

ORDINANCE 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

WHEREAS, prior to Second Reading of this Ordinance, the City Council has received, reviewed, and considered an actuarial impact statement describing the actual impact of the amendments provided for herein.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA THAT:

SECTION 1. Recitals. Each and all the foregoing recitals be and the same are hereby incorporated into this Ordinance as if specifically set forth herein.

SECTION 2. Amendment and Adoption. That Section 22-55 “Finances and fund management” of Article III “Firefighters’ Pension Plan” of Chapter 22 “Fire Prevention and Protection” of the City Code is hereby amended to read as follows:¹

Sec. 22-55. Finances and fund management.

* * *

- (f) The board shall have the following investment powers and authority:
- (1) All contributions from time to time paid into the fund, and the income thereof, without distinction between principal and income, shall be held and administered by the board or its agent in the fund and the board shall not be required to segregate or invest separately any portion of the fund.
 - (2) All monies paid into or held in the fund shall be invested and reinvested by the board and the investment of all or any part of such funds shall be invested and reinvested in such securities or in such property, real or personal, wherever situated, as the Board of Trustees shall deem advisable, including but not limited to, stocks, common or preferred, bonds, limited partnerships, and mortgages, and other evidences of indebtedness or ownership. The board of pension trustees is authorized to invest up to 80 percent of the fund in stocks at market value. The foregoing is a variance permitted by subsection 175.071(b)4b of the investment procedures outlined in section 175.071(b), Florida Statutes. The board of pension trustees is authorized to invest up to 25 percent of plan assets in foreign securities on a market-value basis limited to:
 - ~~a. Annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the members in the fund shall be entitled under the provisions of this pension plan, and to pay the initial and subsequent premiums thereon.~~
 - ~~b. Time or savings accounts of a national or state bank insured by the bank insurance fund, or a savings, building and loan association insured by the savings association insurance fund which is administered by the Federal Deposit Insurance Corporation, or a state or federally chartered credit union whose share accounts are insured by the national credit union share insurance fund.~~
 - ~~c. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.~~
 - ~~d. Bonds issued by the State of Israel.~~
 - ~~e. Bonds, stocks, commingled funds administered by national or state banks, or evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or~~

¹ Additions to the text are shown in underline. Deletions to the text are shown in ~~strikethrough~~. Additions added between first and second reading are shown in double underline.

~~organized territory of the United States, or the District of Columbia, provided that the corporation is traded on a nationally recognized exchange and in the case of bonds holds a rating in one of the three highest classifications by a major rating service, and if such investments are made in a pooled fund administered by a state or national bank, then the rating of each issue in the pooled fund shall hold a rating within the top three rating classifications of a major rating service.~~

- ~~f. Real estate.~~
- ~~g. The board shall identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in F.S. § 215.473, and proceed to sell, redeem, divest, or withdraw all publicly-traded securities it may have in such company beginning January 1, 2010, and shall thereafter be and is prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with F.S. § 175.071(8) Ch. 2009-97, Laws of Florida, no person may bring any civil, criminal, or administrative action against the board or any employee, officer, director, or advisor of such board based upon the divestiture of any security pursuant to this paragraph.~~
- (3) The board shall not invest more than five percent of its assets in the common stock, capital stock or convertible securities of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company; ~~nor shall the aggregate of its investments in common stock, capital stock and convertible securities at cost exceed 65 percent of the assets of the fund.~~
 - (4) The board may retain in cash such amounts of the fund as it may deem advisable, having due regard for the cash requirements of the pension plan.
 - (5) No person or entity shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminishment of the fund, except that due to his or its own negligence, willful misconduct or lack of good faith.
 - (6) The board may cause any investment in securities held by it to be registered in or transferred into its name as trustee or into the name of such nominee as it may direct, or it may retain such securities unregistered and in a form permitting transferability, but the books and records shall at all times show that all investments are part of the fund.
 - (7) The board is empowered, but is not required, to vote upon any stocks, bonds, or securities of any corporation, association, or trust and to give general or specific proxies or powers of attorney with or without power of substitution; to participate in mergers, reorganizations, recapitalizations, consolidations, and similar transactions with respect to such securities; to deposit such stocks or other securities in any voting trust or any protective

or like committee with the trustees or with depositories designated thereby; to amortize or fail to amortize any part or all of the premium or discount resulting from the acquisition or disposition of assets; and generally to exercise any of the powers of an owner with respect to stocks, bonds, or other investments comprising the fund which it may deem to be in the best interest of the fund to exercise.

- (8) The board shall not be required to make any inventory or appraisal or report to any court, nor to secure any order of court for the exercise of any power contained herein.
- (9) Where any action which the board is required to take or any duty or function which it is required to perform, either under the terms herein or under the general law applicable to it as trustee under this article, can reasonably be taken or performed only after receipt by it from a member, the city, or any other entity, of specific information, certification, direction or instruction, the board shall be free of liability in failing to take such action or perform such duty or function until such information, certification, direction or instruction has been received by it.
- (10) Any overpayments or underpayments from the fund to a member or beneficiary caused by errors of computation shall be adjusted with interest at a rate per annum approved by the board. Overpayments shall be charged against payments next succeeding the correction. Underpayments shall be made up from the fund.
- (11) In any application to or proceeding or action in the courts, only the board shall be a necessary party, and no member or other person having an interest in the fund shall be entitled to any notice or service of process. Any judgment entered in such a proceeding or action shall be conclusive upon all persons.
- (12) Any of the foregoing powers and functions reposed in the board may be performed or carried out by the board through duly authorized agents, provided that the board at all times maintains continuous supervision over the acts of any such agents.
- ~~(13) The board shall not invest more than five percent at cost of its assets in real property or real estate and there shall be no investment in a limited partnership or trust.~~
- ~~(14) The board shall not invest more than 25 percent of the fund's assets on a market value basis in foreign securities or certificates of indebtedness, except as specifically authorized herein.~~
- ~~(15) The board shall not invest more than ten percent of the fund's assets in foreign securities or certificates of indebtedness, except as specifically authorized herein.~~

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

Sec. 22-65. Internal Revenue Code compliance.

* * *

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

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

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

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

(c) *Required minimum distributions.*

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

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

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

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

2. If the participant's surviving spouse is not the participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.
3. If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

* * *

SECTION 4. Severability/Interpretation.

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

(b) In interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (* * *) indicate a deletion from the Ordinance of text, which continues to exist in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

SECTION 5. Effective Date. This Ordinance shall be effective immediately upon adoption by the City Council on second reading.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 20th day of May 2024.

ATTEST:

CITY OF MARCO ISLAND, FLORIDA

Joan Taylor, City Clerk

By: _____
Jared Grifoni, Chairman

Approved as to form and legal sufficiency:

Alan L. Gabriel, City Attorney