

ORDINANCE NO. 11-02

AN ORDINANCE OF THE CITY OF MARCO ISLAND, COLLIER COUNTY, FLORIDA, AMENDING THE CITY OF MARCO ISLAND POLICE OFFICERS' PENSION PLAN PROVIDING FOR COMPLIANCE WITH THE INTERNAL REVENUE CODE AND CHAPTER 2009-97, LAWS OF FLORIDA; AMENDING SECTION 22-32, DEFINITIONS; AMENDING SECTION 32-39, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 32-44, MAXIMUM PENSION; AMENDING SECTION 32-46, BOARD OF TRUSTEES; AMENDING SECTION 32-47, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 32-49, REPEAL OR TERMINATION OF PENSION PLAN; AMENDING SECTION 32-50, EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the 2009 Florida Legislature enacted Chapter 2009-97, Law of Florida, which mandates certain amendments to the City Police Officers' Pension Plan; and

WHEREAS, recent changes to State statutes require several amendments to the Plan in order to maintain eligibility for receipt of state premium tax revenues; and

WHEREAS, recent changes to federal laws and regulations require that various amendments be made to the Plan in order to maintain its status as a qualified plan under Section 401(a) of the Internal Revenue Code; and

WHEREAS, an amendment to the City code is necessary to permit such new obligations and conditions; and

WHEREAS, the Board of Trustees of the City of Marco Island Police Officers' Pension Plan have approved such an amendment as being in the best interests of the participants and beneficiaries as well as improving the administration of the plan; and

WHEREAS, the City Council has received and reviewed an actuarial impact statement related to this change and attached as such; and

WHEREAS, the current retirement system is in need of amendment in order to meet the above objectives.

WHEREAS, the City Council of the City of Marco Island has deemed it to be in the best interest of the citizens of the City of Marco Island to amend the Plan to reflect these changes;

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

Section 1. The City of Marco Island Police Officers' Pension Plan was established as a local law pension plan pursuant to Chapter 185, Florida Statutes by adopting the City of Marco Island Ordinance No. 05-14.

Section 2. That Chapter 32, Article II, Section 32-32, Definitions, of the City of Marco Island Police Officers' Pension Plan be amended by adding the underlined language as follows:

Compensation means the total remuneration for services rendered to the city as a police officer, including up to 300 hours of overtime pay annually and lump sum payments for unused leave, but excluding pay for special duty or extra-detail work performed for an employer other than the city. For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457 of the

Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in Section 32-48 Compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code.

...

Section 3. That Chapter 32, Article II, Section 32-39, Optional Forms of Benefits, of the City of Marco Island Police Officers' Pension Plan be amended by adding the underlined language as follows:

...

(2) The member, upon electing the option described in subsection (1)(b) above, shall designate the joint pensioner to receive the benefit, if any, payable in the event of the member's death, and will have the power to change such designation from time to time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change the joint pensioner up to two times as provided in Section 185.341, Florida Statutes, without the approval of the board of trustees or the current joint annuitant or beneficiary. The member need not 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. Upon any such new election, the member's final pension benefit shall be recalculated accordingly by the Actuary with all costs resulting directly from the new election borne solely by the member, no more than twice. Subject to the restriction in the previous sentence, a member may substitute a new joint pensioner for a deceased joint pensioner.

Section 4. That Chapter 32, Article II, Section 32-44, Maximum pension, of the City of Marco Island Police Officers' Pension Plan is hereby repealed in its entirety and all following sections/subsections renumbered accordingly:

~~Sec. 32-44. Maximum pension.~~

~~(1) *Basic limitation.* Subject to the adjustments hereinafter set forth, the maximum amount of annual retirement income payable with respect to a member under this plan shall not exceed \$160,000.00.~~

~~For purposes of applying the above limitation, benefits payable in any form other than a straight life annuity with no ancillary benefits shall be adjusted, as provided by treasury regulations, so that such benefits are the actuarial equivalent of a straight life annuity. for purposes of this section, the following benefits shall not be taken into account:~~

~~(a) Any ancillary benefit which is not directly related to retirement income benefits;~~

~~(b) Any other benefit not required under § 415(b)(2) of the [Internal Revenue] Code and Regulations thereunder to be taken into account for purposes of the limitation of § 415(b)(1) of the [Internal Revenue] Code.~~

~~(2) *Participation in other defined benefit plans.* The limitation of this section with respect to any member who at any time has been a member in any other defined benefit plan (as defined in § 414(j) of the [Internal Revenue] Code) maintained by the city shall apply as if the total benefits payable under all defined benefit plans in which the member has been a member were payable from one plan.~~

~~(3) *Adjustments in limitations.*~~

~~(a) In the event the member's retirement benefits become payable before age 62, the \$160,000.00 limitation prescribed by this section shall be reduced in accordance with regulations issued by the secretary of the treasury pursuant to the provisions of § 415(b) of the [Internal Revenue] Code, but not less than \$75,000.00, if the benefit begins at or after age 55. In the event the member's retirement benefit becomes payable before age 55, the \$75,000.00 limitation shall be reduced from age 55 in accordance with regulations issued by the secretary of the treasury pursuant to the provisions of § 415(b) of the [Internal Revenue] Code so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a \$160,000.00 annual benefit beginning at age 62.~~

~~(b) In the event the member's benefit is based on at least 15 years of credited service, the adjustments provided for in subsection (3)(a) above shall not apply.~~

~~(c) The reductions provided for in subsection (3)(a) above shall not be applicable to disability benefits paid pursuant to section 32-37, or preretirement death benefits paid pursuant to section 32-36.~~

~~(d) If the member's retirement benefit becomes payable after age 65, for purposes of determining whether this benefit meets the limitation set forth in subsection (1) herein, such benefit shall be adjusted so that it is actuarially equivalent to the benefit beginning at age 65. This adjustment shall be made using an assumed interest rate of five percent and shall be made in accordance with regulations promulgated by the secretary of the treasury or a delegate thereof.~~

~~(4) *Less than ten years of service.* The maximum retirement benefits payable under this section to any member who has completed less than ten years of credited service with the city shall be the amount determined under subsection (1) of this section multiplied by a fraction, the numerator of which is the number of the member's years of credited service and the denominator of which is ten. The reduction provided for in this subsection shall not be applicable to disability benefits paid pursuant to section, or preretirement death benefits paid pursuant to section.~~

~~(5) *\$10,000.00 limit.* Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the limitations set forth in this section if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the city contributes, do not exceed \$10,000.00 for the applicable plan year and for any prior plan year and the city has not at any time maintained a qualified defined contribution plan in which the member participated.~~

~~(6) *Reduction of benefits.* Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be determined by the board and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which member most recently accrued benefits and thereafter in such priority as shall be established by the board and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the board and the plan administrator of all other plans covering such member.~~

~~(7) Cost of living adjustments. The limitations as stated in subsections (1), (2), (3) and (6) herein shall be adjusted to the time payment of a benefit begins in accordance with any cost of living adjustments prescribed by the secretary of the treasury pursuant to § 415(d) of the [Internal Revenue] Code.~~

~~(8) Additional limitation on pension benefits. Notwithstanding anything herein to the contrary:~~

~~(a) The normal retirement benefit or pension payable to a retiree shall not exceed 100 percent of average final compensation. However, nothing contained in this section shall apply to supplemental retirement benefits or to pension increases attributable to cost of living increases or adjustments.~~

~~(b) No member of the plan shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement plan or plan. This restriction does not apply to social security benefits or federal benefits under Chapter 67, Title 10, U.S. Code.~~

Section 5. That Chapter 32, Article II, Section 32-45, Distribution of benefits, of the City of Marco Island Police Officers' Pension Plan is hereby repealed in its entirety and all following sections/subsections renumbered accordingly:

Sec. 32-45. Distribution of benefits.

~~Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan after the effective date of this chapter, shall satisfy the following conditions:~~

~~(1) If the retirement income is payable before the member's death:~~

~~(a) It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 1/2, or the calendar year in which member retires; or~~

~~(b) The distribution shall commence not later than the calendar year defined above; and (a), shall be paid over the life of the member or over the lifetimes of the member and spouse, issue or dependent, or (b), shall be paid over the period extending not~~

~~beyond the life expectancy of the member and spouse, issue or dependent.~~

~~Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before the member's entire interest in the plan has been distributed, the remaining portion of such interest in the plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.~~

~~(2) If the member's death occurs before the distribution of the member's interest in the plan has commenced, member's entire interest in the plan shall be distributed within five years of member's death, unless it is to be distributed in accordance with the following rules:~~

~~(a) The member's remaining interest in the plan is payable to the member's spouse, issue or dependent;~~

~~(b) The remaining interest is to be distributed over the life of the spouse, issue or dependent or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and~~

~~(c) Such distribution begins within one year of the member's death unless the member's spouse shall receive the remaining interest in which case the distribution need not begin before the date on which the member would have attained age 70 1/2 and if the spouse dies before the distribution to the spouse begins, this section shall be applied as if the spouse were the member.~~

Section 6. That Chapter 32, Article II, Section 32-46, Board of Trustees, of the City of Marco Island Police Officers' Pension Plan be amended by adding the underlined language as follows:

Sec. 32-46. Board of trustees.

(1) The sole and exclusive administration of and responsibility for the proper operation of the plan and for making effective the provisions of this chapter is hereby vested in a board of trustees. The board shall consist of five trustees. Two trustees, unless otherwise prohibited by law, shall be legal residents of the city who shall be appointed by the city council, one of whom shall be the city clerk, or if the city clerk is not a legal resident of the city, a designee who is a legal resident of the city. Two trustees shall be members of the plan, who shall be elected by a majority of the police officers who are members of the plan. The fifth trustee shall be chosen by

a majority of the four trustees approved and elected as provided for herein, and such person's name shall be submitted to the city council. Upon receipt of the fifth person's name, the city council shall, as a ministerial duty, appoint such person to the board of trustees as its fifth trustee. The fifth trustee shall have the same rights as each of the other four trustees appointed or elected as herein provided, and shall serve a four ~~two~~-year term unless the trustee sooner vacates the office. Each resident trustee shall serve as trustee for a period of four ~~two~~- years, unless the trustee sooner vacates the office or is sooner replaced by the city council at whose pleasure said trustee shall serve. Each member trustee shall serve as trustee for a period of four ~~two~~- years, unless the trustee sooner leaves the employment of the city as a police officer or otherwise vacates the office of trustee, whereupon a successor shall be chosen in the same manner as the departing trustee. Each trustee may succeed himself or herself in office. In order to establish staggered terms for the appointed and elected trustees, the term for one elected and one appointed trustee shall be shortened to one year for one term only. All future terms of those and all other trustees shall be four ~~two~~- years thereafter, as provided above. The board shall establish and administer the nominating and election procedures for each election. The board shall meet at least quarterly each year. The board shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

Section 7. That Chapter 32, Article II, Section 32-47, Finances and Fund Management, of the City of Marco Island Police Officers' Pension Plan be amended by adding the underlined language as follows:

Sec. 32-47. Finances and fund management.

...

6) The board shall have the following investment powers and authority:

a. The board shall be vested with full legal title to said fund, subject, however, and in any event to the authority and power of the Marco Island City Council to amend or terminate this plan, provided that no amendment or fund termination shall ever result in the use of any assets of this fund except for the payment of regular expenses and benefits under this plan, except as otherwise provided herein. 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. The board shall identify and

publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in Florida Statutes, Section 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 prohibited from purchasing or holding such securities. The divestiture of any such security must be completed by September 30, 2010. In accordance with 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.

b. 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 limited to:

1. Annuity and life insurance contracts with 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 plan and pay the initial and subsequent premium thereon.

2. Time or savings accounts of a national bank, a 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 federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

3. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States or by an agency of the government of the United States.

4. Bonds issued by the State of Israel.

5. Stocks, commingled funds administered by national or state banks, mutual funds and bonds or other evidences of indebtedness, provided that:

i. Except as provided in subparagraph ii, all individually held securities and all securities in a commingled or mutual fund must be issued or guaranteed by a corporation organized under the laws of the United States, any state or organized

territory of the United States, or the District of Columbia.

ii. Up to twenty-five ~~ten~~ percent on a market-value basis of the assets of the fund may be invested in foreign securities.

...

Section 8. That Chapter 32, Article II, Section 32-48, Miscellaneous provisions, of the City of Marco Island Police Officers' Pension Plan be amended by adding the underlined language and deleting the ~~stricken through~~ language as follows:

Sec. 32-48. ~~Miscellaneous provisions~~ Compliance with the Internal Revenue Code.

It is intended that the Plan remain at all times a qualified plan, as that term is defined under the Internal Revenue Code.

(a) Maximum Pension

Notwithstanding any provision of this Plan to the contrary, the Annual Pension that is accrued by or paid to a participant shall not exceed the Dollar Limitation set forth below. If the benefit the participant would otherwise accrue in a Limitation Year would produce an Annual Pension in excess of the Dollar Limitation, the benefit shall be limited to a benefit that does not exceed the Dollar Limitation.

(1) Definitions Used in this Section

(A) "Annual Pension" means the benefits received by a participant under this Plan expressed in the form of a straight life annuity. In determining whether benefits payable exceed the Dollar Limitation set forth below, benefits payable in any form other than a straight life annuity shall be adjusted to the larger of:

(i) The annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the form of benefit payable to the participant; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that

has the same actuarial present value as the form of benefit payable to the participant, computed using a 5 percent interest assumption and the applicable mortality table described in §1.417(e)-1(d)(2) for that annuity starting date.

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (a), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

(B) “Dollar Limitation” means \$160,000 (subject to the annual adjustments provided under Section 415(d) of the IRC). Said amount shall be adjusted based on the age of the participant when benefits begin, as follows:

(i) Except with respect to a participant who is a “Qualified Participant” as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code) beginning before age 62 the Age-Adjusted Dollar Limitation is equal to the lesser of--

(I) the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a deferred straight life annuity commencing at age 62, where annual payments under the straight life annuity commencing at age 62 are equal to the Dollar Limitation (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under §1.417(e)-

1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and

(II) the Dollar Limitation (as adjusted pursuant to section 415(d)) multiplied by the ratio of the annual amount of the straight life annuity under the plan to the annual amount of the straight life annuity under the plan commencing at age 62, with both annual amounts determined without applying the rules of section 415.

(ii) For benefits beginning after the age of 65, the age-adjusted Dollar Limitation is equal to the lesser of:

(I) the actuarial equivalent of the annual amount of a straight life annuity commencing at the annuity starting date that has the same actuarial present value as a straight life annuity commencing at age 65, where annual payments under the straight life annuity commencing at age 65 are equal to the dollar limitation of section 415(b)(1)(A) (as adjusted pursuant to section 415(d) for the limitation year), and where the actuarially equivalent straight life annuity is computed using a 5 percent interest rate and the applicable mortality table under §1.417(e)-1(d)(2) that is effective for that annuity starting date (and expressing the participant's age based on completed calendar months as of the annuity starting date); and

(II) the section 415(b)(1)(A) Dollar limitation (as adjusted pursuant to section 415(d) and §1.415(d)-1 for the limitation year) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan to the adjusted age 65 straight life annuity. The adjusted immediately

commencing straight life annuity means the annual amount of the immediately commencing straight life annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are applied to offset accruals. For this purpose, the annual amount of the immediately commencing straight life annuity is determined without applying the rules of section 415. The adjusted age 65 straight life annuity means the annual amount of the straight life annuity that would be payable under the plan to a hypothetical participant who is 65 years old and has the same accrued benefit (with no actuarial increases for commencement after age 65) as the participant receiving the distribution (determined disregarding the participant's accruals after age 65 and without applying the rules of section 415).

(iii) There shall be no age adjustment of the Dollar Limitation with respect to benefits beginning between the ages of 62 and 65.

(2) The limitations set forth in this Subsection (a) shall not apply if the Annual Pension does not exceed \$10,000 provided the participant has never participated in a Defined Contribution Plan maintained by the City.

(3) Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section Subsection 415(d) of the Code.

(4) In the case of a participant who has fewer than 10 years of participation in the Plan, the Dollar Limitation set forth in Paragraph (1)(B) of this Subsection (a) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10.

(5) Any portion of a participant's benefit that is attributable to mandatory employee contributions (unless picked-up by the City)

or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.

(6) Should any participant participate in more than one defined benefit plan maintained by the City, in any case in which the participant's benefits under all such defined benefit plans (determined as of the same age) would exceed the Dollar Limitation applicable at that age, the accrual of the participant's benefit under this Plan shall be reduced so that the participant's combined benefits will equal the Dollar Limitation.

(7) For a participant who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

(8) The determination of the Annual Pension under Paragraph (a)(1) of this Subsection (a) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant § 1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.

(9) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the City shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Subsection (a) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this Subsection (a) shall be used to decrease future employer contributions.

(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:

-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

-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 32-48.

(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:

(i) 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, if later.

(ii) 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.

(iii) 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.

(B) The participant's entire interest shall be distributed as follows:

(i) participant Survived by Designated Beneficiary. If the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in Subparagraph (2)(A) above, over the life of the designated beneficiary or over a period certain not exceeding:

(I) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

(II) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(ii) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(C) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. In any case in which (i) the participant dies before the date distribution of his or her interest begins, (ii) the participant's surviving spouse is the participant's sole designated beneficiary, and (iii) the surviving spouse dies before distributions to the surviving spouse begin, Subparagraphs (2)(A) and 2(B) above shall apply as though the surviving spouse were the participant.

(3) Requirements For Annuity Distributions That Commence During participant's Lifetime.

(A) Joint Life Annuities Where the Beneficiary Is Not the participant's Spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's Required Beginning Date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of Section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(B) Period Certain Annuities. Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this Subparagraph (3)(B), or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained

ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(4) Form of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions will be made in accordance with Subparagraphs (4)(A), (4)(B) and (4)(C) below. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in Section 414(k) of the Code will be distributed in a manner satisfying the requirements of Section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

(A) General Annuity Requirements. If the participant's interest is paid in the form of annuity distributions under the Plan, payments under the annuity will satisfy the following requirements:

(i) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(ii) the distribution period will be over a life (or lives) or over a period certain, not longer than the distribution period described in Paragraphs 2 or 3 above, whichever is applicable, of this Subsection (c);

(iii) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(iv) payments will either be non-increasing or increase only as follows:

(I) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

(II) to the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Section 414(p) of the Code;

(III) to provide cash refunds of employee contributions upon the participant's death; or

(IV) to pay increased benefits that result from a Plan amendment.

(B) Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the participant's Required Beginning Date (or, if the participant dies before distributions begin, the date distributions are required to begin under Subparagraph (2)(A)(i) or (2)(A)(ii), whichever is applicable) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's Required Beginning Date.

(C) Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(5) For purposes of this Subsection (c), distributions are considered to begin on the participant's Required Beginning Date. If annuity payments irrevocably commence to the participant (or to the participant's Surviving Spouse) before the participant's Required Beginning Date (or, if to the participant's Surviving

Spouse, before the date distributions are required to begin in accordance with Subparagraph (2)(A) above, the date distributions are considered to begin is the date distributions actually commence.

(6) Definitions.

(A) Designated beneficiary. The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

(B) Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's Required Beginning Date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Paragraph (2) of this Subsection (c).

(C) Life expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9 of the Treasury regulations.

(d) (1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions

The following definitions apply to this Section:

(A) Eligible rollover distribution: An eligible rollover distribution is 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:

(i) any distribution that is one of a series of substantially equal periodic payments (not less

frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

(ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;

(iii) the portion of any distribution that is a hardship distribution described in Section 401(k)(2)(B)(i)(IV) of the Code; and

(iv) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(3) Eligible retirement plan: An eligible retirement plan is 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, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of

Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.

(4) Distributee: A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.

(5) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(e) Notwithstanding any other provision of this Plan, the maximum amount of any mandatory distribution, as defined in Section 401(a)(31) of the Code, payable under the Plan shall be \$1000.

(f) Compensation Limitations Under 401(a)(17):

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each participant taken into account under the Plan shall not exceed the EGTRRA annual compensation limit for limitation years beginning after December 31, 2001. The EGTRRA annual compensation limit is \$200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the Plan to the limitation under Section 401 (a)(17) of the Code shall mean the EGTRRA annual compensation limit set forth in this provision.

(g) At no time prior to the satisfaction of all liabilities under the plan with respect to members and their spouses or beneficiaries, shall any part

of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.

~~(1) *Interest of members in plan.* At no time prior to the satisfaction of all liabilities under the plan with respect to retirees and members and their spouses or beneficiaries, shall any part of the corpus or income of the fund be used for or diverted to any purpose other than for their exclusive benefit.~~

(2h) *No reduction of accrued benefits.* No amendment or ordinance shall be adopted by the city council which shall have the effect of reducing the then vested accrued benefits of a member or a member's beneficiaries.

~~(3) *Qualification of plan.* It is intended that the plan will constitute a qualified governmental retirement plan under the applicable provisions of the code, as now in effect or hereafter amended. Any modification or amendment of the plan may be made retroactively, if necessary or appropriate, to qualify or maintain the plan as a plan meeting the requirements of the applicable provisions of the code as now in effect or hereafter amended, or any other applicable provisions of the U.S. federal tax laws, as now in effect or hereafter amended or adopted, and the regulations issued thereunder.~~

(4i) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce future city contributions.

(5j) *Compliance with F.S. ch. 185.* This plan is intended to comply with all applicable provisions of F.S. ch. 185.

Section 9. That Chapter 32, Article II, Section 32-49, Repeal or Termination of Plan, of the City of Marco Island Police Officers' Pension Plan be amended by adding the underlined language as follows:

Sec. 32-49. Repeal or termination of plan.

1) This article establishing the plan and fund, and subsequent ordinances pertaining to said plan and fund, may be modified, terminated, or amended, in whole or in part; provided that if this or any subsequent ordinance shall be amended or repealed in its application to any person benefiting hereunder, the amount of benefits which at the time of any such alteration, amendment, or repeal shall have accrued to the member or beneficiary shall not be affected thereby, ~~except to the extent that the assets of the fund may be determined to be inadequate.~~

(2) If this article shall be repealed, or if contributions to the plan are discontinued or if there is a transfer, merger or consolidation of government units, services or functions as provided in F.S. ch. 121, the board shall continue to administer the plan in accordance with the provisions of this article, for the sole benefit of the then members, any beneficiaries then receiving retirement allowances, and any future persons entitled to receive benefits under one of the options provided for in this article who are designated by any of said members. In the event of repeal, discontinuance of contributions, or transfer, merger or consolidation of government units, services or functions, there shall be full vesting (100 percent) of benefits accrued to date of repeal. The Board shall determine the date of distribution and the asset value required to fund all nonforfeitable benefits after taking into account the expenses of such distribution. The Board shall inform the city, or then current Plan sponsor, if additional assets are required, in which event the city, or then current Plan sponsor, shall continue to financially support the pension plan until all nonforfeitable benefits have been funded, and the assets of the plan shall be allocated in an equitable manner to provide benefits on a proportionate basis to the persons so entitled in accordance with the provisions thereof.

(3) The board of trustees shall determine the method of distribution of the asset value, that is, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each police officer entitled to benefits under the plan as specified in subsection (3) of Section 185.37, Florida Statutes.

~~The following shall be the order of priority for purposes of allocating the assets of the plan as of the date of repeal of this article, or if contributions to the plan are discontinued with the date of such discontinuation being determined by the board.~~

~~(a) Apportionment shall first be made in respect of each retiree receiving a retirement or disability benefit hereunder on such date, each person receiving a benefit on such date on account of a retired or disabled (but since deceased) member, and each member who has, by such date, become eligible for normal retirement but has not yet retired, an amount which is the actuarial equivalent of such benefit, provided that, if such asset value be less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.~~

~~(b) If there be any asset value remaining after the apportionment under subsection (a), apportionment shall next be made in respect of each member in the service of the city on such date who is vested and who is~~

~~not entitled to an apportionment under subsection (a), in the amount required to provide the actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), based on the credited service and average final compensation as of such date, and each vested former member then entitled to a deferred benefit who has not, by such date, begun receiving benefit payments, in the amount required to provide said actuarial equivalent of the vested portion of the accrued normal retirement benefit (but not less than accumulated contributions), provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(c) If there be any asset value after the apportionments under subsections (a) and (b), apportionment shall be made in respect of each member in the service of the city on such date who is not entitled to an apportionment under subsections (a) and (b) in the amount equal to member's accumulated contributions, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder such latter amount shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(d) If there be any asset value remaining after the apportionments under subsections (a), (b), and (c), apportionment shall lastly be made in respect of each member included in subsection (c) above to the extent of the actuarial equivalent of the nonvested accrued normal retirement benefit, less the amount apportioned in subsection (c), based on the credited service and average final compensation as of such date, provided that, if such remaining asset value be less than the aggregate of the amounts apportioned hereunder, such amounts shall be reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(e) In the event that there be asset value remaining after the full apportionment specified in subsections (a), (b), (c), and (d), such excess shall be returned to the city, less return of the state's contributions to the state, provided that, if the excess is less than the total contributions made by the city and the state to the date of termination such excess shall be divided proportionately to the total contributions made by the city and the state.~~

...

Section 10. That Chapter 32, Article II, Section 32-50, Exemption from Execution, Nonassignability, of the City of Marco Island Police Officers' Pension Plan be amended by adding the underlined language as follows:

Sec. 32-50. Exemption from execution, nonassignability.

Except as otherwise provided by law, the pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of this article and the accumulated contributions and the cash securities in the fund created under this article are hereby exempted from any state, county or municipal tax and shall not be subject to execution, attachment, garnishment or any legal process whatsoever and shall be unassignable, except the recipient of any monthly benefit may authorize the board of trustees to withhold from the monthly benefit those funds necessary to pay for the benefits being received through the city to pay the certified bargaining agent of the city and to make any payments for child support or alimony. The Board of Trustees may, upon the written request of the retiree of the pension plan, authorize the plan administrator to withhold from the retirement payment those funds that are necessary to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. The pension plan, and its Board of Trustees, shall not incur any liability for participation in this permissive program should its actions be taken in good faith.

Section 11. If any word, phrase, clause, subsection, or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

Section 12. That all sections or parts of sections of all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 13. This ordinance shall take effect upon adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND

THIS 7th day of February, 2011.

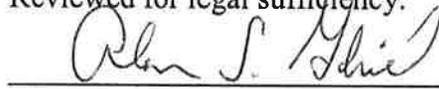


Laura Litzan
City Clerk



Frank R. Recker, Chairman

Reviewed for legal sufficiency:



Alan L. Gabriel
City Attorney

