

Temp. Ord. No. 1500  
10/19/09  
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CITY OF MIRAMAR  
MIRAMAR, FLORIDA

ORDINANCE NO. 10-05

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, AMENDING CHAPTER 15 "PENSIONS," ARTICLE III "FIREFIGHTERS' RETIREMENT PLAN AND TRUST" OF THE CODE OF THE CITY OF MIRAMAR, FLORIDA TO PROVIDE FOR AN AMENDMENT TO THE DEFINITIONS OF EARNABLE COMPENSATION, FIREFIGHTER AND MEMBER IN SECTION 15-77; TO PROVIDE FOR FOUR YEAR TRUSTEE TERMS IN SECTION 15-78; TO PROVIDE FOR 25% INVESTMENT LIMIT IN FOREIGN SECURITIES AND TO PROVIDE FOR DIVESTITURE OF SCRUTINIZED COMPANIES AS PROVIDED FOR IN FLA. STAT. §215.473; TO PERMIT RETIREES TO CHANGE THEIR JOINT ANNUITANT UP TO TWICE; TO PROVIDE FOR A PROSPECTIVE COLA FOR MEMBERS RETIRED BEFORE OCTOBER 1, 1999 IN SECTION 15-81(i); AMENDING SECTION 15-82 AND SECTION 15-83 TO PROVIDE FOR DEATH AND DISABILITY BENEFITS FOR PARTICIPANTS ABSENT FROM WORK ON QUALIFYING MILITARY SERVICE; TO INCORPORATE STATUTORY PROVISIONS REGARDING TERMINATION OF THE PENSION PLAN; TO ALLOW RETIREES TO AUTHORIZE PAYMENT OF THIRD PARTY HEALTH INSURANCE PREMIUMS; TO PROVIDE FOR A CHANGE TO THE ENTRY DATE TO SECTION 15-92 DEFERRED RETIREMENT OPTION PLAN; ADDING A NEW SECTION 15-93 TO PROVIDE FOR A SHARE ACCOUNT BENEFIT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING A REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 110-24) ("HEART") was passed into federal law, permitting qualified plans to provide certain benefits to members of the Fund absent from employment on active duty military service; and

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**CERTIFICATION**  
I CERTIFY THIS TO BE A TRUE & CORRECT  
COPY OF THE ORIGINAL DOCUMENT ON  
FILE AT CITY HALL.  
WITNESS MY HAND AND OFFICIAL SEAL OF  
THE CITY OF MIRAMAR THIS 10 DAY  
OF May 2010  
Yvette M. McFary  
CITY CLERK

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**WHEREAS**, qualified plans are required to adopt the provisions of HEART; and

**WHEREAS**, the State of Florida enacted into law Chapter 2009-97, which made significant changes to Florida Statutes Chapter 175 which governs this plan; and

**WHEREAS**, the City and the Union have as a result of collective bargaining determined to amend the pension plan by adding a Share Account benefit, an amendment to the Cost of Living Adjustment ("COLA") and an amendment to the DROP plan; and

**WHEREAS**, all costs of the share account benefit will be paid for by the Chapter 175 money and there will be no cost to the City; and

**WHEREAS**, there is no cost of amending the COLA to include the prior retirees as the full actuarial present value of the benefit will be paid in a lump sum from the Chapter 175 money; and

**WHEREAS**, any future costs associated with the prior retirees COLA will be paid from the Chapter 175 money before transfers are made to share account; and

**WHEREAS**, the changes to the DROP plan will result in an approximate .13% decrease in the City's otherwise required contribution; and

**WHEREAS**, the Board of Trustees of the City of Miramar Firefighters Retirement Fund ("Fund") has determined that it is in the best interest of the Members and Beneficiaries to amend the plan to provide certain benefits to individuals who are absent from employment on active duty military service to amend the plan to comply with Florida law changes and to amend the plan to incorporate the changes from the collective bargaining process; and

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**WHEREAS**, consistent with the foregoing, the City of Miramar desires to change the Miramar Firefighter Pension Plan and Trust Fund.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, AS FOLLOWS:**

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

**Section 2:** Section 15-77 of the Miramar City Code is hereby amended to read as follows:

**Sec. 15-77. Definitions.1**

The following words and phrases as used in this article shall have the following meanings:

\* \* \*

*Earnable compensation* shall mean a member's fixed monthly compensation, including pick-up contributions for all straight time hours worked. Earnable compensation shall also include the following: incentive pay received by employees assigned to a permanent, non-shift, forty (40) work hour week position; dive team assignment pay; Fire Inspector assignment pay; pay to an employee assigned to work in any capacity not regularly part of the unit member's position (i.e. Public information officer or any position which is not a promotion); pay received by employees as rescue

<sup>1</sup> Words in ~~strikeout~~ type are deletions from existing text and words in underline type are additions.

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pay; and pay received by employees assigned to the fire life safety bureau and effective for payments made after 12/31/08, as provided for by Internal Revenue Code §414(u)(7), this definition of compensation shall include any differential wage payment from the employer to a member as a result of the member's absence from employment while serving in qualified military service.

Compensation in excess of the limitation set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for eligible employees shall be not less than the amount which was allowed to be taken into account under the plan in effect on July 1, 1993. For this purpose, an eligible employee is an individual who was a member of the retirement system before September 30, 1996.

\* \* \*

*Firefighter* shall mean any person for whom contributions to the retirement plan as required by this article who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it is to extinguish fires, to protect life and to protect property. The term "Firefighter" includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters.

\* \* \*

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*Member* shall mean a firefighter actively employed by the city for whom contributions to the retirement plan are made as required by this ordinance. ~~Members shall also include retired firefighters,~~ but the fire chief may elect not to participate in the system by submitting written notice to the board of trustees.

**Section 3:** Amending Section 15-78(c) of the Miramar City Code as follows:

**Sec. 15-78. Administration of the retirement plan.**

\* \* \*

(c) **Effective for elections and appointments occurring after the effective date of this Ordinance, all** trustees shall serve a term of **four (4)** ~~two (2)~~ years. If a vacancy shall occur prior to the expiration of a member's term, a replacement member shall be chosen in the same manner as the person who has left office. A replacement trustee shall serve a full term measured from the date of replacement. All trustees shall serve until their replacements are selected.

**Section 4:** Amending Section 15-80(c)(7) and adding a new subsection (i) of the Miramar City Code as follows:

**Sec. 15-80. Fund management and investments.**

\* \* \*

(c) The board shall establish a written investment policy, with the advice and counsel of such advisors as the board deems necessary, and said investment policy shall set

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forth the types of securities and other types of investments into which shall be placed the assets of the fund. The policy shall further set forth appropriate limitations on those investments, including, but not limited to, anticipated rate of return, quality of investment, class of investment and acceptable risk.

The board shall have the authority to invest and reinvest the assets of the plan in such securities or property, real or personal, as the board deems appropriate, including but not limited to:

\* \* \*

(7) Common stock, preferred stock and interest-bearing obligations of corporations having an option to convert into common stock issued by a corporation. Investment in foreign securities shall be limited to twenty-five (25) ten (10) percent of the total fund, at least on a market-value basis.

\* \* \*

(i) Notwithstanding anything else in this subsection and as provided in Florida Statutes §215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section. Beginning January 1, 2010, the Board must proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have directly in that company. The divestiture of any such security must be completed by

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**September 30, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by Florida Statutes §215.473, as provided for in Florida Statutes 175.071(8) and the manner of the disposition, if any, is reasonable as to the means chosen. For purposes of determining which companies are scrutinized companies, the Board may utilize the list of scrutinized companies as developed by the Florida State Board of Administration. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this subsection.**

**Section 5:** Amending Section 15-81(h)(2) of the Miramar City Code is hereby amended as follows:

**Sec. 15-81. Service retirement benefits: cost of living adjustments.**

\* \* \*

(h)(2) Joint and last survivor option. A member may elect to receive a benefit for life and to have the benefit (or a designated fraction of the benefit) continued after the member's death and during the lifetime of a designated survivor. The member may elect

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to receive the payment of a benefit of one hundred (100) percent, seventy-five (75) percent, sixty-six and two-thirds (66  $\frac{2}{3}$ ) percent or fifty (50) percent of the member's monthly retirement allowance to be paid at the members death to his or her joint designated survivor named by the member at the time of or prior to retirement. The reduced retirement benefit shall be the actuarial equivalent of the amount of the retirement compensation otherwise payable to the member. A designated survivor may be any natural person, but need not be the spouse of the member. In the event that the designated survivor dies, or in the case of a spouse, the marriage is dissolved, before the member's benefit payments begin, this options shall be canceled automatically and a retirement income shall be payable to the member as if the election had never been made. A member may, at that time, elect a life annuity or a ten-year certain and life thereafter benefit. **Notwithstanding any other provision of this section, a retired member may change his or her designation of joint annuitant or beneficiary up to two times as provided in s. 175.333 without the approval of the board of trustees or the current joint annuitant or beneficiary. The retiree is not required to provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living. Any retired member who desires to change his or her joint annuitant or beneficiary shall file with the board of trustees a notarized notice of such change. Upon receipt of a**



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completed change of joint annuitant form or such other notice, the board of trustees shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit and there is no impact to the Plan.

\* \* \*

**Section 6:** Section 15-81(i) of the Miramar City Code is hereby amended to read as follows:

**Sec. 15-81. Service retirement benefits: cost of living adjustments.**

\* \* \*

(i) It is the intention of the city that the purchasing power of a retirement benefit be preserved necessary to maintain a member' retiree's purchasing power of seventy-five (75) percent of its value on the date of retirement. The board shall annually determine, in consultation with the actuary, a cost of living adjustment utilizing the cost of living index for urban areas maintained by the Bureau of Labor Statistics of the United States Department of Labor. In no event shall the annual cost of living benefit be less than three (3) percent per year. The three (3) percent minimum adjustment shall apply to members of the plan who were employed by the city as firefighters on or after October 1, 1999 and survivors of such members. **Effective October 1, 2009,** Retirees, survivors and separated, vested members who terminated

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before October 1, 1999 shall only be entitled to receive the cost-of-living adjustment on a prospective basis only based upon the October 1, 2009 value of their retirement benefit. ~~necessary to maintain purchasing power at seventy five (75) percent of its value on the date the member's benefit commenced.~~

**The cost of living adjustment shall be paid in January.**

**Section 7:** Section 15-82(a) of the Miramar City Code is hereby amended to read as follows:

**Sec. 15-82. Buyback for military or prior firefighter service.**

Any member of the plan who is employed by the city prior to entry into military service and who takes a leave of absence for the purpose of entering into voluntary or involuntary military service in the Armed Forces of the United States and thereafter re-enters the employ of the city as a firefighter within one (1) year of the date of release from active military service, shall be entitled to up to five (5) years of service credits for the period of absence provided the member has served that time in the military. **Effective January 1, 2007, participants who die or become disabled while serving on active duty military service which intervenes the participant's employment shall be entitled to the rights of this subsection even though such participant was not re-employed by the City. Participants who die or become disabled while on active duty military service shall be treated as though re-employed the day before the**

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participant became disabled or died, was credited with the service they would have been entitled to under this section, and then either died a non-duty death while employed or became disabled from a non-duty disability.

**Section 8:** Section 15-83(n) of the Miramar City Code is hereby amended to read as follows:

**Sec. 15-83. Disability.**

\* \* \*

(n) No member shall be granted a disability pension upon a determination by the board that the disability resulted from:

- (1) Excessive and habitual use of drugs, intoxicants or narcotics;
- (2) Injury or disease sustained while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;
- (3) Injury or disease sustained while serving in the armed forces. **This exclusion does not affect Members who have become disabled as a result of intervening military service under the federal Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 110-245);** or

(4) Injury or disease sustained after the termination of employment.

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**Section 9:** Amending Section 15-87 of the Miramar City Code as follows:

**Sec. 15-87. Amendment or termination of the system.**

(a) It is the intention of the city and the board that this pension plan shall constitute an irrevocable trust and no portion of the assets may revert to the employer until all other obligations of the plan, including the payment to the last surviving member and beneficiary has been paid. No amendment shall result in members receiving lower benefits than those in effect on the date the member commenced service with the city.

(b) In the event of termination or partial termination of the plan, each participant's accrued pension benefit shall become nonforfeitable (one hundred (100) percent vested) ~~to the extent funded.~~ **If the plan is terminated, the board shall inform the City if additional assets are required, in which event the City shall continue to financially support the plan until all nonforfeitable benefits have been funded.** At such time, the funds shall be appropriated and distributed in accordance with the provisions of Chapter 175. **The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest, if provided by the plan, less the value of any plan benefits previously paid to the employee.**

~~In the event that the plan is terminated, the assets of the plan shall first be distributed to retired members and their beneficiaries. If there is any asset~~

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~~value remaining after the apportionment to retired members and their beneficiaries, apportionment shall next be made to each member in the service who has completed at least ten (10) years of credited service and has contributed to the fund for at least ten (10) years and who is not otherwise eligible to retire. If there is any asset value after the apportionments to retirees and their beneficiaries and to vested members of the plan, apportionment shall lastly be made in respect of each member in the service of the city in an amount not to exceed the total value of the member's contributions. In the event that there is any asset value remaining after full apportionment to all members and beneficiaries of the plan, the excess, if any, shall revert proportionately to the city and the State of Florida on the basis of contributions to the plan.~~

**Section 10:** Amending Section 15-89(a) of the Miramar City Code as follows:

**Sec. 15-89. Miscellaneous.**

(a) The present or future right of a person to money in the pension fund or to a retirement allowance, an optional allowance, a death benefit, the return of contributions, or any other right accrued or accruing under the provisions of this plan shall not be assignable and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or any other process of law whatsoever, except with respect to

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alimony, child support or medical payments to a former spouse or minor child.

**Upon written request by the retiree, the Board of Trustees may authorize the Plan administrator to withhold from the monthly retirement payment funds necessary to:**

**(1) pay for benefits being received through the City;**

**(2) pay the certified bargaining agent; or**

**(3) to pay for premiums for accident, health and long-term care insurance for the retiree's spouse and dependants. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith pursuant to Florida Statutes 175.061(7).**

**Section 11:** Section 15-92(a) of the Miramar City Code is hereby amended to read as follows:

**Sec. 15-92. Deferred retirement option plan ("DROP").**

(a) Eligibility

(1) Any active member of the retirement system may participate in the DROP upon becoming eligible for an unreduced service retirement.

(2) The maximum DROP participation period shall be five (5) years commencing at the earliest DROP entry date, however, of eligibility. ~~The available~~ that DROP participation period shall decline by one (1) month for each month that the active member does not enter the DROP beyond the member's eligibility for an unreduced service retirement until the expiration of a sixty (60) month period beginning at the earliest eligibility date. An active member may enter the DROP after attainment of age fifty-five (55) and completion of ten (10) years of service, without reduction of the maximum participation period, as long as the member enters the DROP no later than the completion of twenty-five (25) years of service. Additionally, members who are eligible for coordination of benefits under §15-132 of this plan may enter the DROP without reduction of the maximum participation period as long as the member enters the DROP no later than the completion of twenty-five (25) years of service in this plan.

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(3) Notwithstanding paragraph (2), any member who is eligible for normal retirement as of October 1, 2003, may elect to participate in the DROP for the full five-year period. This option is limited to only those members who are eligible for normal retirement on October 1, 2003 and from that date to September 1, 2004. However, the sixty-month period for participation in the DROP will begin to run as of September 1, 2004.

**Section 12:** Add a new Section 15-93 of the Miramar City Code to read as follows:

**Sec. 15-93. Chapter 175 Share Account.**

**(a) A separate individual member account shall be established and maintained in each actively employed member's name effective October 1, 2009.**

**1. Upon establishing the share accounts, Members shall be credited with a pro-rata share of the excess of Chapter 175 money over the 1999 frozen amount plus any additional amounts used to meet the minimum benefits that accumulated since 1999 as required by Florida Statutes §175.35(i). The pro-rata balances shall be determined as provide for by the collective bargaining agreement.**



2. Retirees and vested individual former members, who were employed for at least one year on September 30, 1999 and thereafter shall also receive a pro-rata share of the excess of Chapter 175 money over the 1999 frozen amount plus any additional amounts used to meet the minimum benefits that accumulated since 1999 as required by Florida Statutes §175.35(i). The Shares will be allocated to the individual former members including retirees as provided for by the collective bargaining agreement. Individual former members who did not vest in a retirement benefit are not entitled to a share account allocation nor a distribution.

(b) Share account funding.

(1) Chapter 175 Moneys. Each individual actively employed member account shall be credited with the moneys received from Chapter 175, Florida Statutes, tax revenues in excess of the frozen amount plus any additional amount necessary to fund the minimum benefits as required by Florida Statutes §175.35(1).

2) Forfeitures. In addition, any forfeitures as provided in paragraph (e) shall be credited to the individual actively employed member accounts in accordance with the formula set forth in paragraph (c).

(c) Annual allocation of accounts.

(1) 175 Moneys shall be credited to each individual actively employed member account in an amount directly proportionate to the number of pay periods for which the actively employed member worked as compared to the total number of pay periods years of credited service for all actively employed members.

(2) At the end of each fiscal quarter, each individual actively employed member account shall be adjusted to reflect the earnings or losses resulting from investments.

(3) Effective beginning January 1, 2010, vested Participants have the option to select between two methods to credit investment earnings to their account. Thereafter, the method may be changed each year effective October 1, however, the method must be elected during the month of August on a form provided by the Trustees. The initial

investment election period shall be during the month of December, 2009 for the investment period from January 1, 2010 to September 30, 2010.

The methods are:

- (a) Member accounts shall be credited/debited quarterly with the interest earned/lost at a rate equal to the fund's actual investment return, net of investment expenses, subject to costs fees and expenses of administration of the share accounts, which shall be debited from the individual accounts on a proportionate basis in accordance with the procedure developed by the Board of Trustees.
- (b) A fixed annual rate that is equal to the then prevailing actuarial funding assumption rate minus one hundred fifty (150) basis points.
- (d) Eligibility for benefits. Any actively employed member who terminates employment with the City, upon application filed with the Board, shall be entitled to 100 percent of the value of his or her individual actively employed member account, provided the actively employed member is eligible to receive a pension under this Plan.

(e) Forfeitures. Any actively employed member who has less than 10 years of credited service or who is not eligible for payment of benefits after termination of employment with the City shall forfeit his or her individual actively employed member account. The amounts credited to said individual actively employed member account shall be redistributed to the remaining individual actively employed member accounts in the same manner as Chapter 175, Florida Statutes, tax revenues are credited (i.e., based on pay periods).

(f) Payment of benefits.

(1) The normal form of benefit payment shall be a lump sum payment of the entire balance of the actively employed member's individual actively employed member account or upon the written election of the actively employed member, on a form provided by the Board, and payment shall be made:

A. Over 3 years in annual installments; or

B. In monthly installments over the lifetime of the actively employed member or until the entire balance is exhausted. The monthly amount paid shall be determined by the Fund's actuary in accordance with

selections made by the actively employed member on a form provided by the Board of Trustees.

(2) Members who have retired and are receiving retirement benefits may elect to begin to receive payment upon termination of employment or defer payment of the Share Account until the latest day as provided by Internal Revenue Code §401(a)(9) and the regulations thereunder.

(3) Any form of payment selected by a firefighter must comply with the minimum distribution requirements of s. 401(A)(9) of the Internal Revenue Code.

(g) Death of actively employed member. If an actively employed member dies and is eligible for benefits from the individual actively employed member account, the entire balance of the individual actively employed member account shall be converted to the name of the beneficiary designated on a form provided by the Board of Trustees. The entire balance shall be paid out in a lump sum to the beneficiary, at the discretion of the

beneficiary. If the designated beneficiary is the surviving spouse, the account may remain with the Fund until the latest period specified under Internal Revenue Code §401(a)(9) and the regulations thereunder. These individual accounts shall not be eligible for any further shares of the Chapter 175 moneys but shall be credited with interest. If an actively employed member fails to designate a beneficiary, or if the beneficiary predeceases the actively employed member, the entire balance shall be converted, in the following order, to the name or names of:

1. The actively employed member's surviving children on a pro rata basis;
2. If no children are alive, the actively employed member's spouse;
3. If no spouse is alive, the actively employed member's surviving parents on a pro rata basis;  
or
4. If none are alive, the estate of the actively employed member.

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**The accounts which are converted to the names of the beneficiaries shall have the right to name a successor beneficiary.**

**Section 13:** It is the intention of the City Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Miramar, that the sections of the Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 14:** If any clause, section or other part or application of this Ordinance shall be held in any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and shall not affect the validity of the remaining portions or applications which shall remain in full force and effect.

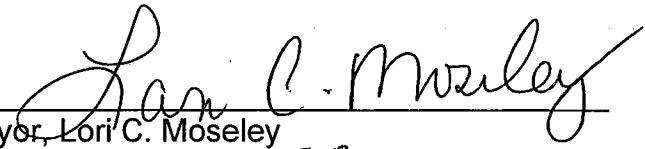
**Section 15:** All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

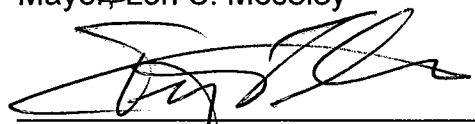
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**Section 16:** This Ordinance shall become effective immediately upon adoption, except as provided by the text of the amendments.

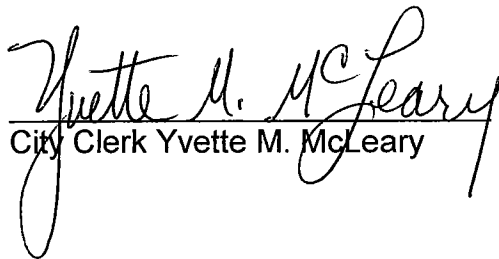
**PASSED FIRST READING:** January 27, 2010

**PASSED AND ADOPTED ON SECOND READING:** February 17, 2010

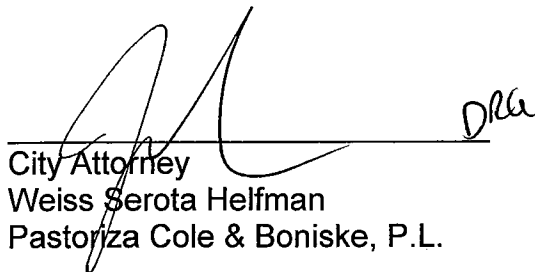
  
\_\_\_\_\_  
Mayor, Lori C. Moseley

  
\_\_\_\_\_  
Vice Mayor, Troy R. Samuels

ATTEST:

  
\_\_\_\_\_  
City Clerk Yvette M. McLeary

I HEREBY CERTIFY that I have approved this ORDINANCE as to form:

  
\_\_\_\_\_  
City Attorney  
Weiss Serota Helfman  
Pastoriza Cole & Boniske, P.L.

<u>Requested by Administration</u>	<u>Voted</u>
Commissioner Winston F. Barnes	<u>Yes</u>
Commissioner Yvonne Garth	<u>Yes</u>
Vice Mayor Troy R. Samuels	<u>Yes</u>
Commissioner Barbara Sharief	<u>Yes</u>
Mayor Lori C. Moseley	<u>Yes</u>