

ORDINANCE NO. 24-13

AN ORDINANCE OF THE CITY OF MARCO ISLAND, COLLIER COUNTY, FLORIDA, AMENDING CHAPTER 22 “FIRE PREVENTION AND PROTECTION,” ARTICLE III “FIREFIGHTERS’ PENSION PLAN,” IN ACCORDANCE WITH THE SECURING A STRONG RETIREMENT ACT OF 2022 (SECURE ACT 2.0) AND AUTHORIZED INVESTMENT PROCEDURES UNDER CHAPTER 175, FLORIDA STATUTES; BY AMENDING SECTION 22-55 “FINANCES AND FUND MANAGEMENT” AND SECTION 22-65 “INTERNAL REVENUE CODE COMPLIANCE”; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marco Island (the “City”) maintains a defined benefit pension plan for its firefighters, which is known as the City of Marco Island Firefighters' Pension Plan (the “Plan”), and which is codified in Chapter 22 of the City Code; and

WHEREAS, the City shall adopt certain changes as required by the federal Securing a Strong Retirement Act of 2022 (“SECURE Act 2.0”), which include increasing the applicable age required for minimum distribution; and

WHEREAS, the Plan shall be amended to permit the Plan’s Board of Trustees to modify its investment procedures as authorized under Chapter 175, Florida Statutes, via a variance request; and

WHEREAS, the City Council finds that it is in the best interest of the City and its employees to amend the Plan to conform to the requirements under the SECURE Act 2.0 and to authorize the Board to modify its investment procedures as permitted under state law; and

- 59 ~~a. Annuity and life insurance contracts of life insurance companies in~~
60 ~~amounts sufficient to provide, in whole or in part, the benefits to which~~
61 ~~all of the members in the fund shall be entitled under the provisions of~~
62 ~~this pension plan, and to pay the initial and subsequent premiums~~
63 ~~thereon.~~
- 64 ~~b. Time or savings accounts of a national or state bank insured by the bank~~
65 ~~insurance fund, or a savings, building and loan association insured by~~
66 ~~the savings association insurance fund which is administered by the~~
67 ~~Federal Deposit Insurance Corporation, or a state or federally chartered~~
68 ~~credit union whose share accounts are insured by the national credit~~
69 ~~union share insurance fund.~~
- 70 ~~c. Obligations of the United States or obligations guaranteed as to principal~~
71 ~~and interest by the government of the United States.~~
- 72 ~~d. Bonds issued by the State of Israel.~~
- 73 ~~e. Bonds, stocks, commingled funds administered by national or state~~
74 ~~banks, or evidences of indebtedness issued or guaranteed by a~~
75 ~~corporation organized under the laws of the United States, any state or~~
76 ~~organized territory of the United States, or the District of Columbia,~~
77 ~~provided that the corporation is traded on a nationally recognized~~
78 ~~exchange and in the case of bonds holds a rating in one of the three~~
79 ~~highest classifications by a major rating service, and if such investments~~
80 ~~are made in a pooled fund administered by a state or national bank, then~~
81 ~~the rating of each issue in the pooled fund shall hold a rating within the~~
82 ~~top three rating classifications of a major rating service.~~
- 83 ~~f. Real estate.~~
- 84 ~~g. The board shall identify and publicly report any direct or indirect holdings~~
85 ~~it may have in any scrutinized company, as defined in F.S. § 215.473,~~
86 ~~and proceed to sell, redeem, divest, or withdraw all publicly-traded~~
87 ~~securities it may have in such company beginning January 1, 2010, and~~
88 ~~shall thereafter be and is prohibited from purchasing or holding such~~
89 ~~securities. The divestiture of any such security must be completed by~~
90 ~~September 30, 2010. In accordance with F.S. § 175.071(8) Ch. 2009-~~
91 ~~97, Laws of Florida, no person may bring any civil, criminal, or~~
92 ~~administrative action against the board or any employee, officer,~~
93 ~~director, or advisor of such board based upon the divestiture of any~~
94 ~~security pursuant to this paragraph.~~
- 95 (3) The board shall not invest more than five percent of its assets in the
96 common stock, capital stock or convertible securities of any one issuing
97 company, nor shall the aggregate investment in any one issuing company
98 exceed five percent of the outstanding capital stock of that company; ~~nor~~
99 ~~shall the aggregate of its investments in common stock, capital stock and~~
100 ~~convertible securities at cost exceed 65 percent of the assets of the fund.~~

- 101 (4) The board may retain in cash such amounts of the fund as it may deem
102 advisable, having due regard for the cash requirements of the pension
103 plan.
- 104 (5) No person or entity shall be liable for the making, retention or sale of any
105 investment or reinvestment made as herein provided, nor for any loss or
106 diminishment of the fund, except that due to his or its own negligence,
107 willful misconduct or lack of good faith.
- 108 (6) The board may cause any investment in securities held by it to be
109 registered in or transferred into its name as trustee or into the name of
110 such nominee as it may direct, or it may retain such securities
111 unregistered and in a form permitting transferability, but the books and
112 records shall at all times show that all investments are part of the fund.
- 113 (7) The board is empowered, but is not required, to vote upon any stocks,
114 bonds, or securities of any corporation, association, or trust and to give
115 general or specific proxies or powers of attorney with or without power of
116 substitution; to participate in mergers, reorganizations, recapitalizations,
117 consolidations, and similar transactions with respect to such securities; to
118 deposit such stocks or other securities in any voting trust or any protective
119 or like committee with the trustees or with depositories designated
120 thereby; to amortize or fail to amortize any part or all of the premium or
121 discount resulting from the acquisition or disposition of assets; and
122 generally to exercise any of the powers of an owner with respect to
123 stocks, bonds, or other investments comprising the fund which it may
124 deem to be in the best interest of the fund to exercise.
- 125 (8) The board shall not be required to make any inventory or appraisal or
126 report to any court, nor to secure any order of court for the exercise of
127 any power contained herein.
- 128 (9) Where any action which the board is required to take or any duty or
129 function which it is required to perform, either under the terms herein or
130 under the general law applicable to it as trustee under this article, can
131 reasonably be taken or performed only after receipt by it from a member,
132 the city, or any other entity, of specific information, certification, direction
133 or instruction, the board shall be free of liability in failing to take such
134 action or perform such duty or function until such information, certification,
135 direction or instruction has been received by it.
- 136 (10) Any overpayments or underpayments from the fund to a member or
137 beneficiary caused by errors of computation shall be adjusted with
138 interest at a rate per annum approved by the board. Overpayments shall
139 be charged against payments next succeeding the correction.
140 Underpayments shall be made up from the fund.
- 141 (11) In any application to or proceeding or action in the courts, only the board
142 shall be a necessary party, and no member or other person having an

143 interest in the fund shall be entitled to any notice or service of process.
144 Any judgment entered in such a proceeding or action shall be conclusive
145 upon all persons.

146 (12) Any of the foregoing powers and functions reposed in the board may be
147 performed or carried out by the board through duly authorized agents,
148 provided that the board at all times maintains continuous supervision over
149 the acts of any such agents.

150 ~~(13) The board shall not invest more than five percent at cost of its assets in~~
151 ~~real property or real estate and there shall be no investment in a limited~~
152 ~~partnership or trust.~~

153 ~~(14) The board shall not invest more than 25 percent of the fund's assets on a~~
154 ~~market value basis in foreign securities or certificates of indebtedness,~~
155 ~~except as specifically authorized herein.~~

156 ~~(15) The board shall not invest more than ten percent of the fund's assets in~~
157 ~~foreign securities or certificates of indebtedness, except as specifically~~
158 ~~authorized herein.~~

159

160 **SECTION 3. Amendment and Adoption.** That Section 22-65 “Internal Revenue
161 Code compliance” of Article III “Firefighters’ Pension Plan” of Chapter 22 “Fire
162 Prevention and Protection” of the City Code is hereby amended to read as follows:

163 **Sec. 22-65. Internal Revenue Code compliance.**

164

* * *

165 (b) ~~Required beginning date.~~ ~~Notwithstanding any other provision of the plan,~~
166 ~~payment of a participant's retirement benefits under the plan shall commence~~
167 ~~not later than the participant's required beginning date, which is defined as the~~
168 ~~later of:~~ Notwithstanding any other provision of the Plan, payment of a
169 participant’s retirement benefits under the plan shall commence not later than
170 the participant’s Required Beginning Date, which effective January 1, 2023 is
171 defined as the later of 1 and 2 below:

172 (1) With regard to a participant who reached age 70 ½ prior to January 1,
173 2020, April 1 of the calendar year that next follows the calendar year in
174 which the participant attained the age of 70½ years; or a participant who
175 reached age 70 ½ on or after January 1, 2020, and age 72 prior to
176 January 1, 2023, April 1 of the calendar year that next follows the calendar
177 year in which the participant attained the age of 72 years; or a participant
178 who attains age 72 on or after January 1, 2023, in accordance with the
179 Secure 2.0 Act and any technical corrections thereto; or

180 ~~April 1 of the calendar year that next follows the calendar year in which the~~
181 ~~participant attains or will attain the age of 70½ years; or~~

182 ~~(2)~~ April 1 of the calendar year that next follows the calendar year in which
183 the participant retires.

184 (c) *Required minimum distributions.*

185 (1) *Required beginning date.* The participant's entire interest will be
186 distributed, or begin to be distributed, to the participant no later than the
187 participant's required beginning date as defined in subsection (b) of this
188 section 22-65.

189 (2) *Death of participant before distributions begin.*

190 a. If the participant dies before distributions begin, the participant's entire
191 interest will be distributed, or begin to be distributed, no later than as
192 follows:

193 1. If the participant's surviving spouse is the participant's sole
194 designated beneficiary, then distributions to the surviving spouse will
195 begin by December 31 of the calendar year immediately following
196 the calendar year in which the participant died, or by December 31
197 of the calendar year in which the participant would have attained age
198 70½ ~~their required beginning date~~, if later.

199 2. If the participant's surviving spouse is not the participant's sole
200 designated beneficiary, then distributions to the designated
201 beneficiary will begin by December 31 of the calendar year
202 immediately following the calendar year in which the participant died.

203 3. If there is no designated beneficiary as of September 30 of the year
204 following the year of the participant's death, the participant's entire
205 interest will be distributed by December 31 of the calendar year
206 containing the fifth anniversary of the participant's death.

207 * * *

208 **SECTION 4. Severability/Interpretation.**

210 (a) if any term, section, clause, sentence or phrase of this Ordinance is
211 for any reason held to be invalid, illegal, or unconstitutional by a court of competent
212 jurisdiction, the holding shall not affect the validity of the other or remaining terms,
213 sections, clauses, sentences, or phrases portions of this Ordinance, and this
214 Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable
215 term, provision, clause, sentence, or section did not exist.

216 (b) In interpreting this Ordinance, underlined words indicate additions to
217 existing text, and ~~stricken through~~ words include deletions from existing text.
218 Asterisks (* * *) indicate a deletion from the Ordinance of text, which continues to
219 exist in the Code of Ordinances. It is intended that the text in the Code of

