

AN ORDINANCE

Amending the defined benefit pension plans to comply with Delay v. Sutton, 304 Ga. 338 (2018) and other administrative updates.

NOW THEREFORE, THE COUNCIL OF THE CITY OF MARIETTA HEREBY ORDAINS:

Section 1: That Article 4-12-4, Exhibit A to Chapter 4-12, Ordinance 4022, "Retirement Plan for the Employees of the City of Marietta, Georgia," Article X (Pension Board) be amended to read as follows:

**ARTICLE X
Pension Board**

Section 1. Definitions and rules of construction.

- A. Board shall mean the pension board created by this article.
- B. Police and fire employees shall mean the sworn personnel of the police and fire departments.
- C. General employees are personnel other than the sworn personnel of the police and fire departments.
- D. Provider shall mean any person, partnership, corporation or other legal entity which supplies or provides pension, retirement or disability payments to employees, including elected members of the governing authority of the City of Marietta.
- E. Council shall mean the governing authority of the City of Marietta which shall include the mayor and members of the council.
- F. Time. In computing time required under this ordinance, time shall be computed without exclusion of Sundays and holidays.
- G. Gender. When used in this ordinance, the male gender shall include the female and neuter genders.
- H. Nomination. When used in this ordinance, a formal nomination submitted to the City Council has the same effect as a non-binding recommendation. Otherwise, nomination is used to indicate the process to select potential individuals for appointment to the Board.

Section 2. Creation.

There is hereby created in the City of Marietta a pension board which shall consist of such members selected and having such duties, functions and powers as are hereinafter prescribed.

Section 3. Functions and powers.

The pension board shall have the following duties, functions and powers:

- A. In its dealings with any provider, the pension board shall:
 - 1. Furnish all information with respect to enrollment of employees, including elected and appointed members of the governing authority.
 - 2. Collect and remit to any provider all required contributions.
 - 3. Furnish any provider, in accordance with its rules and regulations, all reports, and other records required to administer this plan.
 - 4. Notify any provider, in accordance with its rules and regulations, of all benefit elections made by participants under any plan adopted and all matters regarding payment of benefits.
 - 5. Notify any provider of the termination of participating employees in any plan adopted and the vacation of elective office by elected and appointed members of the governing authority.
- B. In dealing with those persons participating or eligible to participate in any pension, retirement or disability program, the pension board shall:
 - 1. Be responsible for the enrollment of eligible employees and elected and appointed members of the governing authority.
 - 2. Handle distribution of all reports to participants.
 - 3. Handle arbitration between the city and the participants in all matters regarding the plan.
 - 4. Handle any notices of eligibility, benefits, available options, and any other notices required by this plan, contract or rules and regulations of any provider.
 - 5. Decide all questions and disputes on the interpretation and eligibility of persons for payment under any pension, retirement and disability ordinance of the City of Marietta.
- C. In performance of its duties, the pension board shall have the following powers:
 - 1. Recommend to the council the awarding of contract(s) for provider(s) of pension, retirement or disability benefits;
 - 2. Adopt rules and regulations providing procedures for the granting of pension, retirement and disability benefits and to approve payments for such persons entitled to payment;
 - 3. Adopt investment programs and procedures for funds held by any provider of pension, retirement and disability payments;
 - 4. Adopt and use a seal on all documents issued by the board;
 - 5. Review and recommend changes in the pension, retirement and disability program;

6. When requested by the city manager, to advise the city manager on all pension, retirement or disability payment matters; and
7. To do all other things necessary and proper to carry out the duties required of it as the pension board of the City of Marietta.

Section 4. Appeal and procedure.

Any person dissatisfied with any decision of the pension board shall have the right to appeal the decision to the council by delivering to the city manager a written notice within ten days of the decision complained of. The city manager shall cause the secretary of the pension board, within ten days after such receipt, to provide to the clerk of the council all documents relied upon by the pension board in reaching its decision. The council shall decide the appeal within 75 days of receipt of the appeal documents from the secretary of the pension board. Should the council fail to act within 75 days of the decision of the pension board, the decision of the pension board shall be affirmed. In ruling on any appeal from the pension board, the decision of the pension board shall be presumed correct and based upon sufficient facts to sustain it.

Section 5. Membership and operation of pension board.

The pension board shall consist of nine members appointed by the City Council which may be selected from the following:

Post 1: City manager or his nominated designee, to be appointed by City Council and reappointed with each successive City Council. The City Council shall consider, but not be bound by, nominations made by the City Manager.

Post 2: Council member

Post 3: Council member

Post 4: General employee representative

Post 5: General employee representative

Post 6: General employee representative

Post 7: General employee representative

Post 8: Police department representative

Post 9: Fire department representative

Subject to being appointed by the City Council, the police chief and fire chief shall be ex officio members of the pension board and shall only vote in the absence of the police and fire representatives. Each chief must be reappointed with each successive City Council.

Terms. All members shall be nominated as hereinafter provided in November and shall begin service on January 1 for a term of three years.

Selection of council, police, fire and general employee members:

Council representative. Two members of the council shall serve on the pension board. Effective October 1, 2016, the two members representing council shall be the Chairman of the Personnel/Insurance Committee and the Chairman of the Finance/Investments Committee as provided in Section 1-4-040 of City Code. If either of the chairmen is unable to serve or declines to serve for any reason, then the Vice Chairman of the applicable committee shall serve in their stead. If a vacancy still exists, then the Mayor with consent of council shall appoint an alternate.

Police Nomination. One member of the pension board shall be appointed by the City Council as a representative of the police department. The senior officer in each of the ranks of police deputy chief, police major, police lieutenant, police sergeant, detective and police officer shall serve as a nominating committee for the police department. The highest-ranking officer shall serve as chairperson of the nominating committee.

Fire Nomination. One member of the pension board shall be appointed by the City Council as a representative of the fire department. The senior officer in each of the ranks of deputy chief, assistant chief, commander, lieutenant, firefighter engineer, and firefighter shall serve as a nominating committee for the fire department. The highest-ranking officer shall serve as chairperson of the nominating committee.

Nomination of police and fire representatives. The chairperson of each respective nominating committee of police and fire shall call a meeting of the committee in November of the year immediately preceding the termination of the police and fire representatives on January 1 of the next year. The purpose of this meeting will be to nominate three employees from each of the departments of fire and police. The names of the three employees nominated shall be placed on a ballot with space provided for write-ins. The duration of the election period will not exceed ten business days, including periods of early voting. Ballots shall be distributed by the nominating committees to all of the employees in the respective departments of police and fire. When used, paper ballots shall be marked in secret and returned to the nominating committee the same day they are distributed. If electronic voting is used, the method must be certified by the director of information technology as maintaining anonymity. Each employee will vote for one candidate and the candidate receiving a plurality of votes shall be nominated for appointment by the City Council as the representative of their respective departments to the pension board. If for any reason the nominated representative of the police or fire departments cannot fulfill his or her office, the respective nominating committee shall call a meeting to nominate a replacement for the duration of the vacated membership. The City Council shall consider, but not be bound by, nominations made as a result of elections or the nominating process.

Nomination of General employees. Four members of the pension board shall be appointed by the City Council as representatives of the general employees. A nominating committee consisting of the director of human resources and risk management, or a designee thereof; two person(s) appointed by the director of public works, one of whom cannot be in a supervisory position; three persons appointed by the BLW general manager, one of whom cannot be in a supervisory position; two persons appointed by the city manager, one of whom cannot be in a supervisory position; and one person appointed by the director of parks, recreation, and

facilities shall nominate the candidates for membership on the pension board. The director of human resources, or the designee thereof, shall act as presiding officer of the nominating committee and call a meeting of the committee in the month of November in the year immediately preceding the end of the current member's term. The purpose of this meeting shall be to nominate two candidates for each expiring term of a member of the pension board represented by the general employees. The names of such employees nominated shall be placed on a ballot with space provided for write-ins. The duration of the election period will not exceed ten business days, including periods of early voting. Ballots shall be distributed to all general employees. When used, paper ballots shall be marked in secret and returned to the nominating committee the same day they are distributed. If electronic voting is used, the method must be certified by the director of information technology as maintaining anonymity. Each employee will vote for as many candidates as there are representative seats of the general employees expiring on January 1. The candidates receiving the highest plurality votes for such seats shall be nominated as the representatives of the general employees to the pension board. If for any reason a duly nominated representative of the general employees cannot fulfill his or her office, the nominating committee shall call a meeting to nominate a replacement for the duration of the vacated membership. The City Council shall consider, but not be bound by, nominations made as a result of elections or the nominating process.

Notwithstanding anything contained herein, no person shall serve as a member of the Pension Board without having been appointed by the City Council of the City of Marietta.

Officers. The pension board may elect such officers as it deems necessary. The board shall elect a chairperson and a secretary.

The chairperson shall preside at meetings of the board, cast a vote on any issue, call meetings as may be necessary, and do all things necessary to carry on the orderly affairs of the board. The chairperson shall be selected by a majority vote of the board for a one-year term. The board shall designate, in writing, a secretary or other representative who shall have full authority to represent the board in all communications with any provider and the city's employees, including elected and appointed members of the governing authority. The secretary shall keep accurate minutes of all meetings of the board, recording those voting for and against any issue. Minutes shall be distributed to each member of the board, the council of the City of Marietta, and shall be posted in a prominent place(s) within the City Government Complex.

Legal assistance. The city attorney or other attorney appointed by the governing authority shall furnish legal advice to the pension board on any issue before it upon which legal advice is sought.

Meetings. The pension board shall meet at least quarterly. Five members of the board (including the chairperson) shall constitute a quorum. The city manager or his designee shall have authority to approve pension, retirement and disability payments pending a meeting of the board.

Rules of procedure. The pension board shall have the authority to promulgate rules and regulations for its internal operation, as well as the approval of payments within its jurisdiction.

(Ord. No. 5923, 11/11/98, § 1; Ord. No. 7103, 10/10/2007, § 1; Ord. No. 7191, 6/11/2008, § 1; Ord. No. 7379, 9/9/2009, § 1, Ord. No. 7871, 3/9/2016, § 1; Ord. No. 7893, 6/8/2016, § 1)

Section 2: That Article 4-12-6, Exhibit B to Chapter 4-12, Ordinance 4532, “Consolidated Retirement Plan for the Employees of the City of Marietta, Georgia,” Article X (Pension Board) be amended to read as follows:

ARTICLE X Pension Board

Section 1. Definitions and rules of construction.

- A. "Board" shall mean the pension board created by this article.
- B. "Police and fire employees" shall mean the sworn personnel of the police and fire departments.
- C. "General employees" are personnel other than the sworn personnel of the police and fire departments.
- D. "Council" shall mean the governing authority of the City of Marietta which shall include the mayor and members of the council.
- E. In computing time required under this ordinance, time shall be computed without exclusion of Sundays and holidays.
- F. When used in this ordinance, the male gender shall include the female and neuter genders.
- G. "Nomination" shall mean either the process to select potential individuals for appointment to the Board or a formal and non-binding recommendation to the City Council for appointment.

Section 2. Creation.

There is hereby created in the City of Marietta a pension board which shall consist of such members elected and appointed and having such duties, functions, and powers as are hereinafter prescribed.

Section 3. Functions and powers.

The pension board shall have the following duties, functions and powers:

- A. In dealing with those persons participating or eligible to participate in any pension, retirement or disability program, the pension board shall:
 - 1. Handle distribution of all reports to participants.
 - 2. Handle arbitration between the city and the participants in all matters regarding the plan.
 - 3. Handle any notices of eligibility, benefits, available options, and any other notices required by this plan, contract or rules and regulations.
 - 4. Decide all questions and disputes on the interpretation and eligibility of persons for payment under any pension, retirement and disability ordinance of the City of Marietta.

- B. In performance of its duties, the pension board shall have the following powers:
1. Recommend to the council the awarding of contract(s) for actuarial, and investment management and other administrative services as needed;
 2. Adopt rules and regulations providing procedures for the granting of pension, retirement and disability benefits and to approve payments for such persons entitled to payment;
 3. Adopt investment programs and procedures for funds held by any investment manager;
 4. Adopt all documents issued by the board;
 5. Review and recommend changes in the pension, retirement and disability program;
 6. When requested by the city manager, to advise the city manager on all pension, retirement, or disability payment matters; and
 7. To do all other things necessary and proper to carry out the duties required of it is as the pension board of the City of Marietta.

Section 4. Appeal and procedure.

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Police Nomination. One member of the pension board shall be appointed by the City Council as a representative of the police department. The senior officer in each of the ranks of police deputy chief, police major, police lieutenant, police sergeant, detective and police officer shall serve as a nominating committee for the police department. The highest-ranking officer shall serve as chairman of the nominating committee.

Fire Nomination. One member of the pension board shall be appointed by the City Council as a representative of the fire department. The senior officer in each of the ranks of deputy chief, assistant chief, commander, lieutenant, firefighter engineer, and firefighter shall serve as a nominating committee for the fire department. The highest-ranking officer shall serve as chairman of the nominating committee.

Nomination of police and fire representatives. The chairperson of each respective nominating committee of police and fire shall call a meeting of the committee in November of the year immediately preceding the termination of the police and fire representatives on January 1 of the next year. The purpose of this meeting will be to nominate three employees from each of the departments of fire and police. The names of the three employees nominated shall be placed on a ballot with space provided for write-ins. The duration of the election period will not exceed ten business days, including periods of early voting. Ballots shall be distributed by the nominating committees to all of the employees in the respective departments of police and fire. When used, paper ballots shall be marked in secret and returned to the nominating committee the same day they are distributed. If electronic voting is used, the method must be certified by the director of information technology as maintaining anonymity. Each employee will vote for one candidate and the candidate receiving a plurality of votes shall be nominated for appointment by the City Council as the representative of their respective departments to the pension board. If for any reason the duly nominated representative of the police or fire departments cannot fulfill his or her office, the respective nominating committee shall call a meeting to nominate a replacement for the duration of the vacated membership. The City Council shall consider, but not be bound by, nominations made as a result of elections or the nominating process.

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The chairperson shall preside at meetings of the board, cast a vote on any issue, call meetings as may be necessary, and do all things necessary to carry on the orderly affairs of the board. The chairperson shall be selected by a majority vote of the board for a one-year term. The board shall designate, in writing, a secretary or other representative who shall have full authority to represent the board in all communications with any provider and the city's employees, including elected and appointed members of the governing authority. The secretary shall keep accurate minutes of all meetings of the board, recording those voting for and against any issue. Minutes shall be distributed to each member of the board, the council of the City of Marietta and shall be posted in a prominent place(s) within the City Government Complex.

Legal assistance. The city attorney or other attorney appointed by the governing authority shall furnish legal advice to the pension board on any issue before it upon which legal advice is sought.

Meetings. The pension board shall meet at least quarterly. Five members of the board (including the chairman) shall constitute a quorum. The city manager or his designee shall have authority to approve pension, retirement and disability payments pending a meeting of the board.

Rules of procedure. The pension board shall have the authority to promulgate rules and regulations for its internal operation, as well as the approval of payments within its jurisdiction.

(Ord. No. 5923, 11/11/98, § 2; Ord. No. 7103, 10/10/2007, § 2; Ord. No. 7379, 9/9/2009, § 1; Ord. No. 7872, 3/9/2016, § 1; Ord. No. 7893, 6/8/2016, § 1)

Section 3: It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses and phrases are severable, and if any section, paragraph, sentence, clause or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance.

Section 4: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 5: This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: _____

APPROVED: _____
R. Steve Tumlin, Jr., Mayor

ATTEST: _____
Stephanie Guy, City Clerk

Approved as to Form: _____
Douglas R. Haynie, City Attorney