ORDINANCE NO.: 7669

AN ORDINANCE

AMENDING

The City of Marietta/BLW Retirement Plan 4532 (New Consolidated Plan) to clarify Disability retirement provisions.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA:

<u>Section 1:</u> That Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan," Article V, Section 11, "Eligibility for a Disability Retirement Benefit," shall be amended in its entirety to read as follows:

A participant shall be eligible to retire on a disability retirement benefit if he becomes disabled, as defined in section 6 of Article II. If the disability is non-job related, the participant must have completed at least twelve (12) months of continuous service. Continuous service shall be defined in the same manner as "Service" under section 24 of Article II.

Section 2: That Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan," Article V, Section 12, "Amount of Disability Retirement Benefit," shall be amended in its entirety to read as follows:

The monthly amount of the disability retirement benefit shall be determined in accordance with section 2 of this article. In no event, however, shall the benefit be less than fifty percent (50%) of the average of the participant's most recent 12 months of earnings. If the employee has completed an initial twelve (12) months of continuous service, from date of hire to date of termination of employment as a result of a disability, but has less than twelve (12) months of monthly earnings, the disability retirement benefit shall be no less than fifty percent (50%) of the average monthly earnings for the actual number of months worked. Continuous service shall be defined in the same manner as "Service" section 24 of Article II.

Should a participant receiving workers' compensation benefits become qualified to receive disability retirement benefits on or after March 18, 2008, his disability retirement benefit will be reduced by the amount of workers' compensation benefit. Once the participant is ineligible for workers' compensation benefits, his total disability benefit will be restored.

<u>Section 3</u>: That Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Plan," Article V, Section 13, Evidence of Disability," shall be amended in its entirety to read as follows:

Participants applying for disability retirement must provide such evidence of disability in writing on a form provided by the City, which shall substantiate a claim of disability as set forth in section 6 of Article II. When an application for disability pension is filed, the applicant shall submit therewith a signed

certificate from a licensed, practicing physician certifying to the total disability of such applicant for a pension under the terms required in section 6 of Article II, on a form provided by the City. Such form(s) must be completed in full and include all the information required by such form(s). The pension board may accept such completed form(s) or may order the applicant to be examined by a physician named by the pension board who likewise shall certify the physical ability or total disability, if found, of the applicant under the terms required in section 6 of Article II. The pension board shall pay the cost of such additional examination. If the certificates of the respective physicians generally agree upon total disability, such facts shall be conclusive as to the physical or mental condition of the applicant and the pension board shall enter an order granting a disability pension in the proper amount. If the certificate tendered by the applicant and the certification of the physician appointed by the pension board shall disagree as to the condition of the applicant, the pension board shall review the documentation related to the request for disability and shall render a determination as to the disability of the applicant. If the applicant is dissatisfied with the decision of the pension board, the participant shall request and the pension board shall conduct a hearing for the purpose of reviewing the application on appeal. Such hearing shall be conducted informally by the examination of witnesses for and in opposition to such application, and both the applicant and the pension board may be represented by legal counsel if they so desire. Any oral testimony shall be summarized in pension board minutes. Copies of documents may be received as evidence in lieu of the original at the discretion of the pension board, and affidavits shall be filed with the pension board at the time of the hearing. The decision of the pension board after a hearing shall be final as to the physical or mental condition of the applicant; provided, however, any person dissatisfied with the decision of the pension board after such hearing may appeal that decision to council in accordance with section 4 of Article X. The applicant shall be entitled to present to council all documents reviewed by the pension board and testimony given during the hearing in making its determination during such final appeal. Council may consider only evidence submitted, heard or considered by the pension board.

At least once every two (2) years after the pension board approves the applicant's disability retirement, or sooner if specifically requested by the pension board, the applicant must furnish evidence to the pension board of his or her ongoing disability as defined in section 6 of Article II, in writing, on a form provided by the City. When the form for an ongoing disability pension is filed, the applicant shall submit therewith a signed certificate from a licensed, practicing physician certifying to the ongoing disability of such applicant for a pension on a form provided by the City under the terms required in section 6 of Article II. Such form(s) must be completed in full and include all the information required by such form(s) within thirty (30) days of the earlier of the second anniversary of the pension board's approval of such employee's initial or ongoing disability or the date requested by the pension board. Provided, however, if such participant receiving disability benefits does not provide evidence of and provide all of the information required by the City to show an ongoing disability within such thirty (30) day period defined above, the pension board shall withhold payments of his benefits until he submits the required forms and the participant shall be deemed to have forfeited his benefits during the time of his refusal to submit such required forms. Should the refusal continue for a period of six (6) months, or the participant's physician cannot certify to the participant's ongoing disability, such disability pension shall end and be terminated.

The pension board shall have the right to require an examination of any and all participants receiving disability pensions under the provisions of this section once every two years by a physician named by the pension board. The pension board shall pay the cost of such additional examination. If any such participant receiving a disability pension shall be found, as a result of such examination, to no longer be disabled in accordance with section 6 of Article II, the pension board may, after hearing evidence thereon, and after giving an opportunity to such participant to be heard, remove such participant from the list of those entitled to disability pension. If the applicant is dissatisfied with the decision of the pension board, the participant shall request and the pension board shall conduct a hearing for the purpose of reviewing the application for ongoing disability, in appeal. Such hearing shall be conducted informally by the

examination of witnesses for and in opposition to such application, and both the applicant and pension board may be represented by legal counsel if they so desire. Any oral testimony shall be summarized in pension board minutes. Copies of documents may be received as evidence in lieu of the original at the discretion of the pension board, and affidavits shall be filed with the pension board at the time of the hearing. The decision of the pension board after a hearing shall be final as to the physical or mental condition of the applicant; provided however any person dissatisfied with the decision of the pension board after such hearing may appeal that decision to council in accordance with section 4 of Article X. The applicant shall be entitled to present to council all documents reviewed by the pension board and testimony given during the hearing in making its determination during such final appeal. Council may consider only evidence submitted, heard or considered by the pension board.

Provided, however, that in the event a participant receiving disability benefits refuses to submit to a physical examination or does not cooperate with and complete the examination conducted by the physician as requested by the pension board pursuant to this section after thirty (30) days' notice to report for such examination, the pension board shall withhold payments of his benefits until he submits to such examination. The participant shall be deemed to have forfeited his benefits during the time of his refusal to submit to a physical examination. Should the refusal continue for a period of six (6) months, such disability pension shall end and be terminated and can only be reinstated if the participant reapplies for a disability pension in accordance with this section.

<u>Section 4:</u> It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, phrases and words are severable, and if any section, paragraph, clause, phrase or word of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, clauses, phrases or words of this Ordinance.

Section 5: All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

<u>Section 6:</u> This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

DATE: _____ July 10, 2013

APPROVED: // _

R. Steve Tumlin, Jr., Mavor

ATTEST

Stephanie Guy, City Clerk

Approved as to Form:

Douglas R. Haynie City Attorney