee"** means 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; and
- (IV) **"Direct rollover"** means a payment by the Fund to the eligible retirement plan specified by the distributee.

SECTION 7. ADMINISTRATION.

- (a) **Board of Trustees.** There is hereby created a Board of Trustees of the Miami Fire Fighter's Relief and Pension Fund. The Board shall consist of three Participants in the Fund to be elected by Participants, the Fire Chief, and a fifth member appointed by the Participants elected as Trustees. Trustees shall be elected to serve as Trustee for a three year term. The fifth Trustee appointed to the Board shall serve for a term of one year. The Board shall annually elect from its membership a Chairman and a Secretary and a Treasurer. The Chairman, when present, shall preside at all meetings. The Secretary shall keep complete minutes of all proceedings of the Board. The Treasurer shall supervise the books and records which record the receipts and disbursements of the Fund and the inventory of assets of the Fund. The Treasurer shall report at each quarterly meeting, and at such other times as the Board may determine, the assets and liabilities of the Fund as of the date of such meeting. Any and all acts and decisions of the Board, except for the appointment of the fifth Trustee, shall be by at least three affirmative votes

of the Board, a quorum being present. Three or more Trustees shall constitute a quorum.
Trustees shall receive no compensation for their service as such.

- (b) **Elections.** All elections of Fire Fighters to the Board shall be by secret written ballot. Only Participants shall be eligible for nomination and election to the Board and only Participants shall be eligible to vote in such elections. Notice of each election shall be given at least two weeks prior to the date upon which such elections shall be held.
- (c) **Meetings.** The Board will hold regular meetings at least quarterly or more often as determined by the Board. Special meetings may be called by the Chairman and Secretary or by any three Trustees. Ten days written notice of a special meeting shall be given in writing to all Trustees, which notice shall contain the purpose, date, time and place of the special meeting. If any Trustee fails to attend two consecutive meetings of the Board without cause, as determined by the Board, his membership on the Board shall be terminated. Written notice of his termination shall be given to the Trustee whose membership is thus terminated.
- (d) **Replacement of Board Members.** If at any time between elections a vacancy occurs on the Board for any reason whatsoever, the remaining Trustees, by majority vote, shall fill the vacancy. The new Trustee so chosen shall serve until the next election of the Board of Trustees, at which time a new Trustee shall be elected to serve the remainder of the term of the Trustee whose position became vacant.
- (e) **Powers of the Board.** The Board shall have the power and authority as follows:

- (I) To invest and reinvest the assets of the Fund and keep them invested, without distinction between principal and income, in stocks, bonds, stock options, option contracts of any type, contracts for the immediate or future delivery of financial instruments and other property, or other securities or certificates of participation or shares of any mutual investment company, trust or fund, or deposits which bear a reasonable rate of interest, or annuity or investment contracts issued by an insurance company, or other property of any kind, real or personal, tangible or intangible, as a prudent man would do under like circumstances with due regard for the purpose of this Fund. Notwithstanding anything to the contrary in this paragraph (e), the Board shall be governed by State laws relating to the investments of fiduciary funds when investing the Fund's assets.
- (II) To establish one or more separate investment accounts within the Fund. The Board shall transfer to each such separate investment account such portion of the Fund's assets as the Participants direct in accordance with the provisions of paragraph (c) of Section 5. The Board shall invest and reinvest the assets which have been allocated to a separate investment account in accordance with the investment guidelines, objectives and restrictions which have been established by the Board for that separate investment account.
- (III) To keep such amounts of cash as it, in its sole discretion, shall deem necessary or advisable as part of the Fund.
- (IV) To approve disbursements, pay claims, and authorize payments from the Fund by warrants signed by at least three Trustees.
- (V) To construe and interpret the provisions of this ordinance including, but not limited to, determination of an individual's eligibility to participate in the Fund, the right and amount of any benefit payable under the Fund and the date on which any individual ceases to be

a Participant. The determination of the Board as to the interpretation of this ordinance or any disputed question shall be conclusive and final to the extent permitted by applicable law.

(VI) To promulgate necessary rules respecting (i) the operation and administration of the Fund and the transaction of its business and (ii) the elections of Trustees, not in conflict with the wording or clear intent of this ordinance.

(VII) To authorize expenditures in connection with preliminary research, and for technical, legal, consulting and accounting services; to contract for employees necessary to the general administration of the Fund and to employ legal counsel, auditors and others necessary to the proper administration of the Fund.

(VIII) To appoint from their number such committees with such powers as they shall determine and to allocate among themselves all or such portion of their duties under this ordinance as they, in their sole discretion, shall decide.

(IX) To take or do any other actions or things permitted to be taken or done by trustees under any applicable State law.

(f) **Bonding.** All persons, including Trustees and employees, who sign checks or handle money, securities or other assets of the Fund shall be bonded by a qualified surety.

(g) **Limitation of Liability and Indemnification.** The Trustees and any officer, employer or agent of the Trustees or of the Fund shall not incur any liability individually or on behalf of any other individuals or on behalf of the Board or the Fund for any act or failure to act, made in good faith in relation to the Fund or the assets of the Fund. To the extent permitted by applicable law and the assets of the Fund, the Trustees and the officers, employees and agents

of the Board and the Fund shall be indemnified from the assets of the Fund against any and all liabilities arising by reason of any act, or failure to act, in relation to the Fund or the assets of the Fund, including, without limitation, expenses reasonably incurred in the defense of any claim relating to the Fund or the assets of the Fund and amounts paid in any compromise or settlement relating to the Fund or the assets of the Fund, except for actions or failures to act made in bad faith.

SECTION 8. MISCELLANEOUS PROVISIONS.

- (a) **Nonalienation of Benefits.** The benefits provided by the Fund shall not be subject to garnishment, attachment, execution of any other legal process.

- (b) **City's Responsibilities.** The City shall have no responsibility for the operation of the Fund except those specified herein and shall bear no expense in connection therewith.

- (c) **Facility of Payment.** If the Board shall find that a Participant or other person entitled to a benefit is unable to care for his affairs or is a minor, or is legally incapacitated, the Board may direct that any benefit due him shall be paid to his duly appointed legal representative. Any payment so made shall be a complete discharge of the liabilities of the Fund for that benefit.

- (d) **Information.** Each Participant, Beneficiary or other person entitled to a benefit, before any benefit shall be payable to him or on his account under the Fund, shall file with the Board the information that it shall require to establish his rights and benefits under the Plan.

- (e) **Amendment.** The provisions of this ordinance and the Fund are intended to meet the requirements of a qualified profit sharing plan under Section 401(a) of the Code and to be tax-exempt under Section 501(a) of the Code. Should any changes be required to the ordinance for the ordinance or the Fund to comply or to continue to comply with the provisions of Sections 401(a) and 501(a) of the Code, the Board shall prepare a statement for the City describing the changes and the City shall, after reviewing the Board's statement, make any such required changes to the ordinance.

- (f) **Severability of Provisions.** If any provision of this ordinance is for any reason held unconstitutional, inoperative or void, such holding shall not affect the remaining provisions of the ordinance. It shall be deemed to be the intent of the Commission of the City of Miami to pass this ordinance without such unconstitutional, inoperative or void provision and the remainder of this ordinance, after the exclusion of such provision, shall be deemed and held to be valid as if such provision had not been included herein.

- (g) **Repealer.** All City laws and ordinances, or parts of City laws or ordinances, in conflict with the provisions of this ordinance shall be, and the same hereby are, repealed.

- (h) **Gender.** Whenever used in this ordinance, the masculine shall include the feminine and the singular shall include the plural, unless the context indicates otherwise.

- (i) **Captions.** The caption preceding the sections and paragraphs of this ordinance are for convenience only. In the case of ambiguity or inconsistency, the text rather than the captions shall control.

SECTION 9. This Ordinance is hereby declared to be an emergency measure on the grounds of urgent public need for the preservation of peace, health, safety, and property of the City of Miami, and upon the further grounds of the necessity to make the required and necessary payments to its employees and officers, payment of its debts, necessary and required purchases of goods and supplies, and to generally carry on the functions and duties of municipal affairs.

SECTION 10. The requirement of reading this Ordinance on two separate days is hereby dispensed with by an affirmative vote of not less than four-fifths of the members of the Commission.

SECTION 11. This Ordinance shall become effective immediately upon its adoption.

PASSED AND ADOPTED BY TITLE ONLY this 20th day of March , 1997 .

JOE CAROLLO , MAYOR

ATTEST:

WALTER J. FOEMAN , CITY CLERK

PREPARED AND APPROVED BY :

RAFAEL O . DIAZ
DEPUTY CITY ATTORNEY

APPROVED AS TO FORM AND CORRECTNESS :

A . QUINN JONES , III
CITY ATTORNEY