

Amendment to the City of Marietta/BLW Retirement Plans 4532 and 4022

File I.D. #: 20170503

ORDINANCE NO.: 7965

AN ORDINANCE

AMENDING **the defined benefit employee pension plans to comply with the Official Code of Georgia Annotated with respect to forfeiture of benefits for certain crimes.**

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

Section 1: That Section 4-12-4-010, Exhibit A to Chapter 4-12, also known as Ordinance 4022, the "Retirement Plan for the Employees of the City of Marietta, Georgia," Article XII, "Miscellaneous" shall be amended by deleting Section 9, "Fraud, embezzlement, theft and dismissal for cause" in its entirety and substituting the following:

Section 9. Forfeiture for certain crimes.

A. Participation in the Plan for any Employee in service on July 1, 1985, who is convicted of a public employment related crime (as defined in O.C.G.A. 47-1-20) on or after July 1, 1985, in the capacity of an Employee, shall terminate on the date of final conviction in accordance with O.C.G.A. 47-1-21.

B. Benefits under this Plan for any Employee hired or re-hired after July 1, 1985, who is convicted of a public employment related crime in his or her capacity as an Employee (as provided in O.C.G.A. 47-1-22), including any survivor's benefits if applicable, shall be reduced by an amount equal to three times the economic impact of the crime, upon final conviction. Payment of such benefits shall cease until such amount has been forfeited, after which benefits shall be restored. If the person has not begun to receive a benefit, the deduction shall commence at the time such benefits would normally begin. For purposes of this subsection, the term "benefits" shall not include a refund of employee contributions without interest.

C. Except as otherwise provided in this subsection, any Employee hired or re-hired after July 1, 1990, who is not vested under the Plan and who is convicted of a drug related crime (as defined in O.C.G.A. 47-1-20) shall forfeit all rights and benefits under and membership in the Plan, effective on the date of final conviction. Any employee contributions made by any such Employee shall be reimbursed, without interest, to the Employee within 60 days after the date of final conviction

for the commission of the drug related crime. If an Employee who is vested under the Plan commits a drug related crime, such employee's active membership in the Plan shall terminate on the date of final conviction.

D. Nothing in this section shall be construed to create a right for the Employee who is charged with the commission of a public employment or drug related crime to accrue rights or benefits under this Plan after the date the Employee ceases to be a member of the Plan.

E. Within 30 days following the day the Pension Board receives notice that a member of the retirement system has a final conviction for a public employment related crime, the Pension Board shall initiate proceedings in the Office of State Administrative Hearings, under the provisions of O.C.G.A. 47-1-25 and O.C.G.A. 50-2-13, to determine the economic impact of the employment related crime. The State Department of Law shall represent the Pension Board in such proceedings. The decision of the administrative law judge shall be final unless appeal is made as otherwise provided by law.

F. For purposes of this Section 9, a final conviction does not include circumstances under which a first offender is exonerated from guilt and discharged as a matter of law after successful completion of sentencing.

G. Notwithstanding any provision of this Section 9 to the contrary and to the extent permitted by applicable law, with respect to Employees hired or re-hired after July 1, 1985, who committed a public employment related crime before July 1, 2008, the City reserves the right to require forfeiture of all rights and benefits under the Plan in accordance with the provisions of O.C.G.A. Section 47-1-22(b) in effect prior to July 1, 2008.

Section 2: That Section 4-12-6-010, Exhibit B to Chapter 4-12, also known as Ordinance 4532, the "Consolidated Retirement Plan for the Employees of the City of Marietta, Georgia," Article IX, "Application, Benefit Payments and Claims Procedures" shall be amended by deleting Section 4, "Fraud, embezzlement, theft and dismissal for cause" in its entirety and substituting the following:

Section 4. Forfeiture for certain crimes.

A. Participation in the Plan for any Employee in service on July 1, 1985, who is convicted of a public employment related crime (as defined in O.C.G.A. 47-1-20) on or after July 1, 1985, in the capacity of an Employee, shall terminate on the date of final conviction in accordance with O.C.G.A. 47-1-21.

B. Benefits under this Plan for any Employee hired or re-hired after July 1, 1985, who is convicted of a public employment related crime in his or her capacity as an Employee (as provided in O.C.G.A. 47-1-22), including any survivor's benefits if applicable, shall be reduced by an amount equal to three times the economic impact of the crime, upon final conviction. Payment of such benefits

shall cease until such amount has been forfeited, after which benefits shall be restored. If the person has not begun to receive a benefit, the deduction shall commence at the time such benefits would normally begin. For purposes of this subsection, the term "benefits" shall not include a refund of employee contributions without interest.

C. Except as otherwise provided in this subsection, any Employee hired or re-hired after July 1, 1990, who is not vested under the Plan and who is convicted of a drug related crime (as defined in O.C.G.A. 47-1-20) shall forfeit all rights and benefits under and membership in the Plan, effective on the date of final conviction. Any employee contributions made by any such Employee shall be reimbursed, without interest, to the Employee within 60 days after the date of final conviction for the commission of the drug related crime. If an Employee who is vested under the Plan commits a drug related crime, such employee's active membership in the Plan shall terminate on the date of final conviction.

D. Nothing in this section shall be construed to create a right for the Employee who is charged with the commission of a public employment or drug related crime to accrue rights or benefits under this Plan after the date the Employee ceases to be a member of the Plan.

E. Within 30 days following the day the Pension Board receives notice that a member of the retirement system has a final conviction for a public employment related crime, the Pension Board shall initiate proceedings in the Office of State Administrative Hearings, under the provisions of O.C.G.A. 47-1-25 and O.C.G.A. 50-2-13, to determine the economic impact of the employment related crime. The State Department of Law shall represent the Pension Board in such proceedings. The decision of the administrative law judge shall be final unless appeal is made as otherwise provided by law.

F. For purposes of this Section 4, a final conviction does not include circumstances under which a first offender is exonerated from guilt and discharged as a matter of law after successful completion of sentencing.

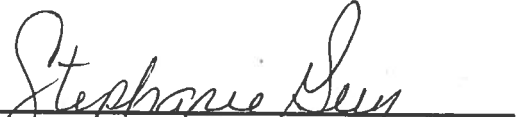
G. Notwithstanding any provision of this Section 4 to the contrary and to the extent permitted by applicable law, with respect to Employees hired or re-hired after July 1, 1985, who committed a public employment related crime before July 1, 2008, the City reserves the right to require forfeiture of all rights and benefits under the Plan in accordance with the provisions of O.C.G.A. Section 47-1-22(b) in effect prior to July 1, 2008.

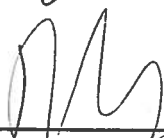
Section 3: It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses, phrases and words are severable, and if any section, paragraph, clause, phrase or word of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of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

Section 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: 06/14/2017 APPROVED: 
R. Steve Tumlin, Jr., Mayor

ATTEST: 
Stephanie Guy, City Clerk

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