

ORDINANCE NO. 2002-7

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING THE VILLAGE CODE BY AMENDING CHAPTER 28 "RETIREMENT," BY AMENDING SECTION 23-38 "DISABILITY," TO PROVIDE ENHANCED DISABILITY RETIREMENT BENEFITS FOR PLAN MEMBERS INJURED IN THE LINE OF DUTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Retirement Plan (the "Plan") for the Village's police officers and firefighters has provisions providing for comprehensive benefits in case of disability of police officers or firefighters; and

WHEREAS, at a cost of approximately Thirty Nine Thousand Four Hundred Seventy Five Dollars (\$39,475) annually, the Village of Key Biscayne (the "Village") previously provided a limited form of disability insurance for police and firefighters; and

WHEREAS, representatives of the members of the Plan have requested that the Village provide assistance to the Plan for purposes of increasing the disability benefit of the Plan from the present 42% of average final pay to 70% of average final pay ("AFP") for Line of Duty ("LOD") Disability and from the present 25% AFP to 50% AFP for non LOD Disability (with a reduction in qualifying years of service) for police officers and firefighters, and has further requested additional funds of approximately Thirty One Thousand Eight Hundred Fifty Seven Dollars (\$31,857) so as to fully cover the annual cost of the Plan's increased disability benefit at a total cost of approximately Seventy One Thousand Three Hundred Thirty Two Dollars (\$71,332); and

WHEREAS, the Village Council finds that, as an enhanced replacement for disability insurance, it desires to provide funding for the disability benefit of the Plan commencing September 1, 2002.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, THAT:

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

Section 2. The Village Code of the Village of Key Biscayne, Florida is hereby amended by amending Chapter 23 "Retirement," at Section 23-38 "Disability," to read as follows:

Section 23-38. Disability.

(a) Disability Benefits On-Duty. Each Member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a Police Officer or Firefighter which disability was directly caused by the performance of his duty as a Police Officer or Firefighter shall, upon establishing the same to the satisfaction of the Board, be entitled to a monthly pension equal to his accrued pension benefit as of the date of disability, but not less than 70 percent of his or her average monthly salary at time of disability. Such accrued pension shall be payable at his otherwise early or normal retirement date.

Any condition or impairment of health of a Member caused by tuberculosis, hypertension, heart disease, or hardening of the arteries shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence, provided that such Member shall have successfully passed a physical examination

upon entering into such service, including cardiogram, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance.

(b) Disability Benefits Off-Duty. Each Member with five (5) years or more of Credited Service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a Police Officer or Firefighter which disability is not directly caused by the performance of his duties as a Police Officer or Firefighter shall, upon establishing the same to the satisfaction of the Board, be entitled to his accrued pension benefit as of the date of disability, but not less than 50 percent of his or her average monthly salary at time of disability. Such accrued pension shall be payable at his otherwise early or normal retirement date.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion in the Code. It is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the Village of Key Biscayne; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Effective Date. Following adoption on second reading, this Ordinance shall take effect on October 1, 2002.

PASSED AND ADOPTED on first reading this **2nd day of July , 2002.**

PASSED AND ADOPTED on second reading this **27th day of August , 2002.**

MAYOR JOE I. RASCO

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

RICHARD JAY WEISS, VILLAGE ATTORNEY