



**INSURANCE AND RETIREMENT**  
**REGULATIONS**

&

**CONSOLIDATED RETIREMENT PLAN**

UPDATED IN OCTOBER 2019

FOR QUESTIONS REGARDING THIS PUBLICATION, CONTACT THE  
DEPARTMENT OF HUMAN RESOURCES AND RISK MANAGEMENT

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## CHAPTER 4-12 - INSURANCE AND RETIREMENT

### ARTICLE 4-12-2 - GENERAL REGULATIONS

4-12-2-010 - Mandatory retirement.

(Reserved)

(Code 1978, § 4-3001; Ord. No. 5575, 6/12/96)

4-12-2-020 - Old age and survivors, insurance terminated; supplemental plan adopted.

- A. The City of Marietta does terminate and withdraw from the Employees Retirement System of Georgia (known as social security).
- B. The pension board of the City of Marietta, Georgia, created by ordinance of the mayor and council shall assume the function of plan administrators of the City of Marietta Supplemental Pension Plan effective July 1, 2000. The pension board shall be discharged of their duties as trustees of the supplemental pension plan effective June 30, 2000. The pension board, with approval of council, shall designate a professional pension management company to serve as trustee and record keeper of the supplemental pension plan effective July 1, 2000. The pension board shall supervise and direct such authorized trustee of the supplemental pension plan in the performance of its duties.
- C. The mayor is authorized and directed to execute any and all documents and other instruments necessary to terminate the relationship of the City of Marietta with the Employees Retirement System of Georgia.
- D. Beginning January 1, 1981, the City of Marietta shall pay 6.13 percent of the salary of regular full-time employees into the supplemental pension retirement plan. The amount so paid shall be immediately vested in each employee's behalf. No employee may be eligible for participation in said supplemental pension retirement plan until the employee has completed one continuous year of service. The City of Marietta shall pay into the plan 6.13 percent of all the salary of appointed employees up to the maximum salary payable to regular employees as exists in the personnel pay plan ordinance. Funds accumulated under this plan shall be paid to employees only upon retirement, death, disability, or termination of employment. The pension board of the City of Marietta, Georgia, created by ordinance of the mayor and council shall represent the city/BLW in the administration of the plan established, unless otherwise designated by council.
- E. The city clerk is directed to attest any and all instruments under the seal of the city which the mayor is authorized and directed to execute by this section.
- F. Part time, temporary and seasonal employees, as defined in Section 4-12-6-010, Article II, Subsection 27, 28 and 29, hired by the city/BLW on and after January 1, 2000, will be eligible to participate in the supplemental retirement plan in accordance with the following provisions:

1. Effective January 1, 2000, the City of Marietta/BLW shall pay 7.5 percent of the salary of part time, temporary and seasonal employees into the Supplemental Retirement Plan. The amount so paid shall be immediately vested in each employee's behalf. Each new part time, temporary and seasonal employee hired on and after January 1, 2000, shall become a participant in the plan on their date of hire.
2. Funds accumulated under this plan shall be paid to part time, temporary and seasonal employees only upon retirement, death, disability or termination of employment in accordance with the provisions of the plan.

(Code 1978, § 4-3002; Ord. No. 3741, 12/30/80; Ord. No. 5575, 6/12/96; Ord. No. 6019, 8/11/1999, § 2; Ord. No. 6142, 6/14/2000, §§ 1, 2; Ord. No. 6483, 2/12/2003, § 1(1)—  
(8))

#### 4-12-2-025 - Employee health insurance and protected health information.

- A. Purpose: To establish privacy procedures to assure that the confidentiality of individually identifiable health information is protected, to inform employees of their privacy rights and obligations and how their protected health information (PHI) may be used and disclosed.
- B. Policy: The City of Marietta/BLW (plan sponsor) established and maintains a group health plan (the "plan") for its employees and covered dependents. The Plan is a covered entity and is required to comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The plan sponsor is not a covered entity but is responsible for ensuring that the group health plan is in compliance with the privacy regulations. The privacy regulations will give employees and covered dependents more control and access to their PHI. It will limit the use and disclosure of health information; enable participants to find out how their information may be used and what disclosures of their information have been made. Medical information relating to family and medical leave, fitness-for-duty and workers' compensation is not covered under the regulations. It is the policy of the City of Marietta Group Health Plan to protect the privacy of protected health information and to comply with HIPAA Standards for Privacy of Individually Identifiable Health Information. Where state law is more restrictive than the privacy regulations, Georgia state law will prevail. The city/BLW specifically reserves the right to add to, change or abolish the provisions of this policy, in whole or in part, based upon pertinent action by any appropriate legislative, judicial or regulatory authority.

#### C. Definitions:

Covered Entities. Health plans (includes health flexible spending accounts), health care clearinghouses and those health care providers who conduct certain financial and administrative transactions electronically.

Protected Health Information. Individually identifiable health information that is maintained or communicated in any form (electronic, paper, or oral) by a covered entity.

D. Uses and Disclosures of Protected Health Information (PHI):

1. Required Uses and Disclosures. The plan is required to give employees and dependents access to their own protected health information (PHI) upon request and will disclose PHI to the Secretary of the Department of Health and Human Services when needed to investigate or determine if the city/BLW is in compliance with the privacy rules.
2. Permitted Uses and Disclosures to Carry Out Treatment, Payment and Health Care Operations.
  - a. The plan and/or its business associates may use and disclose protected health information without the employee's consent, authorization or opportunity to agree or object to carry out treatment, payment or health care operations.

Treatment includes the provision, coordination or management of health care. For example, the plan may tell a doctor who is treating a covered individual that the individual has previously been treated for a condition that may affect his treatment of the individual.

As defined by the privacy rule, payment includes but is not limited to actions to make coverage determinations and payment (including billing, claims management, subrogation, plan reimbursement, reviews for medical necessity, appropriateness of care, utilization review and preauthorization). For example, the plan may tell a doctor whether the employee is eligible for coverage or what percentage of the bill will be paid by the plan.

Health care operations include but are not limited to quality assessment and improvement, reviewing competence or qualifications of health care professionals, underwriting, premium rating and other insurance activities relating to creating or renewing insurance contracts. It also includes disease management, case management, conducting or arranging for medical review, legal services and auditing functions including fraud and abuse, compliance programs, business planning and development, business management and general administrative activities. For example, the plan may use information about the employee claims to refer the employee to a disease management program, reimburse business associates for claims paid on behalf of the plan or project future benefit costs or audit the accuracy of its claims processing functions.

- b. The plan may disclose information to business associates as needed to enable them to provide business services on behalf of the plan. Business associate services may include claims administration, legal, actuarial, consulting, accounting and financial services. For example, the plan may disclose information to a consultant that performs actuarial services, cost sharing methodology, budgeting and plan design changes on behalf of the plan.

The plan requires all business associates to sign contracts agreeing:

- (1) Not to use or disclose the PHI other than as permitted by the contract or as required by law;
  - (2) Use appropriate safeguards to prevent the use or disclosure of the information other than as provided by the contract or by the privacy rules;
  - (3) Assist the plan in complying with the regulations by providing participants upon request access to protected health information disclosures.
- c. Where the plan sponsor does not already have access to PHI by virtue of its role in administering the plan, the plan will not disclose PHI to the plan sponsor except when the disclosure is:
- (1) Limited summary health information for insurance placement or settlor functions;
  - (2) Enrollment and disenrollment information;
  - (3) Involved in plan administration when the plan sponsor complies with certain administrative requirements involving an amendment of the plan document and the erection of proper firewalls; and
  - (4) Authorized by the individual to whom it applies.

The plan sponsor has amended the plan document and certified that the plan sponsor will appropriately safeguard and limit the use and disclosure of protected health information to carry out plan administration functions. Plan administration functions do not include employment-related functions or functions in connection with other benefits.

3. Uses and Disclosures that Require the Employee's Written Authorization. Any written authorization for the plan to disclose PHI other than as described herein shall be in plain language and satisfy the following requirements:
- a. It must include a description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion. The authorization may by its terms apply to all health information.
  - b. It must include the name or other identification of the person or class of persons authorized to use or disclose the PHI.
  - c. The authorization must specify the name or other specific identification of the person or class of persons to whom the plan is authorized to make the requested use or disclosure.
  - d. The authorization must describe the purpose of the requested use or disclosure.
  - e. The authorization must include an expiration date or an expiration event. An expiration event must relate to the individual or the purpose of the use or disclosure.



- f. The authorization must be dated and include a signature of the individual or the individual's authorized representative. When an authorized representative signs the authorization, it must include a description of the representative's authority to act for the individual.
- g. The authorization must include a statement describing the individual's right to revoke the authorization and of the mechanism for making such a revocation, as to disclosures that have not taken place before the revocation is received by the plan.
- h. The authorization must state either that the plan may not condition treatment, payment, enrollment or eligibility on the individual's execution of an authorization or, when this is not accurate, describe the consequences of not providing the authorization.
- i. The authorization must include a statement that once information is disclosed pursuant to the authorization, the recipient's use of the information is not subject to the privacy rules.

The plan will provide the individual with a copy of the signed authorization. The plan may but is not required to maintain a standard authorization form that can be completed by covered individuals.

Generally, the plan will obtain the employee's written authorization before any uses and disclosures will be made pertaining to psychotherapy notes obtained from a psychotherapist. The plan may use and disclose such notes when needed by the plan to defend against litigation filed by the employee or covered dependent.

- 4. Uses and Disclosures that Require that the Employee be Given an Opportunity to Agree or Disagree Prior to the Use or Release. Disclosures of employees' PHI to family members, other relatives and to employees' close personal friends are allowed if the information is directly relevant to the family or friend's involvement with the employee's care or payment for that care and the employee has either agreed to the disclosure or has been given an opportunity to object and have not objected.
- 5. Uses and Disclosures for Which Consent, Authorization or Opportunity to Object is Not Required. Use and disclosure of the employee's PHI is allowed without the employee's consent, authorization or request under the following circumstances:
  - a. When required by law.
  - b. When permitted for purposes of public health activities.
  - c. When authorized by law to report information about abuse, neglect or domestic violence to public authorities.
  - d. When requested by a public health oversight agency for oversight activities authorized by law.
  - e. When required for judicial or administrative proceedings.

- f. When required for law enforcement purposes.
- g. When consistent with applicable law and standards of ethical conduct if the plan, in good faith believe the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the disclosure is to a person reasonably able to prevent or lessen the threat, including the target of the threat.
- h. When authorized by law to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death or other duties as authorized by law.
- i. When authorized by and to the extent necessary to comply with worker's compensation or similar programs established by law.

Except as otherwise indicted in this policy, uses and disclosures will be made only with the employee's written authorization subject to the employee's right to revoke such authorizations.

- 6. Verification of Identity of Person Requesting PHI. The plan will verify the identity of any person requesting PHI by requesting the person's name, address, business affiliation, phone number and signature, and/or such other identification as it deems appropriate. The plan will document the responses it receives and, when appropriate, take steps to confirm that the information is accurate.
- 7. Minimum Necessary. The plan and plan sponsor will make every reasonable effort to limit their use and disclosure of PHI to the minimum necessary unless there is a specific exception to the rules. The minimum necessary standard will not apply, for example to disclosures authorized by the individual or to information that is used for treatment.
- 8. De-identified PHI. Information that has been de-identified so that all identifying information is removed may be disclosed.

#### E. Participant Rights and Responsibilities:

- 1. Right to Request Restrictions on PHI Uses and Disclosures. Participants may request that the plan restrict the use or disclosure of the participant's PHI, even for treatment, payment, or health care operations. However, the plan is not required to agree to the restriction.
- 2. Right to Inspect and Copy PHI. A participant generally has a right with some exceptions to inspect and obtain a copy of his or her protected health information. The requested information will be provided within 30 days if the information is maintained on site or within 60 days if the information is maintained offsite. A single 30-day extension is allowed if the plan is unable to comply with the deadline provided the plan notifies the participant within the original 30-day time limit.
- 3. Right to Amend PHI. Participants have a right to request amendment to the participant's PHI. The plan must comply within 60 days unless the plan did not create the PHI or believes the amendment is inaccurate. A single 30-day

extension is allowed if the plan is unable to comply within the deadline. If the request is denied, the plan will provide the participant with a written denial that explains the basis of the denial. The participant may submit a written statement disagreeing with the denial and have a statement included with any future disclosure of the participant's PHI.

4. Right to Receive an Accounting of PHI Disclosures. At the participant's request, the plan will provide the participant with an accounting of disclosures of PHI by the plan during the six years prior to the date of the request. However, the plan is not required to provide an accounting for:
    - a. Disclosures made prior to the April 14, 2003, compliance date.
    - b. Disclosures to carry out treatment, payment or health care operations.
    - c. Disclosures made to the participant.
    - d. Disclosures made under some of the exceptions, such as for law enforcement purposes.
    - e. Disclosures the individual has authorized.
  5. Right to Request Alternative Communications of PHI. Participants may request and the plan must accommodate reasonable requests by individuals to receive communications of protected health information from the plan by alternative means or at alternative locations, if the individual clearly states that the disclosure of all or part of that information could endanger the individual.
- F. Personal Representative: The employee or his or her personal representative will be required to complete a form to request access to this information. A personal representative will be required to produce evidence of his or her authority to act on the employee's behalf before that person will be given access to the employee's PHI or allowed to take any action for the employee. Proof of such authority may take one of the following forms:
1. A power of attorney for health care purposes, notarized by a notary public;
  2. A court order of appointment of the person as the conservator or guardian of the individual;
  3. An individual who is the parent of a minor child.

The plan retains discretion to deny access to PHI to a personal representative to provide protection to those vulnerable people who depend on others to exercise their rights under these rules and who may be subject to abuse or neglect. This also applies to personal representatives of minors.

To request access to PHI or to obtain a form for this purpose, please contact the benefits manager whose office is located in the human resources department. The benefits manager has 30 days to respond to the employee's request and 60 days if someone else holds the information or it is offsite. If the employee's request is denied, the employee or his or her personal representative will be provided with a written denial setting forth the basis of the denial, the complaint procedure and how the employee or

personal representative may file a complaint to the Secretary of Health and Human Services.

G. Responsibilities of Department Heads, Division Managers and Supervisors:

1. To attend training sessions on the important role supervisors and managers have in protecting the confidentiality of medical information. The training will include a discussion of the privacy policy and procedure, what PHI is and the types of PHI, complaint procedures and steps to take when reasonable suspicion exists that an employee has violated the privacy policy.
2. To maintain and post the department/and or division poster notifying employees of the plan's privacy practices in a conspicuous location.
3. To notify the privacy officer of any use or disclosure of PHI that is inconsistent with the privacy policy.
4. To agree not to use or disclose health information for employment related actions.

H. Plan Sponsor Responsibility:

1. Administration.
  - a. The benefits manager will serve as the privacy officer for the city/BLW. The privacy officer shall be responsible for the privacy program and shall regularly review the implementation of this policy and relevant privacy practices to assure that the confidentiality of individually identifiable health information is protected. If the employee has any questions regarding these policies, contact the privacy officer whose office is located in the human resources department.
  - b. The privacy officer is designated as the person to whom complaints should be brought. Contact the human resources department to reach the privacy officer or to obtain additional information about the plan's notice of privacy practices.
  - c. When performing plan administration functions on behalf of the plan, only the following employees or classes of employees will be given access to PHI to accomplish the intended purpose of the use, disclosure or request: benefits manager, payroll manager, IT director, finance director and staff designated by the benefits manager, payroll manager, finance director and IT director.
2. Safeguards. The plan will comply with the security standards of the Act and have implemented technology and security policies to protect the personal data that is under the plan's control from unauthorized access, improper use or disclosure, alteration, and unlawful or accidental destruction. The IT director will serve as the security officer. The security officer and privacy officer have the responsibility of monitoring the program and maintaining appropriate administrative, technical and physical safeguards to protect the privacy of protected health information. The safeguards implemented include, but are not limited to:
  - a. Requiring all employees and business associates who have access to or are associated with the processing of employee data to respect the employee's

confidentiality. If the plan discovers that an employee or business associate has intentionally or unintentionally disclosed personal information about any of the participants, the plan will take immediate action to prevent further occurrences.

- b. Providing training classes on the privacy and security policies and procedures to all employees involved in payment, health care operations and security. Training will also be provided to all new employees with plan administration responsibilities within a reasonable period of time after the employee joins the workforce. If there is a material change in the policies and procedures, retraining will be provided to all employees whose functions are affected by this material change.
  - c. Requiring all employees involved in health care operations and security or having potential access to health care information to sign a confidentiality agreement to respect the confidentiality of PHI.
  - d. Developing appropriate firewalls to prevent individuals from accessing health information without authorization, including creating and using passwords and changing them periodically to limit access to unauthorized individuals and storing paper records in locked file cabinets or storage rooms.
  - e. Maintaining and storing information in a physically secure area and destroying records according to record retention schedules.
3. Complaints.
- a. The employee and covered dependents may file a complaint with the privacy officer or the Secretary of the U. S. Department of Health and Human Services, 200 Independence Avenue S.W., Washington, D.C. 20201, if the employee or covered dependent believes that his or her privacy rights have been violated. A complaint should be filed within a reasonable time after the employee or covered family member discovers that his or her privacy rights have been violated. The employee and covered dependent is encouraged to contact the privacy official initially to resolve complaints before seeking outside assistance.
  - b. Although supervisors and managers of the city/BLW are to take appropriate action when they have reason to suspect that the privacy policy has been violated, employees should not assume that the privacy officer or security officer is aware of any problem.
4. Formal Privacy Rights Complaint Procedure. Any employee who, in good faith, believes his or her privacy rights have been violated should:
- a. Complete the city/BLW PHI complaint form and submit the completed and signed form to the privacy officer with a copy to the human resources director within seven calendar days following the incident that led the employee to believe that his or her privacy rights have been violated. The privacy officer has the authority and responsibility to investigate all complaints brought to his or her attention.

- b. Describe the infraction in detail including persons involved (if known), PHI involved, dates and relevant facts.
  - c. The privacy officer will meet with the employee and document what the employee perceives the complaint to be and what remedy the employee believes should be taken if the complaint is upheld.
  - d. The privacy officer will interview all individuals involved in the complaint and other employees who have access to the PHI in question by virtue of carrying out the employees' job duties on behalf of the plan.
  - e. The privacy officer will review all the facts and provide a detailed report of his or her findings to the human resources director within seven calendar days following receipt of the complaint.
  - f. The human resources director will review the evidence and supporting documentation and communicate a decision in writing to the employee within seven calendar days following receipt of the privacy officer's report.
  - g. If the human resources director's decision does not resolve the privacy issue to the satisfaction of the employee, the employee may file a formal complaint as outlined in Article 4-4-22 of the personnel rules and regulations (Grievance and Appeals Policy) and initiate the complaint at step 3. The employee must submit the complaint with all supporting documentation including a copy of the director of personnel's decision to the city manager within seven calendar days from receipt of the human resources director's decision.
  - h. The city manager will review the documentation and communicate a decision in writing to the employee within 30 days following receipt of the written complaint. Such decision will exhaust all remedies with the plan sponsor.
  - i. At all times during the investigation, reasonable steps will be taken to maintain confidentiality of the case within the limits of federal and state law. Employees will not be retaliated against for filing a complaint about the plan's privacy and security practices.
5. Remedial Action. If the evidence indicates that the employee or covered dependent's privacy has been breached, appropriate disciplinary action will be taken. Depending on the severity of the action and its damaging effects to the complainant, the violator(s) shall be subject to appropriate disciplinary action up to and including termination of employment.
  6. Mitigation. The plan will make reasonable efforts to mitigate any harmful effects the complainant experiences arising from the use or disclosure of protective health information that violates the privacy or security rules or the plan's privacy policy and practices.

(Ord. No. 6491, 3/12/2003, § 1; Ord. No. 7191, 6/11/2008, § 1; Ord. No. 7545, 7/13/2011, § 2)

4-12-2-030 - Payment of cost of health, life and accidental death and dismemberment insurance for employees.

- A. Employees eligible for health, life and accidental death and dismemberment insurance benefits shall include:
  - 1. All full-time employees, defined as those individuals who work a minimum of 30 hours per week, including classified and appointed personnel; and
  - 2. The mayor and city council members.
- B.
  - 1. The City of Marietta shall pay 100 percent of the calculated premium for single coverage, as determined by the City of Marietta, of any offered plans of health, life and accidental death and dismemberment insurance or coverage for all eligible employees as defined above and if hired prior to November 14, 1996.
  - 2. If an eligible employee was hired between November 14, 1996 through October 31, 2006, the City of Marietta shall pay 100 percent of the calculated premium cost for single coverage, as determined by the City of Marietta, of the basic (currently the HMO) plan of health, life and accidental death and dismemberment coverage. If such employee wishes to participate in other plans, such participation will require 100 percent funding of the cost difference by the employee. The cost difference is determined at the sole discretion of the City of Marietta.
  - 3. If an eligible employee is hired on or after November 1, 2006, the City of Marietta shall pay 85 percent of the calculated premium cost for single coverage, as determined by the City of Marietta, of the basic (currently the HMO) plan of health care coverage and 100 percent of the life and accidental death and dismemberment coverage. If such employee wishes to participate in other plans, such participation will require 100 percent funding of the cost difference by the employee. The cost difference is determined at the sole discretion of the City of Marietta.
- C.
  - 1. If an eligible employee, who was hired prior to November 14, 1996, chooses dependent health insurance coverage, the City of Marietta shall pay 80 percent of the calculated premium cost, as determined by the City of Marietta, for dependent coverage of any city-sponsored health insurance plan that the employee selects.
  - 2. If an eligible employee was hired between November 14, 1996 and October 31, 2006, the City of Marietta shall pay 80 percent of the calculated premium cost, as determined by the City of Marietta, for dependent coverage of the basic (currently the HMO) plan of health care coverage. If such employee wishes dependent coverage in a health care plan other than the basic plan, such participation will require 100 percent funding of the cost difference by the employee. The cost difference is determined at the sole discretion of the City of Marietta.
  - 3. If an eligible employee was hired on or after November 1, 2006, the City of Marietta shall pay 80 percent of the calculated premium cost, as determined by the City of Marietta, for dependent coverage of the basic (currently the HMO) plan

of health care coverage plus 85 percent of the calculated premium cost of the single rate for the basic (currently HMO) plan. The employee will pay the remainder of the calculated premium cost, as determined by the City of Marietta, for any health plan selected.

- D. These contribution percentages may change based upon the financial ability of the city. Any change in contribution rate will be made in ordinance form.
- E. The City of Marietta expressly reserves the right to terminate any or all health care coverage, and life insurance, and accidental death and dismemberment insurance for any or all those employees hired on or after November 1, 2006.

(Code 1978, § 4-3003; Motion of 1/11/69; Code 1961, § 2-17.3; Ord. No. 4817, 8/8/90; Ord. No. 5575, 6/12/96; Ord. No. 5924, 11/11/98, §§ 1, 2; Ord. No. 6963, 9/13/2006, §§ 1—3)

#### 4-12-2-040 - Retiree health insurance.

- A. All full-time employees hired between August 14, 1991 and October 31, 2006, may continue their health insurance coverage after retirement from active service. Effective July 1, 2003, the city/BLW will contribute toward the cost of retiree health insurance for such employees on the following basis:
  - 1. 20+ years of employee service. If hired after August 14, 1991, and before November 14, 1996, the city will contribute 100 percent of the calculated premium cost of retiree health care coverage (HMO and PPO plans). If hired between November 14, 1996 and October 31, 2006, the city/BLW will contribute 100 percent of the calculated premium cost of the retiree coverage on the city/BLW's basic health care plan (currently the HMO plan). The city/BLW will not contribute to the calculated premium cost of retiree dependent coverage except that the calculated premium cost to the retiree if he/she elects to cover such dependents will be frozen at time of retirement.
  - 2. 15—19 years of employee service. If hired after August 14, 1991, and before November 14, 1996, the city/BLW will contribute 80 percent of the calculated premium cost of retiree health care coverage (HMO and PPO plans). If hired between November 14, 1996 and October 31, 2006, the city/BLW will contribute 80 percent of the calculated premium cost of the retiree coverage on the city/BLW's basic health care plan (currently the HMO plan). The calculated premium cost to the retiree for retiree coverage will be frozen at time of retirement. The city/BLW will not contribute to the calculated premium cost of retiree dependent coverage and rate increases for dependent coverage will be passed on to the retiree as they occur.
  - 3. 10—14 years of employee service. If hired after August 14, 1991, and before November 14, 1996, the city/BLW will contribute 50 percent of the calculated premium cost of retiree health care coverage (HMO and PPO plans). If hired between November 14, 1996 and October 31, 2006, the city/BLW will contribute 50 percent of the calculated premium cost of the retiree coverage on the



city/BLW's basic health care plan (currently the HMO plan). The calculated premium cost to the retiree for retiree coverage will be frozen for such employees at time of retirement. The city/BLW will not contribute to the calculated premium cost of retiree dependent coverage and rate increases for dependent coverage will be passed on to the retiree as they occur.

4. Less than 10 years of employee service. If hired between August 14, 1991 and October 31, 2006, the employee may continue their health coverage after retirement from continuous, active service, but the retired employee must pay 100 percent of the retiree calculated premium cost and 100 percent of the dependent calculated premium cost if the retiree elects dependent coverage and all rate increases thereon.
  5. The city/BLW regularly monitors the marketplace for legitimate opportunities to reduce the cost of retiree health care coverage without reducing or otherwise negatively impacting such coverage. When such opportunities are identified and implemented, the city/BLW desires to be able to pass some or all of the resulting cost reductions on to the retirees receiving such coverage. To this end, for purposes of Section 4-12-2-40, the term "frozen at retirement" henceforth shall mean that the calculated premium cost to the retiree for retiree coverage shall not exceed the cost paid by the retiree at the time of his/her retirement. As so defined, nothing in Section 4-12-2-40 shall preclude the city/BLW, in its sole discretion, from reducing the calculated premium cost to the retiree below the cost paid by the retiree at the time of his/her retirement when the circumstances described above so permit. Likewise, in the event the calculated premium cost to the retiree is so reduced, the city/BLW reserves the right to increase said premium cost up to, but not in excess of, the cost paid by the retiree at the time of his/her retirement. Nothing in this section is intended or shall be interpreted or applies as granting any retiree a vested or enforceable right to retiree coverage at a premium cost below the cost he/she paid at the time of his/her retirement.
- B. All full-time employees hired on or after November 1, 2006, with a minimum of 10 years full-time continuous, active service may continue their health care coverage after retirement provided such health care coverage is elected and provided by the City of Marietta at time of retirement. Effective November 1, 2006, the city/BLW will contribute toward the cost of this retiree health insurance on the following basis for such employees:
1. 20+ years of continuous employee service for those employees hired on or after November 1, 2006. The city/BLW will contribute 85 percent of the calculated premium cost of retiree single coverage for the City/BLW's basic health care plan (currently the HMO). Such benefit will be limited to cover the city/BLW retiree only. The dollar amount of the retiree contribution will not be frozen and will increase as the calculated premium cost for coverage increases to the city/BLW. The city/BLW will not contribute to the calculated premium cost of retiree dependent coverage and rate increases for dependent coverage will be passed on to the retiree as they occur.

2. 10—19 years of continuous employee service for those employees hired on or after November 1, 2006. The city/BLW will not contribute toward the calculated premium cost of any retiree health plan chosen by the retired employee. The employee may purchase city/BLW group retiree health care coverage and dependent health care coverage, but will be responsible for 100 percent of all incurred costs including future rate increases on any plan selected.
  3. Less than 10 years of continuous employee service for those employees hired on or after November 1, 2006. Employees who retire with less than ten years' service are not eligible to purchase retiree or dependent health care coverage through the City of Marietta/BLW.
- C. No current terminated vested retiree nor any employee who will subsequently receive a terminated vested retirement benefit is eligible to receive health insurance benefits from the city.

(Code 1978, § 4-3003.1; Ord. No. 4928, 8/14/91; Ord. No. 5575, 6/12/96; Ord. No. 6490, 3/12/2003, § 1; Ord. No. 6963, 9/13/2006, §§ 4—6; Ord. No. 7766, 10/8/2014, § 1)

4-12-2-050 - Retirement plan; JMERS coverage terminated.

- A. The City of Marietta does terminate and withdraw from the pension, retirement and disability payment plan known as the Joint Municipal Employees Retirement System.
- B. The pension board of the City of Marietta, Georgia, created by ordinance of the mayor and council shall assume the function of trustees of a pension retirement and disability plan of the City of Marietta, and the pension board of the City of Marietta, Georgia, is authorized to receive all trust funds held on behalf of the City of Marietta from the Joint Municipal Employees Retirement System.
- C. The vested retirement rights and benefits of employees, participants, retirees and beneficiaries eligible under any superseded pension or retirement ordinance shall not be impaired. The pension board is directed to safeguard the funds of any participating employee of the City of Marietta, Georgia, in all pension, retirement and disability benefits previously provided by the Joint Municipal Employees Retirement System.
- D. The mayor is authorized and directed to execute any and all documents and other instruments necessary to terminate the relationship of the City of Marietta with the Joint Municipal Employees Retirement System. The mayor is further authorized and directed to execute any and all documents and instruments which may be necessary to transfer any funds held on behalf of the City of Marietta by the Joint Municipal Employees Retirement System to the pension board of the City of Marietta, where such funds shall be held in trust and reinvested in a successor pension, retirement and disability plan.
- E. The clerk is directed to attest any and all instruments under the seal of the city which the mayor is authorized and directed to execute by this section.

(Code 1978, § 4-3004; Ord. No. 3753, 2/11/81; Ord. No. 5575, 6/12/96)

4-12-2-060 - Same—Adoption of new plan.

- A. The rights and obligations of persons who retired prior to the effective date of the plan established in Exhibit A are fixed and shall be governed by the retirement or pension plan as it existed and was in effect at the time of such retirement and the provisions of any retirement plan in effect prior to the effective date of this section shall be continued in effect for the purpose of payment of pensions to pensioners retired prior to such effective date and their beneficiaries, if any. The retirement benefits of any employee in the active employ of the city on the adoption date of this section, who immediately prior thereto shall have been included in any superseded retirement or pension plan with the city and who maintains his eligibility as a participant under such superseded plan, and who declines to waive his accrued pension benefits under the retirement plan that was in existence and which has been expressly superseded by this section or any other ordinance of the City of Marietta shall retain any entitlement to benefits originally provided under the superseded plan upon his actual termination of employment and/or attainment of his retirement date in accordance with the provisions of the superseded plan. Such benefits shall be based upon the provisions of the superseded plan, which except as herein provided shall be continued in effect for the purpose of the payment of pensions to the employees declining to waive their pension benefits in favor of the benefits specified in the plan established by this section. Benefits afforded under the superseded plan to such employees will be determined in accordance with said superseded plan.
- B. The city clerk is directed to attest any and all instruments under the seal of the city which the mayor is authorized and directed to execute by this section.

(Code 1978, § 4-3005; Ord. No. 3752, 2/11/81; Ord. No. 5575, 6/12/96)

4-12-2-070 - Adoption of consolidated plan.

- A. The Consolidated Retirement Plan for the Employees of the City of Marietta, Georgia, a copy of which is attached hereto as Exhibit "B" and by reference made a part hereof, is hereby adopted for the employees of the City of Marietta, Georgia, on the following terms and conditions:
1. Each employee hired after March 1, 1987 (the effective date of this consolidated retirement plan) shall be eligible to participate in the consolidated retirement plan as provided for therein. Each new employee hired after March 1, 1987 shall have no right whatsoever to participate or become eligible to participate in the retirement plan adopted by Ordinance No. 4022, Section 4-12-2-060 of the City Code.
  2. Each employee that is employed with the City of Marietta, Georgia on March 1, 1987 shall have the right to either remain with the retirement plan adopted by Ordinance No. 4022 or elect to participate in the consolidated retirement plan adopted by this section. Each employee that elects to participate in this consolidated retirement plan shall make said election in writing and shall waive and relinquish any and all rights to participate or receive any benefits from the

retirement plan adopted by Ordinance No. 4022 as it was originally enacted or any benefits adopted by any amendments to Ordinance No. 4022. The period to make this election shall be for a period of ninety (90) days commencing on March 1, 1987 and ending on May 29, 1987. Any employee that has not elected to participate in the consolidated retirement plan by May 29, 1987 shall automatically remain a participant in the retirement plan adopted by Ordinance No. 4022 and shall have no right whatsoever to participate or become eligible to participate in the consolidated retirement plan adopted by this section.

- B. The rights and obligations under the retirement plan approved September 20, 1973, as amended, with respect to persons whose employment with the city was terminated for any reason whatsoever prior to the effective date of this section are fixed and shall be governed by such retirement plan as it existed and was in effect at the time of such termination.

(Code 1978, § 4-3006; Ord. No. 4532, 2/11/87; Ord. No. 5575, 6/12/96)

AN ORDINANCE

ADOPTING a Consolidated Retirement plan for the employees of the City of Marietta, Georgia.

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

Section 1: The Consolidated Retirement Plan for the employees of the City of Marietta, Georgia, a copy of which is attached hereto as Exhibit "A" and by reference made a part hereof, is hereby adopted for the employees of the City of Marietta, Georgia, on the following terms and conditions:

(a) Each employee hired after March 1, 1987 (the effective date of this Consolidated Retirement Plan) shall be eligible to participate in the Consolidated Retirement Plan as provided for therein. Each new employee hired after March 1, 1987 shall have no right whatsoever to participate or become eligible to participate in the Retirement Plan adopted by Ordinance No. 4022.

(b) Each employee that is employed with the City of Marietta, Georgia on March 1, 1987 shall have the right to either remain with the Retirement Plan adopted by Ordinance No. 4022 or elect to participate in the Consolidated Retirement Plan adopted by this Ordinance. Each employee that elects to participate in this Consolidated Retirement Plan shall make said election in writing and shall waive and relinquish any and all rights to participate or receive any benefits from the Retirement Plan adopted by Ordinance No. 4022 as it was originally enacted or any benefits adopted by any amendments to Ordinance No. 4022. The period to make this election shall be for a period of ninety (90) days commencing on March 1, 1987 and ending on May 29, 1987. Any employee that has not elected to participate in the Consolidated Retirement Plan by May 29, 1987 shall automatically remain a participant in the Retirement Plan adopted by Ordinance No. 4022 and shall have no right whatsoever to participate or become eligible to participate in the consolidated Retirement Plan adopted by this Ordinance.

Section 2: All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed, except as provided in Section 3.

COUNCIL BILL NO: 259387

ORDINANCE NO: 4532

Section 3: The rights and obligations under the Retirement Plan approved September 20, 1973, as amended, with respect to persons whose employment with the City was terminated for any reason whatsoever prior to the effective date of this Ordinance are fixed and shall be governed by such Retirement Plan as it existed and was in effect at the time of such termination.

Section 4: The effective date of this Ordinance shall be March 1, 1987.

DATE: February 11, 1987

APPROVED: *Vicki Chestain*  
Mayor and Council

ATTEST: *Rillian C. Harris*  
City Clerk

**Consolidated Retirement Plan  
for Employees of the City  
of Marietta, Georgia**

Historical note—Exhibit B contains the consolidated retirement plan for city employees adopted by Ord. No. 4532, 2/11/87, and subsequently amended. Amendments have been worked into their prescribed places and are indicated by a history note following the affected section or subsection.

ARTICLE I  
Purpose

This ordinance shall constitute the consolidated retirement plan of the City of Marietta, Georgia for the exclusive benefit of the city employees according to the terms and conditions hereinafter contained; and said ordinance shall be subject to amendment from time to time by the city. The provisions of this plan shall be effective March 1, 1987.

**Summary of Consolidated  
Retirement Plan for the  
Employees of the City  
of Marietta, Georgia**

Participation—All current participants will have the option to participate in the new plan or continue to be participants in the existing plan, new participants must meet the eligibility provisions as outlined in the current plan.

Normal retirement date for employees hired prior to March 18, 2008—First day of the month following or coincident with the later of the participant's 65th birthday and the completion of five years of credited service.

Early retirement—Age 55 or more with a minimum of five years credited service.

Disability retirement—Current plan with offset for any benefit received from Workers' Compensation.

Normal retirement date for employees hired on or after March 18, 2008 through December 31, 2008—First day of the month following or coincident with the later of the participant's 65th birthday and the completion of seven years of credited service.

Early retirement—Age 55 or more with a minimum of seven years credited service.

Disability retirement—Current plan with offset for any benefit received from Workers' Compensation.

Normal retirement date for employees hired on or after January 1, 2009—First day of the month following or coincident with the later of the participant's 65th birthday and the completion of ten years of credited service.

Early retirement—Age 55 or more with a minimum of ten years credited service.

Disability retirement—Current plan with offset for any benefit received from Workers' Compensation.

Special election period—All current participants have 90 days from the new plan effective date of March 1, 1987, to elect to be covered under the new plan, failure to elect will mean automatic coverage under the current plan.

Second special election period—All current "4022" plan participants as of November 11, 1998, will be provided a 30-day period in the calendar year 1999 to elect to be covered by the provisions of the Consolidated Retirement Plan; failure to elect will mean automatic coverage under their current plan.

Normal retirement pension—2.1% (for participants who terminate active service prior to the effective date of this change, the benefit percentage will remain two percent).

Final average earnings—Shall mean the average of the annual earnings paid to a participant during any consecutive three-year period preceding his actual date of retirement in which his earnings were highest; or if he had less than three years of total credited service, then his final average earnings shall be his average earnings for his total credited service for employees hired prior to January 1, 2009.

Effective January 1, 2009, final average earnings shall mean the average of the annual earnings paid to a participant during any consecutive five-year period preceding his actual date of retirement in which his earnings were highest; or if he had less than five years of total credited service, then his final average earnings shall be his average earnings for his total credited service for employees hired prior to January 1, 2009.

80-point pension—Participants hired prior to March 18, 2008, will be eligible to receive an unreduced retirement when a participant's age plus credited service total 80.

Participants hired on or after March 18, 2008 will only be eligible to receive an unreduced retirement pension under the 80-point pension provision once they reach age 55.

Early retirement pension for employees hired prior to January 1, 2009—The accrued normal retirement pension is reduced by .25 of one percent for each month the participant's age at early retirement is less than 65.

Early retirement pension for employees hired on or after January 1, 2009—The accrued normal retirement pension is reduced by .417 of one percent for each month the participant's age at early retirement is less than 65.

Normal benefit form—No change from the current plan—Lifetime benefit without survivor continuation.

Benefit form options—Normal benefit, Social Security Option, Joint & Survivor Option

Break-in-service pension eligibility—All future participants that incur a break-in-service will only be entitled to a benefit at their normal retirement date.

This plan is intended to be a qualified defined benefit plan under Internal Revenue Code Section 401(a) by meeting the requirements of Internal Revenue Code Section 414(d).



(Ord. No. 5921, 11/11/98, §§ 1, 3; Ord. No. 6339, 12/12/2001, § 7; Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1; Ord. No. 7733, 6/11/2014, § 1)

## ARTICLE II Definitions

Whenever the terms set forth below are used in this plan, they shall have the meanings indicated below, unless a different meaning is plainly required by the context. Masculine pronouns, when used throughout the plan, shall refer to both men and women, and the singular shall include the plural, unless the context indicates otherwise. Headings of sections are used for convenience of reference, and in the case of conflict, the text of the plan, rather than such headings, shall control.

### Section 1. Actuarial present value.

Unless otherwise specified in the plan, the actuarial present value of a benefit shall be determined using the interest rate prescribed by the pension benefit guaranty corporation for valuing annuities under the single-employer plans that terminate without a notice of sufficiency during the first month of the calendar year in which the date as of which the benefit is valued, occurs. The mortality assumption shall be based on the 1971 Group Annuity Mortality Table, weighted as follows:

- (a) For a participant's benefit, 80% male and 20% female;
- (b) For the benefit of a participant's spouse or former spouse, 20% male and 80% female; and
- (c) In any other case, 50% male and 50% female.

Actuarial equivalence means two benefits of equal actuarial present value based on the factors and assumptions specified in the provisions in which that phrase is used or, if not otherwise specified, based on the assumptions described in this section.

Notwithstanding the first paragraph hereof, effective January 1, 2002, unless otherwise specified in the plan, the actuarial present value of a benefit shall be determined using the interest rate or rates published by the Pension Benefit Guaranty Corporation for lump sum calculations for private-sector calculations (as described in PBGC Reg. Sec. 4022.7), as in effect as of the first day of the plan year in which a distribution occurs.

(Ord. No. 6340, 12/12/2001, § 7)

### Section 2. Actuary.

Actuary shall mean an actuary who is enrolled under subtitle C of Title III of the Federal Employee Retirement Income Security Act of 1974.

### Section 3. Beneficiary.

Beneficiary shall mean the person(s) designated by the participant to receive any death benefits. For purposes of this definition, "person" shall include only a natural person(s) and shall not include a corporation, estate or other such entity.

Any beneficiary designation shall be made in a writing submitted to the pension board or its designee, in a form prescribed by the pension board. The submission of a new beneficiary designation shall automatically revoke all prior beneficiary designations. If a participant does not have an effective beneficiary designation on file, his beneficiary shall be his spouse, if he is married as of the date of his death, or his estate, if he is not married on the date of his death.

(Ord. No. 6340, 12/12/2001, § 8)

### Section 4. City.

City shall mean the City of Marietta, Georgia.

### Section 5. Credited service.

Credited service shall mean the year of credit for full-time work except as otherwise specified herein, with an employer which is used to determine the amount of benefits payable under this plan, including past credited service, for work prior to November 1, 1973 and future credited service, for work after November 1, 1973.

(Ord. No. 6284, 9/12/2001, § 3)

### Section 6. Disability.

A participant will be considered disabled if unable, solely because of disease or accidental bodily injury, to work at his or her own occupation or at any reasonable occupation for which the participant may be engaged, or may reasonably become engaged, fitted by education, training or experience provided, however, that such disability shall not have been (a) self-inflicted; (b) incurred in military service; (c) incurred in the commission of a felonious enterprise; or (d) the result of the use of narcotics and/or drugs and/or alcohol.

### Section 7. Early retirement age.

Early retirement age for employees hired prior to March 18, 2008 shall mean the date a participant attains age 55 and has completed at least five years of credited service.

Early retirement age for employees hired on or after March 18, 2008 through December 31, 2008 shall mean the date a participant attains age 55 and has completed at least seven years of credited service.

Early retirement age for employees hired on or after January 1, 2009 shall mean the date a participant attains age 55 and has completed at least ten years of credited service.

(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)

#### Section 8. Earnings.

Earnings shall mean the total compensation paid to an employee of the city for service rendered, but shall exclude compensation for overtime and reimbursed expenses. Earnings shall include holiday and vacation pay and payments made by the city on behalf of an employee during periods of authorized absence for illness and other reasons.

Except with respect to qualified participants (as defined below), for plan years beginning on and after January 1, 1996, the earnings taken into account during a plan year in calculating a participant's benefit under this plan shall not exceed the limitations of Internal Revenue Code Section 401(a)(17) in effect as of the beginning of the plan year (e.g., \$150,000.00 in 1996). For purposes of applying the \$150,000.00 limit, as adjusted, if any employee is the spouse or a lineal descendant of an employee (provided the lineal descendant is younger than age 19 by the end of the plan year) who is one of the ten (10) "highly compensated employees" (within the meaning of Internal Revenue Code Section 414(q)) paid the greatest amount of earnings (determined without regard to the \$150,000.00 limit, as adjusted) during the plan year, the employee shall not be treated as a separate employee. The preceding sentence shall not, however, apply to any plan year which begins on or after January 1, 1997.

The \$150,000.00 limit described in the previous paragraph shall not apply to any qualified participant. A qualified participant is any participant who first became a participant in the plan before January 1, 1996.

Effective for plan years beginning on and after January 1, 2002, the \$150,000.00 amount described in this paragraph, as adjusted by the commissioner, shall be increased to \$200,000.00, as adjusted by the commissioner. For future plan years, any change to the limitation imposed by Code Section 401(a)(17)(B) shall be deemed to be automatically incorporated into this plan without the necessity of an amendment to that effect.

Effective January 1, 2001, earnings shall be increased by the amount by which the participant's earnings is reduced by salary reduction or similar arrangement under Section 132(f)(4) of the Code (i.e., a qualified transportation fringe benefit program). This increase also shall apply to the definition of "compensation" in Section 8.05.

(Ord. No. 6340, 12/12/2001, § 9; Ord. No. 6483, 2/12/2003, § 2(1))

#### Section 9. Effective date.

Effective date shall mean March 1, 1987 for the purpose of this consolidated plan.

#### Section 10. Full-time employee.

Full-time employee shall mean a person who is regularly employed for at least thirty (30) hours per week in the services of the city and Marietta Board of Lights and Water, or any person who is an elected or appointed member of the governing authority.

The term full-time employee shall not include:

- (a) Employees, other than elected and appointed members of the governing authority, who regularly work less than thirty (30) hours per week in the service of the city;
- (b) Any person employed by the city to perform scientific, technical, engineering, accounting, legal, or similar expert services in a consulting capacity;
- (c) Any person employed for less than five (5) months in any year or on a retainer contract or fee basis; or
- (d) Prosecuting attorney and chief judge—Municipal court for the City.

(Ord. No. 4905, 6/12/91, § 1)

#### Section 11. Employer.

Employer shall mean the City of Marietta, Georgia.

#### Section 12. Final average earnings.

Final average earnings for participants hired prior to January 1, 2009 shall mean the average monthly earnings paid to a participant during the 36 full months preceding his actual date of retirement in which his earnings were highest.

Final average earnings for participants hired on or after January 1, 2009 shall mean the average monthly earnings paid to a participant during the 60 full months preceding his actual date of retirement in which his earnings were highest.

Final average earnings for an elected or appointed member of the governing authority shall be defined as the average annual salary divided by 12 of all plan participants covered by the plan on the July 1 preceding the plan year of determination. Under no circumstances may this amount be more than five percent greater than the average salary used from the prior year. This amount will also be adjusted as necessary in order to preserve an individual participant's accrued benefit.

(Ord. No. 5907, 10/14/98, § 2; Ord. No. 7234, 9/10/2008, § 1)

#### Section 13. Governing authority.

Governing authority shall mean the mayor and council of the City of Marietta, Georgia.

#### Section 14. Investment manager.

Investment manager shall mean a person or company who:

- (a) has the power to manage, acquire, or dispose of any asset of the plan;
- (b) who is
  - (1) registered as an investment adviser under the Investment Advisers Act of 1940;

- (2) is a bank, as defined in that act; or
  - (3) is an insurance company qualified to perform services described in subparagraph (a) under the laws of more than one state; and
- (c) has acknowledged in writing that it is a fiduciary with respect to the plan.

Section 15. Normal retirement age.

Normal retirement age for employees hired prior to March 18, 2008 shall mean the date a participant attains age 65 and has completed at least five years of credited service.

Normal retirement age for employees hired on or after March 18, 2008 through December 31, 2008 shall mean the date a participant attains age 65 and has completed at least seven years of credited service.

Normal retirement age for employees hired on or after January 1, 2009 shall mean the date a participant attains age 65 and has completed at least ten years of credited service.

(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)

Section 16. Normal retirement date.

Normal retirement date shall mean the first day of the month coinciding with or next following the participant's normal retirement age.

Section 17. OASDI.

OASDI shall mean the Old-Age and Survivors Disability Insurance program under the Social Security Act or the successor act as further amended.

Section 18. Participant.

Participant shall mean an employee who meets the requirements for participation in the plan as set forth in section 1 of article III.

Section 19. Plan.

Plan shall mean the Consolidated Retirement Plan for Employees of the City of Marietta, Georgia.

Section 20. Plan year.

Plan year shall mean the period of twelve consecutive months commencing on July 1 and ending on June 30.

Section 21. Pension board.

Pension board shall mean the board appointed or elected by the city on this ordinance to represent the city in the administration of the plan hereby established.

Section 22. Retired participant.

Retired participant shall mean any participant who has qualified for retirement under any provision of the plan and is entitled to receive any pension provided under the plan.

Section 23. Retirement.

Retirement shall mean withdrawal from service from the city and the participant is eligible for benefits under this plan.

Section 24. Service.

Service shall mean regular service rendered as an employee of the city. Service includes absence from active employment with the city under conditions which are not treated by it as a termination of employment. However, service shall not include accrued but unused annual leave of the employee. Service also means any tenure of elective office held by an elected or appointed member of the governing authority provided that such tenure of elective office does not include any calendar period during which any elected or appointed member of the governing authority is also in the regular service of the city as a full-time employee.

Section 25. Terminated participant.

Terminated participant shall mean employees withdrawn from service, who are entitled to a vested benefit under the provisions of this plan.

Section 26. Trust fund.

Trust fund shall mean the total amount invested or uninvested, held at any time in trust for the city under any trust agreement, pension or investment contract.

Section 27. Part-time employee.

Part-time employee shall mean a person who is regularly employed for less than thirty (30) hours per week in the services of the city and Marietta Board of Lights and Water.

(Ord. No. 4905, 6/12/91, § 2)

Section 28. Seasonal employee.

Seasonal employee shall mean a person who is regularly employed for at least 30 hours per week for less than five months in any year.

(Ord. No. 4905, 6/12/91, § 2)

Section 29. Temporary employee.

Temporary employee shall mean a person who performs services under a contractual agreement for a duration not exceeding two years.

(Ord. No. 4905, 6/12/91, § 2)

### Section 30. Spouse.

Spouse shall mean the person to whom the participant is legally married under the laws of the State of Georgia, except that, effective as of June 26, 2013, for purposes of Article V section 7 (relating to minimum distribution rules under Code Section 401(a)(9)) and Article XII section 8 (relating to rollovers) only, the term "spouse" shall include the person to whom the participant is legally married under the laws of the jurisdiction in which the marriage was performed (including same-sex individuals). Spouse shall not include domestic partners or other similar relationships that are not denominated as marriage.

(Ord. No. 7752, 9/10/2014, § 1)

## ARTICLE III Participation

### Section 1. Eligibility for participation.

Each employee who was employed by the city on the March 1, 1987, effective date of this plan, and who elected to participate in the plan became a participant in this plan on the effective date, provided he was then in active service with the city or on an authorized leave of absence.

Each elected or appointed member of the governing authority who held an elected office of the city on the effective date of this plan became a participant on that date.

Each part-time, temporary or seasonal employee who was employed by the city on the March 1, 1987, effective date of this plan or who was hired before January 1, 2000, and who elected to participate in the plan became a participant in this plan on the later of the effective date, provided he was then in active service with the city or on an authorized leave of absence, or the first day of the month coinciding with or next following his date of employment.

Each Full-time employee (as defined in Article II, Section 10) who commences Service with the city subsequent to the effective date of this plan shall become a participant on the first day of the month coinciding with or next following the date he commenced Service; provided, however, that in accordance with Marietta Municipal Code Section 4-12-2-070, this provision is not intended and shall not be applied as permitting a participant of any retirement plan to participate in any other retirement plan.

Participation in the plan shall not give any employee the right to be retained in the employ of the city nor, upon dismissal, to have any right or interest in the fund other than is herein provided.

A full-time contract employee may elect, in writing, not to participate in the plan. However, once such an election is made, he may not change the election at a later time to again participate in the plan.

Any eligible employee who terminates employment as a public safety participant under the 4022 plan, and who moves to a general employee position on or after June 1, 1999, shall participate in the consolidated retirement plan adopted by Ordinance No. 4532 on the first day of the pay period immediately coinciding with the employee's change to such position. The employee shall have no right whatsoever to participate or become eligible to participate in general employee portion of the retirement plan adopted by Ordinance No. 4022 as such portion has been terminated by the city. The employee also has no right to continue participation in the public safety portion of the retirement plan adopted by Ordinance No. 4022 after the employee moves to a general employee position. However, the employee shall be entitled to a vested right in his accrued retirement benefits, and shall have the option to receive benefits upon retirement as a public safety participant under the 4022 plan from the time the employee became eligible to the date the employee changes to a general employee position and benefits under the consolidated retirement plan from the date the employee changes to a general employee position to the date of retirement, or the employee may waive and relinquish any and all rights to receipt of any benefits under the 4022 plan and have all benefits calculated under the consolidated retirement plan at the date of retirement.

Notwithstanding anything contained herein to the contrary, the following individuals shall not be eligible to participate in the plan:

- (i) A part-time, temporary or seasonal employee hired on or after January 1, 2000;
- (ii) A leased employee within the meaning of Internal Revenue Code Section 414(n)(2);
- (iii) An employee classified by the city or the Marietta Board of Lights and Water as a leased employee, regardless of whether such employee is a leased employee within the meaning of Internal Revenue Code Section 414(n)(2); or
- (iv) A person who is initially classified by the city or the Marietta Board of Lights and Water as an independent contractor or leased employee for purposes of the withholding and payment of employment taxes, even if such person is later determined, whether by the city, the Marietta Board of Lights and Water, or otherwise, to be a common law employee of the city or of the Marietta Board of Lights and Water.

(Ord. No. 4905, 6/12/91, § 5; Ord. No. 6064, 11/10/1999, § 3; Ord. No. 6340, 12/12/2001, § 10; Ord. No. 8049, 10/10/2018, § 1)

## Section 2. Termination of participation.

Participation shall be deemed to be terminated as of the date of quit, resignation or discharge, by lapse of recall rights after layoff, by ceasing to be an eligible employee as defined herein or by failure to return to service as an eligible employee at the end of an approved leave of absence.



For elected or appointed members of the governing authority, participation shall be deemed to be terminated on the date such person vacates his elected office.

A participant shall become a former participant when his employment terminates otherwise than by retirement, provided he has earned a vested percentage in his accrued benefit.

### Section 3. Reinstatement of participation.

An employee who has lost his status as a participant in accordance with section 3(2) of this article shall again become a participant as of the first day of the month following the date he is reemployed.

## ARTICLE IV Contributions

### Section 1. City contributions.

The city shall make the necessary contributions to fund this retirement plan. The amount of these contributions shall be based upon the mortality tables adopted by the actuary, the benefits provided in the plan, and the number of participants and their respective ages, earnings and lengths of creditable service and such other factors as the actuary shall deem appropriate to properly fund this plan. All contributions by the city shall be used only for the benefit of the participants and eligible beneficiaries. City contributions shall be collected and remitted to the investment manager as required.

### Section 2. Prospective benefit change.

The employer may at its discretion elect to modify the prospective plan benefits by amendment in the event that the required contribution as determined under section 1 of this article is 14.39% or more of covered payroll or 11.78% or less of covered payroll for any single year. The prospective plan benefits may be modified in the event the required contribution level is outside the range as outlined above during a single year for any reason, including but not limited to the addition or reinstatement of any statutory or court mandated benefits, whether related to this plan or the retirement plan adopted by Ordinance No. 4022 as amended, any financial or other experience, or any other unforeseen events. In addition, the prospective plan benefits may be modified in the event that OASDI benefits are reinstated for all employees. Covered payroll shall mean the total annual earnings of all participants in the plan as reported by the city to the actuary for the most recent actuarial valuation of the plan.

### Section 3. Participant contributions.

- (1) As of January 1, 2009, each participant shall make mandatory contributions to the plan. The amount of such contributions shall be four percent of each participant's gross wages other than overtime and expense reimbursements. Such amounts shall be withheld from each payroll check for periods beginning on and after the date that the eligible employee becomes a participant in the plan. The city shall hold such amounts, for recordkeeping purposes, in a participant contribution account for each contributing participant. Such account shall be a notional account only. The participant may not direct the investment of such account, and such amounts shall be

held together with the remaining assets of the plan. The participant shall not, on account of the existence of such an account, have any greater or higher-priority claim on the assets of the plan than any other participant.

Participant contributions described in this article IV, section 3, shall be made pursuant to Section 414(h) of the Code and shall be treated as employer contributions in determining their federal income tax treatment under the Internal Revenue Code. Such contributions shall be included in the participant's earnings for purposes of determining their benefits under this plan.

- (2) Refund of participant contributions. If a participant has a termination of employment and is not eligible for any retirement benefit under this plan, or if the participant dies before his benefits have commenced and no death benefit is payable to a spouse or child of the participant, the participant (or the beneficiary, if the participant dies) shall receive the balance of his participant contribution account. A participant who is vested and eligible to receive his benefit under this plan is not eligible for a refund of participant contributions pursuant to this paragraph (2).

If the participant, a contingent annuitant, a spouse or child is receiving benefits under the plan and dies before payments from the plan to the participant, contingent annuitant, spouse or child have been made in an amount equal to or greater than the total of the participant contribution account, and no additional benefits are due from this plan, then the beneficiary shall receive the amount by which the participant contribution account (as of the date benefits commenced) exceeds such amount. If the beneficiary receives such a refund, no additional death benefits will be paid from the plan.

A refund of a participant contribution account shall not include interest.

"Beneficiary" for purposes of this section 3 shall mean the individual, trust or other entity designated by the participant in accordance with procedures established by the pension board to receive a distribution of the participant's participant contribution account under the circumstances described above.

For the purposes of this section, revocation of prior beneficiary designations will occur when a participant files a new valid designation with the plan administrator.

Nothing in this definition of beneficiary shall be deemed to provide death benefits that are not otherwise provided in this plan.

- \* If the participant does not designate a beneficiary, or the beneficiary so designated does not survive the participant, the participant's beneficiary for purposes of receiving any refund of participant contributions shall be his spouse, if the participant is survived by a spouse, or the participant's estate if he is not survived by a spouse.
- \* Any refund of the participant contribution account shall be made in a lump sum after the later of (i) the participant's termination of employment and (ii) the date that the participant requests a distribution and completes any forms required by the pension board as a condition of his receiving a refund.

(Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7836, 9/9/2015, § 1)

ARTICLE V  
Eligibility for Benefits and Amounts

Section 1. Eligibility for a normal retirement benefit.

A participant shall be eligible to retire on a normal retirement benefit upon the later of:

- A. Attainment of age 65, and
- B. Completion of five years of credited service for employees hired prior to March 18, 2008, completion of seven years of service for those hired on or after March 18, 2008 through December 31, 2008, or completion of ten years of service for employees hired January 1, 2009.
- C. Elected or appointed members of the governing authority shall be eligible to retire on a normal retirement benefit upon attainment of age 65, and completion of five years of credited service for those holding office prior to January 1, 2009.
- D. Elected or appointed members of the governing authority shall be eligible to retire on a normal retirement benefit upon attainment of age 65, and completion of ten years of credited service for those holding office on or after January 1, 2009. However, commencement of benefits shall be delayed until the first day of the month coinciding with or next following the date he vacates such elective office.

(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1; Ord. No. 7730, 5/14/2014, § 1)

Section 2. Amount of normal retirement benefit.

The monthly amount of the normal retirement benefit shall be equal to 2.1% (for participants who terminate active service prior to the effective date of this change, the benefit percentage will remain two percent) or the percentage as revised in accordance with article IV, section 2, of the participant's final average earnings multiplied by the years of credited service which he has completed plus credit granted pursuant to article VI, section 7 (up to a maximum of 35 years of credited service).

Notwithstanding any provision contained herein in this Article to the contrary, the maximum retirement benefits for all elected officials sworn into office on or after January 1, 2018, shall be seventy-three and a half percent (73.5%) of the benchmark amount of the total compensation of the Mayor, including the Mayor's combined compensation as both Mayor and as ex officio Chairman of BLW, as of the elected official's final term of service.

(Ord. No. 5907, 10/14/98, § 1; Ord. No. 6339, 12/12/2001, § 6; Ord. No. 7890, 6/8/2016, § 1; Ord. No. 7925, 10/13/2016, § 1)

### Section 3. Eligibility for an early retirement benefit.

A participant hired prior to March 18, 2008, shall be eligible to retire on the first day of any month following his attainment of age 55, provided he has completed at least five years of credited services.

A participant hired on or after March 18, 2008 through December 31, 2008, shall be eligible to retire on the first day of any month following his attainment of age 55, provided he has completed at least seven years of credited service.

A participant hired on or after January 1, 2009, shall be eligible to retire on the first day of any month following his attainment of age 55, provided he has completed at least ten years of credited service.

(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)

### Section 4. Amount of early retirement benefit.

The monthly amount of the early retirement benefit for participants hired prior to January 1, 2009, shall be equal to the benefit determined in section 2 of this article, reduced by .250 of one percent for each month by which the participant is younger than 65 on the effective date of his early retirement.

The monthly amount of the early retirement benefit for participants hired on or after January 1, 2009, shall be equal to the benefit determined in section 2 of this article, reduced by .417 of one percent for each month by which the participant is younger than 65 on the effective date of his early retirement.

(Ord. No. 7234, 9/10/2008, § 1)

### Section 5. Eligibility for an unreduced early retirement benefit.

A participant hired prior to March 18, 2008, shall be eligible to retire on an unreduced early retirement benefit, provided the sum of his age plus credited service equals at least eighty (80).

A participant hired on or after March 18, 2008, shall be eligible to retire under the 80-point pension provision on an unreduced early retirement benefit, provided they have reached age fifty-five (55).

(Ord. No. 5921, 11/11/98, § 2; Ord. No. 7142, 3/17/2008, § 1)

### Section 6. Amount of unreduced early retirement benefit.

The monthly amount of the unreduced early retirement benefit shall be equal to the benefit determined in accordance with section 2 of this article.

## Section 7. Eligibility for a late retirement benefit.

A participant whose employment with the employer continues after his normal retirement date will receive a late retirement benefit commencing on the first day of the month following the month in which his employment ceases.

Notwithstanding anything contained herein to the contrary, in no event may distribution of a participant's retirement benefit commence later than the first day of April in the calendar year following the later of (a) the calendar year in which the participant attains age 70½, or (b) the calendar year in which the participant retires. If, as of January 1, 2002, a participant is an employee in active employment with the employer and is receiving distributions on account of his attaining age 70½, the participant shall continue to receive plan distributions. A participant or beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) shall not receive those distributions for 2009 unless the participant or beneficiary chooses to receive such distributions. Notwithstanding any other provision of this chapter to the contrary, any required minimum distribution made in 2009 shall be treated as eligible rollover distribution.

The following rules shall apply for purposes of determining the required minimum distribution to participants and designated beneficiaries (as defined below) for calendar years beginning on and after January 1, 2003, even if, in the case of a designated beneficiary, the participant died before 2003.

- (a) Required distribution. Nothing in this section shall be deemed to extend any death benefit or permit any beneficiary designation or payment form not otherwise provided or permitted under this plan. This section 7 shall, instead, be deemed to limit and modify any provision of this plan to the extent that such limitation or modification is necessary to ensure that the plan complies with this section 7, Code Section 401(a)(9) and the regulations thereunder.

The entire interest of each participant in this plan will be distributed, beginning not later than the required beginning date described above, over the life of such participant or over the lives of such participant and his or her designated beneficiary, or over a period not extending beyond the life expectancy of such participant or the life expectancy of such participant and his or her designated beneficiary.

- (b) Death of participant after distribution has begun. If distribution of a participant's interest has begun in accordance with the paragraph (a) above (i.e., distributions on or after the required beginning date), and if the participant dies before his or her entire interest has been distributed to him, then the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution being used under paragraph (a) as of the date of the participant's death.
- (c) Death of participant before distribution has begun. If a participant dies before distribution of the participant's interest has begun in accordance with paragraph (a) above (i.e., no distributions have been made on or after the required beginning

date), the entire interest of the participant must be paid over whichever of the following periods is applicable:

- (i) If one or more designated beneficiary is not the participant's spouse, the distribution period shall be the designated beneficiary's remaining life expectancy.
- (ii) If the sole designated beneficiary is the participant's spouse, the distribution period shall be the spouse's remaining life expectancy.
- (iii) If there is no designated beneficiary, the entire benefit (if any is payable) shall be distributed by the end of the calendar year that includes the fifth anniversary of the participant's death.

Distributions under paragraph (c)(i)—(iii) above shall commence as follows:

- (x) Distributions under (c)(i) (i.e., distribution to a nonspouse designated beneficiary) shall begin on or before the end of the calendar year that begins immediately after the calendar year in which the participant died.
  - (y) Distributions under (c)(ii) (i.e., distribution to a spousal designated beneficiary) shall begin on or before the later of the end of the calendar year immediately following the calendar year in which the participant died and the end of the calendar year in which the participant would have attained age 70½.
- (d) Form of distribution. Any distribution payable under this section 7 may be paid in any optional form of benefit that is available under the plan, provided that all consent and eligibility requirements under the plan are satisfied. Any annuity form of distribution payable under this plan, however, must satisfy the following requirements:
- (i) The distribution must be in the form of a periodic annuity for the participant's life, or for the joint life expectancy of the participant and designated beneficiary or over a period certain that does not exceed the maximum length of the period certain determined under the regulations.
  - (ii) The interval between payments must be uniform over the entire distribution period and must not exceed one year.
  - (iii) If payments have commenced over a period certain, the period certain may not be changed.
  - (iv) Distributions in the form of a life annuity must satisfy the minimum distribution incidental benefit (MDIB) requirement of Code Section 401(a)(9)(G) and Treasury Regulation 1.401(a)(9)-6T, A-2, or any successor regulation thereto.
  - (v) All payments, either in the form of a life annuity or over a period certain must either be nonincreasing or increase only in accordance with the rules set forth in Treasury Regulation 1.401(a)(9)-6T, A-1.

For purposes of this section 7, references to a life annuity shall include an annuity for the joint life expectancy of the participant and the designated beneficiary.

- (e) Incidental death benefit requirement. Any optional form of benefit elected by the participant or designated beneficiary must comply with the minimum distribution incidental benefit requirement of Code Section 401(a)(9)(G). This rule insures that the retirement benefits payable under the plan are more than incidental.
- (f) Pension board's discretion. The pension board for the city shall have the sole authority and full discretion to apply the provisions of this section 7 to any benefit option elected by the participant or designated beneficiary. The plan administrator may, for example, modify a participant's selection of an optional form of benefit to satisfy the incidental death benefit requirement by requiring, at its discretion, that the participant select another form of benefit or another contingent annuitant, or by modifying the form of benefit so that it complies with the applicable rules.
- (g) Definitions. The following definitions shall apply to this section 7, notwithstanding anything contained herein to the contrary.
  - (i) Designated beneficiary. The term "designated beneficiary" shall be determined in accordance with the definition of "beneficiary" in the regulations, notwithstanding that this definition may be different from that set forth elsewhere in this plan, provided that any individual who is a designated beneficiary must also be a beneficiary (but not necessarily all of the beneficiaries) as defined in this plan. Each beneficiary, as defined in the plan, however, need not be a designated beneficiary in the event, for example, that a beneficiary disclaims his interest under this plan.
  - (ii) Spouse. "Spouse" shall mean "Spouse" as defined in the Regulations. Nothing in this section 7 shall be deemed, however, to extend any death benefit or permit any beneficiary designation or payment form not otherwise provided or permitted under this plan.
  - (iii) Regulations. "Regulations" shall refer to the Treasury Regulations (including temporary regulations) promulgated under Code Section 401(a)(9), as set forth in Treasury Regulations 1.401(a)(9)-1 through 1.401(a)(9)-6T, and any additional guidance issued by the IRS in the form of revenue rulings, notices and other guidance published in the Internal Revenue Bulletin or any successor thereto.

Notwithstanding any other provision of the plan to the contrary, distributions from the plan will be made in accordance with a good faith interpretation of Code Subsection 401(a)(9) and the regulations thereunder as applicable to governmental plans with the meaning of Code Section 414(d) and shall be implemented in accordance with the grandfathering provisions of such regulations applicable to annuity option distributions in effect on April 17, 2001.

(Ord. No. 6340, 12/12/2001, § 11; Ord. No. 6483, 2/12/2003, § 3(2); Ord. No. 7514, 1/12/2011, § 1; Ord. No. 7733, 6/11/2014, § 2)

#### Section 8. Amount of late retirement benefit.

The monthly amount of the late retirement benefit shall be equal to the benefit determined in section 2 of this article.

#### Section 9. Eligibility for a vested retirement benefit.

A terminated participant shall be eligible to retire and receive a vested retirement benefit if his employment with the employer terminates voluntarily or involuntarily for any reason other than death, normal, early, or disability retirement, provided he has completed at least five years of credited service if hired prior to March 18, 2008, at least seven years of credited service if hired on or after March 18, 2008 through December 31, 2008, or at least ten years of service if hired after January 1, 2009.

A participant whose employment is terminated voluntarily or involuntarily because he is disabled shall be entitled to a vested benefit provided he qualifies for a disability retirement, (in accordance with section 11 of this article), within one year of termination of employment. Should a participant receiving workers' compensation benefits become qualified to receive disability retirement benefits on or after January 1, 2009, 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.

Benefits shall commence on the first day of the month in which the terminated participant attains his normal retirement date. If an employee is a participant in the plan on March 1, 1987, and later terminates his employment with the employer, he shall be eligible to retire and commence receiving benefits on the first day of any month following his attainment of age 55, provided he has completed at least five years of credited service.

If an employee becomes a participant in the plan on or after March 18, 2008 through December 31, 2008, and later terminates his employment with the employer, he shall be eligible to retire and commence receiving benefits on the first day of any month following the attainment of age 55, provided he has completed seven years of credited service.

If an employee becomes a participant in the plan on or after January 1, 2009, and later terminates his employment with the employer, he shall be eligible to retire and commence receiving benefits on the first day of any month following the attainment of age 55, provided he has completed ten years of credited service.

In the event a participant is involuntarily terminated for reasons other than willful misconduct, he shall be eligible to retire at any time after attaining his early retirement date, provided he has at least 20 years of credited service on the date he terminates his employment.

(Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)



#### Section 10. Amount of vested retirement benefit.

The monthly amount of the vested retirement benefit shall be equal to benefit determined in section 2 of this article, based on the benefit rate in effect at the time the former participant terminated his employment.

#### Section 11. Eligibility for a disability retirement benefit.

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 12 months of continuous service. Continuous service shall be defined in the same manner as "Service" under section 24 of article II.

(Ord. No. 7669, 7/10/2013, § 1)

#### Section 12. Amount of disability retirement benefit.

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 50 percent of the average of the participant's most recent 12 months of earnings. If the employee has completed an initial 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 12 months of monthly earnings, the disability retirement benefit shall be no less than 50 percent 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.

(Ord. No. 6465, 11/13/2002, § 2; Ord. No. 7234, 9/10/2008, § 1; Ord. No. 7669, 7/10/2013, § 2)

#### Section 13. Evidence of disability.

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 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 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 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 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 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 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.

(Ord. No. 7669, 7/10/2013, § 3)

#### Section 14. Termination of disability retirement benefit.

A period of total disability ceases on the earliest of the following dates:

- A. The date the participant ceases to be totally disabled;
- B. The date the participant commences work at a reasonable occupation for which the employee may be engaged or may reasonably become engaged, fitted by education, training or experience;
- C. The date the participant fails to furnish proof of the continuance of total disability or refuses to be examined when required;
- D. The date the participant ceases to be under the care of a physician, or
- E. The date of the participant's death.

#### Section 15. Successive period of disability.

Notwithstanding the fact that a participant may initially be determined disabled, and subsequently have disability retirement benefits terminated because of the occurrence of

any event set forth in section 14 of this article, said participant may continue to be eligible for a successive period of disability benefits, if the participant is later determined disabled again as provided under section 13 of this article. The purpose of the successive disabilities rule is to encourage the participant to return to full-time work by assuring if the disability occurs again due to the same or related cause soon after returning to work, the participant will not have to complete a new qualifying period in order to qualify for benefits.

#### Section 16. Definition of physician.

The term "physician" means a legally qualified physician, except that with respect to a period of total disability, or any portion thereof, during which total disability is caused by any condition other than a medically determinable physical impairment, "physician" shall mean a legally qualified physician who either specializes in the practice of psychiatric medicine or has by reason of training or experience, a specialized competency in the field of psychiatric medicine sufficient to render the necessary evaluation and treatment of mental illness. To be "legally qualified," an individual must be licensed to practice medicine as a physician under the governing law of his state, territory, or foreign country, and said license must be issued by the respective medical board. In Georgia, the physician must be licensed to practice in accordance with O.C.G.A. § 43-34-1 et. seq., as amended."

(Ord. No. 7872, 3/9/2016, § 1)

#### Section 17. Nonduplication of benefits.

Nothing contained in this plan shall be construed as permitting any person to be entitled to more than one type of benefit under this plan or change the type of benefit elected once he has begun to receive benefit payments, unless otherwise specified in this plan.

#### Section 18. Return to employment after retirement.

- A. Reemployment. Any retirement benefit payable under this plan to any participant who has retired and commenced receiving benefits, shall be suspended as of the month in which he is reemployed as an eligible full-time employee or less than full-time employee if retired under the provisions of article V, section 11, by the employer. Benefits shall be resumed as of the first day of the month coinciding with or next following his subsequent retirement; said benefits shall be recalculated in accordance with this article on the basis of his aggregate credited service and final average earnings at the time of his subsequent retirement, but reduced on an actuarial basis by the value of any early retirement benefits received prior to being reemployed, provided that the resulting benefit shall not be less than the benefit payable at the time of this previous retirement.
- B. Election or appointment to the governing authority. If a participant is elected or appointed as a member of the governing authority after he has retired from employment in another capacity under this plan, he shall be eligible to earn credited service, after he has met the participation requirements for elected or appointed officials, as set forth in section 1 of article III. He shall be eligible to receive a normal

retirement benefit as an elected or appointed official provided he has met the requirements as set forth in section 1 of article V. During the period in which said participant is holding an elected or appointed office with the governing authority, he shall continue to receive retirement benefits previously awarded under the plan, however, such benefits shall not be recalculated as a result of his employment as an elected or appointed official.

- C. Disability retirement. Any disability retirement benefit payable under this plan to any participant who shall have retired or been retired pursuant to any provision of section 2 of article V shall be suspended as of the date his disability ceases. In any case where the payment of a participant's disability retirement pension shall have been so suspended, said period of absence from employment due to such disability shall be treated as a leave of absence without pay, but shall not be counted toward future service. Any participant who shall have retired or been retired pursuant to the provisions of section 11 of article V and who does or who has been or shall be subsequently declared ineligible for a disability retirement benefit because of a cessation of said disability shall have a right to any benefit afforded under any other provision of this plan to which he might otherwise be entitled. In such a case any disability retirement payments made prior to the date his disability ceases or is declared to no longer exist shall be retained by the participant and disregarded in computing any other benefit payable under this plan.

(Ord. No. 6284, 9/12/2001, § 2)

ARTICLE VI  
Crediting of Service and Break in Service

Section 1. General.

Service and credited service shall be granted to a participant for the purpose of determining such participant's vested percentage of his accrued benefit and for computing the amount of benefits payable under this plan.

Section 2. Past service.

A participant shall be entitled to receive past service and past credited service for the number of years and full months of continuous employment with the employer prior to November 1, 1973. Past service shall also be granted for any tenure of elected office of an elected or appointed member of the governing authority who was serving as an eligible employee or an elected or appointed official, or both, on November 1, 1973. Otherwise, past service shall not include any tenure of elective office as an elected or appointed member of the governing authority.

Section 3. Future service.

A participant shall earn future service and future credited service for the number of years and full months of continuous employment with the employer on and after November 1, 1973.

Elective or appointed members of the governing authority shall earn future service and future credited service for all periods of elected office, whether or not successive, however any break in his tenure of elective office will not be considered as a period of future service or future credited service.

#### Section 4. Break in service.

- A. General rule. A participant will incur a break in service upon his termination of employment with the employer. A participant who is vested upon termination of employment shall be eligible for a vested retirement benefit in accordance with section 9 of article V. A participant who is not vested upon termination of employment shall lose his service and credited service. However, if the participant later returns to work with the employer and, after such rehire, earns the number of years of continuous service required to earn a vested percentage for the vesting period in effect on the date of rehire, then, except to the extent described in B below in the case of a participant who received a refund of his participant contributions, his previous years of service, prior to January 1, 2009, and credited service prior to January 1, 2009, for which he did not make participant contributions, shall be restored.
- B. Participant received a refund of participant contributions. The rules set forth in this paragraph B shall apply to any participant who (1) has a termination of employment with the employer; (2) is rehired in a position in which he is or will be eligible to accrue a benefit under this plan; and (3) received, upon his original termination of employment, a refund of his participant contributions, pursuant to Article IV, Section 3(2). In such a case:
  1. If the participant is rehired as of a date that is within sixty (60) months of his original termination of employment, and subsequently attains vested status according to the vesting requirements in place at the time of rehire, the participant shall, upon his rehire date and for purposes of calculating both his vested percentage and the amount of any benefit payable under this plan (i.e., both retirement and disability benefit), receive credit for fifty percent (50%) of the service with which the participant was credited during the period that he made participant contributions.
  2. If the participant is rehired as of a date that is more than sixty (60) months after his original termination of employment, the participant shall not receive credit, for purposes of calculating the amount of any benefit payable under this plan, for the period of service earned during the period that he made participant contributions. Such a participant may, however, receive credit for vesting purposes under the rule set forth in Section 4.A above.

(Ord. No. 7301, 3/11/2009, § 1)

#### Section 5. Exceptions to break in service.

An exception to the break in service provisions shall be allowed and a grace period granted if the participant's failure to earn service is due to:

- A. An employee's absence from service by reasons of (1) her pregnancy, (2) birth of child of the employee, (3) placement of a child with the employee in connection with his or her adoption of the child, or (4) care for such child for a period beginning immediately after such birth or placement for reasons defined under the Family Medical Leave Act (FMLA). Such absence shall be credited as hours of employment up to the number of months allowed per incident pursuant to the FMLA. The time so credited shall be applied to the plan year in which such absence begins, if doing so will prevent the employee from incurring a break in service in that plan year; otherwise it shall be applied to the next plan year. FMLA may cover absences that are attributable to (1) the birth and care of the newborn child of the employee; (2) the placement with the employee of a son or daughter for adoption or foster care; (3) the employee's care of an immediate family member (spouse, child, or parent) with a serious health condition; or (4) the employee's medical leave when the employee is unable to work because of a serious health condition, or (5) other FMLA-covered reasons;
- B. The employee's absence for the purpose of involuntary service in the Armed Forces of the United States;
- C. Disability, for which the employee is receiving a disability retirement benefit; or
- D. An authorized leave of absence, provided:
  - 1. The individual was regularly employed by the employer immediately prior to his leave of absence;
  - 2. The individual makes application for reemployment on or before the date of expiration of any leave of absence or within 90 days after he first becomes entitled to his discharge from military service; and
  - 3. The individual is reemployed as an eligible employee within ninety (90) days after such application.

(Ord. No. 7301, 3/11/2009, § 2)

#### Section 6. Vesting.

A participant hired prior to March 18, 2008, who is a full-time employee and who has completed at least five years of service shall have his credited service vested and the break in service rules as set forth in section 4 of this article shall not operate to deprive him of his accumulated service.

A participant who is a full-time employee hired on or after March 18, 2008 through December 31, 2008, and who has completed at least seven years of credited service shall have his credited service vested and the break in service rules as set forth in section 4 of this article shall not operate to deprive him of his accumulated credited service.

A participant who is a full-time employee hired on or after January 1, 2009, and who has completed at least ten years of credited service shall have his credited service vested and the break in service rules as set forth in section 4 of this article shall not operate to deprive him of his accumulated credited service.

(Ord. No. 4905, 6/12/91, § 3; Ord. No. 6284, 9/12/2001, § 4; Ord. No. 7142, 3/17/2008, § 1; Ord. No. 7274, 12/10/2008, § 1)

Section 7. Unused sick leave or military duty used in benefit calculation.

New retirees will be credited with additional service for benefit calculation purposes only (i.e. this additional credit will not be used to satisfy any eligibility criteria for plan benefits) for either unused sick leave or for active duty federal military service prior to becoming an employee of the City of Marietta/BLW whichever is greater, to a maximum of one year. Unused sick leave or military service will be granted for whole months only. Unused sick leave will be verified by the city/BLW. Proof of military service will require evidence of an honorable discharge. This provision only applies to active employees who apply for normal or unreduced early retirement (if applicable) after the effective date of this ordinance.

(Ord. No. 6339, 12/12/2001, § 5)

ARTICLE VII  
Forms of Benefit Payment

Section 1. Normal form of payment.

The normal form of benefit payment shall be a single life benefit, payable monthly to the retired participant. Benefits will cease as of the month in which the participant's death occurs.

Section 2. Election of optional retirement benefit.

A participant may elect, or may revoke said election, at any time prior to his actual retirement date, to have his retirement benefit payable under the options hereinafter set forth, in lieu of the single life benefit he is otherwise entitled to receive. The benefit shall be paid in accordance with the terms of said option. Election of said option shall be made by the participant in writing. The amount of the optional retirement benefit shall be the actuarial equivalent of the amount of benefit that would otherwise be payable to the participant under article V.

Any optional form of benefit elected by the participant must comply with the minimum distribution incidental benefit ("MDIB") requirement of proposed Treasury Regulation 1.401(a)(9)-2, or its successor. This rule ensures that the retirement benefits payable under the plan are more than incidental. If a participant designates a beneficiary or elects a form of benefit that would cause the payments to violate the MDIB rules, the pension board may, at its discretion, require the participant to designate another beneficiary or adjust the form of payment to satisfy such rules.

(Ord. No. 6340, 12/12/2001, § 12)



Section 3. Social Security option.

A participant who retires from active service with a normal, early, or unreduced early retirement benefit as specified in Article V Sections 1, 3, or 5 may elect this option and receive an increased retirement benefit payable to the participant during his lifetime until he is eligible for benefits commenced under O.A.S.D.I. and a decreased retirement benefit payable thereafter for life in order to have a more level retirement income when such decreased retirement benefit is added to his primary benefits under O.A.S.D.I. determined as of his retirement date; said benefit shall be computed in accordance with the factors set forth below. Upon the death of the participant, all payments will cease and no further benefits shall be payable.

The factors set forth below shall be applied to the assumed O.A.S.D.I. benefit payable at the appropriate age. This amount shall then be added to the monthly retirement benefit determined in accordance with Article V of this plan. At the appropriate age, the same amount is then subtracted from the monthly retirement benefit. If, at the time of retirement, a calculation of the later monthly retirement benefit results in a negative balance, this option may not be elected.

O.A.S.D.I. Benefits Paid at Age

Age	62	65	67
55	.4973	.3563	.2810
56	.5465	.3915	.3088
57	.6015	.4309	.3399
58	.6631	.4751	.3747
59	.7325	.5248	.4139
60	.8108	.5809	.4582
61	.8994	.6443	.5082
62	n/a	.7164	.5650
63	n/a	.7985	.6297
64	n/a	.8923	.7037

65	n/a	n/a	.7886
66	n/a	n/a	.8866
67	n/a	n/a	n/a

(Ord. No. 7966, 6/14/2017, § 1)

#### Section 4. Joint and survivor benefit.

A participant may elect to receive an actuarially reduced monthly retirement benefit with a continuation upon his death after retirement of 50%, 75% or 100% of his benefit, to that person he might name as his beneficiary, with the continuation of benefits being for the life of the beneficiary.

The participant's monthly amount shall be a percentage of the full monthly amount otherwise payable as a single life benefit (after adjustment, of any, for early retirement) as follows:

1. 50% joint and survivor option:
  - a. If the participant's pension is a nondisability retirement—The percentage shall be 88.0% plus 0.4% for each full year that the beneficiary is older than the participant or 88.0% minus 0.4% for each full year that the beneficiary is younger than the participant;
  - b. If the participant's pension is a disability pension—The percentage shall be 77.5% plus 0.4% for each full year that the beneficiary is older than the participant or 77.5% minus 0.4% for each full year that the beneficiary is younger than the participant;
  - c. In no event is the percentage to be greater than 99%; and
2. 75% joint and survivor option:
  - a. If the participant's pension is a nondisability retirement—The percentage shall be 83.5% plus 0.5% for each full year that the beneficiary is older than the participant or 83.5% minus 0.5% for each full year that the beneficiary is younger than the participant;
  - b. If the participant's pension is a disability pension—The percentage shall be 70.0% plus 0.5% for each full year that the beneficiary is older than the participant or 70.0% minus 0.5% for each full year that the beneficiary is younger than the participant;
  - c. In no event is the percentage to be greater than 99%; and
3. 100% joint and survivor option:
  - a. If the participant's pension is a nondisability retirement—The percentage shall be 79.0% plus 0.6% for each full year that the beneficiary is older than

the participant or 79.0% minus 0.6% for each full year that the beneficiary is younger than the participant;

- b. If the participant's pension is a disability pension—The percentage shall be 63.0% plus 0.6% for each full year that the beneficiary is older than the participant or 63.0% minus 0.6% for each full year that the beneficiary is younger than the participant;
- c. In no event is the percentage to be greater than 99%.

#### Section 5. Joint and survivor level benefit option.

A participant may elect to receive the Social Security option (section 3 of this article) and a joint and survivor option (50%, 75% or 100%), (section 4 of this article), so that the participant will receive the increased retirement benefit until he is eligible for benefits to commence under O.A.S.D.I. and the decreased benefit payable thereafter for the remainder of his lifetime. Upon his death, the beneficiary will receive a percentage of the benefit the participant was receiving at the time of his death (50%, 75% or 100%, whichever the participant had elected). However, in the event the participant dies before benefits commence under O.A.S.D.I., the beneficiary will receive a percentage (as elected) of the benefit the participant was receiving at the time of his death until the date he would have been entitled to O.A.S.D.I. benefits, at which time the beneficiary will receive a percentage (as elected) of the benefit the participant would have received.

This option may not be elected if the benefits payable under this plan after the participant commences to receive O.A.S.D.I. benefits, equal an amount less than zero.

The participant's monthly benefit shall be determined as follows:

1. Determine the benefits payable in accordance with section 3 of this article.
2. Determine the base level, which is the benefit payable under this plan after the participant commences to receive O.A.S.D.I. benefits. Determine the supplemental level, which is the benefit payable under this plan prior to the participant's commencement of O.A.S.D.I. benefits, minus the base level.
3. Multiply the joint and survivor option factors (in accordance with section 4 of this article) times the base level.
4. Multiply the supplemental level times the applicable factor below:
  - a. 50% joint and survivor option:  $1 - (.0025 \times \text{the years the supplemental level amount will be paid})$
  - b. 75% joint and survivor option:  $1 - (.0035 \times \text{the years the supplemental level amount will be paid})$
  - c. 100% joint and survivor option:  $1 - (.0045 \times \text{the years the supplemental level amount will be paid})$
5. Add the amounts determined in subsections (3) and (4) of this section; this is the benefit payable to the participant at retirement.

6. The amount determined in subsection (3) of this section is the benefit payable to the participant when he commences to receive O.A.S.D.I. benefits, and shall be payable for the remainder of his lifetime.
7. Upon the participant's death, the beneficiary will receive a monthly benefit equal to a percentage (as elected) of the benefit the participant was receiving. If the participant dies prior to the date O.A.S.D.I. benefits commence, the beneficiary will receive a percentage (as elected) of the benefits the participant was receiving until the date the participant's O.A.S.D.I. benefits would have commenced, at which time the beneficiary will receive a percentage (as elected) of the benefit the participant would have received.

(Ord. No. 4547, 4/8/87, § 1)

Section 6. Reserved.

**Editor's note**— Section 1 of Ord. No. 6837, adopted July 13, 2005, deleted § 6, mandatory lump sum cashout, which derived from Ord. No. 4532, adopted Feb. 11, 1987; Ord. No. 4905, adopted June 12, 1991; Ord. No. 6019, adopted Aug. 11, 1999; and Ord. No. 6340, adopted Dec. 12, 2001.

Section 7. Joint and Survivor Benefit with Pop-up Feature.

Effective on or after May 13, 2004, a participant may elect to receive an actuarially reduced monthly retirement benefit with a continuation upon his death after retirement of 50%, 75% or 100% of his benefit, to that person he might name as his beneficiary, with the continuation of benefits being for the life of the beneficiary. In the event the beneficiary predeceases the participant, after benefits have commenced, the participant's monthly benefit shall be adjusted to the single life benefit. This "pop-up" adjustment shall be made the month following written notification to the plan of the beneficiary's death. Notification shall also include a certified copy of the death certificate of the beneficiary. This option is available to participants until the day before the beginning date of any plan year in which the provision of this option would result in an increase in the City/BLW's contribution to the pension plans. In which case, authorization for this option will cease and it will no longer be available to participants.

If this option is elected, the participant's monthly retirement benefit amount shall be a percentage of the full monthly amount otherwise payable as a single life benefits (after adjustment, if any), for early retirement as follows:

1. 50% joint and survivor option:
  - a. If the participant's pension is a nondisability retirement the percentage shall be 87.5%, plus 0.4% for each full year the beneficiary is older than the participant, or 87.5% minus 0.4% for each full year the beneficiary is younger than the participant.
  - b. If the participant's pension is a disability retirement the percentage shall be 77.0% plus 0.4% for each full year the beneficiary is older than the

participant, or 77.0% minus 0.4% for each full year the beneficiary is younger than the participant.

- c. In no event is the percentage to be greater than 99%; and
2. 75% joint and survivor option:
    - a. If the participant's pension is a nondisability retirement the percentage shall be 82.9%, plus 0.5% for each full year the beneficiary is older than the participant, or 82.9% minus 0.5% for each full year the beneficiary is younger than the participant.
    - b. If the participant's pension is a disability retirement the percentage shall be 69.4% plus 0.5% for each full year the beneficiary is older than the participant, or 69.4% minus 0.5% for each full year the beneficiary is younger than the participant.
    - c. In no event is the percentage to be greater than 99%; and
  3. 100% joint and survivor option:
    - a. If the participant's pension is a nondisability retirement the percentage shall be 78.3%, plus 0.6% for each full year the beneficiary is older than the participant, or 78.3% minus 0.6% for each full year the beneficiary is younger than the participant.
    - b. If the participant's pension is a disability retirement the percentage shall be 62.3% plus 0.6% for each full year the beneficiary is older than the participant, or 62.3% minus 0.6% for each full year the beneficiary is younger than the participant.
    - c. In no event is the percentage to be greater than 99%.
  4. Modification of benefit reduction factors: Periodically the above factors will be reviewed and may be modified as necessary to ensure that the option provided under this section 7 does not increase the City/BLW's required contributions necessary to fund the plan.

(Ord. No. 6659, 5/12/2004, § 1)

## ARTICLE VIII Maximum Benefits <sup>[5]</sup>

### Section 8.01 General rule.

The annual benefit payable under this plan to a participant at any time shall not exceed the maximum permissible amount under Code Section 415(b) and the regulations thereunder as applicable to governmental plans (as defined in Code Section 414(d)) and which are hereby incorporated by reference. "Maximum permissible amount" shall mean \$160,000.00, as adjusted by the Secretary of the Treasury for each calendar year, with the new limitation to apply to limitation years ending within the calendar year of the date of the adjustment (the "dollar limitation").

The limitation above is sometimes referred to herein as the "Code Section 415(b) limitation.

#### Section 8.02 Reduction for less than ten years of participation or employment.

If the annual benefit commences when the participant has less than ten years of participation in this plan or any predecessor plan to this plan, the dollar limitation shall be reduced by one-tenth for each year less than ten, but in no event shall be less than one-tenth of the unreduced dollar limitation.

#### Section 8.03 Adjustment if the annual benefit commences before age 62 or after age 65.

If the payment of benefits under this plan commences before age 62 or after age 65, the dollar limitation shall be adjusted as provided in this Section 10.03. The method for making this adjustment is not affected by whether the benefit is payable in a form subject to Code Section 417(e)(3).

Generally, the age-adjusted dollar limitation is the actuarial equivalent of the dollar limitation payable at age 65, as calculated under (a) or (b) below, whichever is applicable:

- (a) If the Age at Which the Benefit is Payable is Less Than 62: The dollar limitation is determined by reducing the dollar limitation at age 65 on an actuarially equivalent basis. First, reduce the dollar limitation at age 65 using the interest rate and mortality table, or tabular factors, as applicable, which are set forth in the plan for the reduction of benefits for early commencement. Second, reduce the dollar limitation at age 65 using five percent interest and the applicable mortality table. Use the lesser of the amounts determined under the two preceding sentences as the age-adjusted dollar limitation under this paragraph (a).

If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted for years of participation less than ten, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in the plan and the mortality table (or other tabular factor) specified in the plan; or (2) a five-percent interest rate assumption and the applicable mortality table as defined in the plan.

- (i) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity

starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted for years of participation less than ten, if required) with actuarial equivalence computed using a five-percent interest rate assumption and the applicable mortality table for the annuity starting date as defined in the plan (and expressing the participant's age based on completed calendar months as of the annuity starting date).

- (ii) Plan has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the dollar limitation for the participant's annuity starting date is the lesser of the limitation determined under subsection (i), and the dollar limitation (adjusted for years of participation less than ten, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this section.
- (b) If the Age at Which the Benefit is Payable is Later Than 65: The dollar limitation is determined by increasing the dollar limitation at age 65 on an actuarially equivalent basis. The increased age-adjusted dollar limitation shall be the lesser of the equivalent amount computed using the interest rate and mortality table set forth in article 1 in the definition of actuarial equivalence under the plan and the equivalent amount computed using five percent interest and the applicable mortality table.

If the annuity starting date for the participant's benefit is after age 65 and occurs in a limitation year beginning before July 1, 2007, the dollar limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the dollar limitation (adjusted for years of participation less than ten, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in the plan and the mortality table (or other tabular factor) specified the plan; or (2) a five-percent interest rate assumption and the applicable mortality table as defined in the plan.

- (i) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the dollar limitation at the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the

actuarial equivalent of the dollar limitation (adjusted for years of participation less than ten, if required), with actuarial equivalence computed using a five-percent interest rate assumption and the applicable mortality table for that annuity starting date as defined [in] the plan (and expressing the participant's age based on completed calendar months as of the annuity starting date). "(d) For limitation years beginning on or after July 1, 2007, the actuarial adjustment is equal to the equivalent annual benefit, computed using (i) the interest rate and mortality table (or other tabular factor) specified in the plan; (ii) a 5.5 percent interest assumption and the applicable mortality table for distributions under Treasury Regulation Section 1.417(e)-1(d)(2); or (iii) the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) divided by 1.05.

- (ii) Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the participant's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the dollar limitation at the participant's annuity starting date is the lesser of the limitation determined under subsection (i) above, and the dollar limitation (adjusted for years of participation less than ten, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this section. For this purpose, the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date is the annual amount of such annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical participant who is age 65 and has the same accrued benefit as the participant.

#### Section 8.04 Special rules.

- (a) All Plans a Single Plan. For purposes of the maximum limitations of this article, all defined benefit plans maintained by the employer shall be considered as a single defined benefit plan, and all defined contribution plans maintained by the employer shall be considered a single defined contribution plan.
- (b) Special Limitation for Qualified Police or Firefighter. If a participant is a "qualified participant" as defined under Code Section 415(b)(2)(G), such Participant may retire before age 62, without a reduction in the dollar limitation if at least 15 years of service is required to receive a full benefit under the plan.



- (c) Ancillary Benefits. "Ancillary benefits" i.e., benefits that are not directly related to retirement income benefits, or as otherwise defined in Code Section 415(b)(2)(B), shall not count toward the dollar limitation. Such ancillary benefits include pre-retirement disability benefits and death benefits.

#### Section 8.05 Definitions.

For purposes of this Article 10, the following definitions shall apply:

- (a) "Annual additions" means the sum of the following amounts credited to a participant's account under a defined contribution plan for the limitation year:
- (i) Employer contributions;
  - (ii) Forfeitures;
  - (iii) Nondeductible employee contributions; provided, however, that the annual addition for any limitation year beginning before January 1, 1987 shall not be recomputed to treat nondeductible employee contributions as an annual addition; and
  - (iv) Amounts described in Code Sections 415(l)(1) and 419A(d)(2).
- (b) "Annual benefit" means a retirement benefit under the plan which is payable annually in the form of a straight life annuity. If a participant's benefit is payable in a non-annuity benefit form, whether as the normal form of benefit or as an optional form which the participant or his beneficiary elects, the non-annuity benefit form is adjusted as provided below, whichever is applicable. No actuarial adjustment to the non-annuity benefit form is required for (i) the value of a qualified joint and survivor annuity; (ii) the value of benefits that are not directly related to retirement benefits (such as a disability benefit, pre-retirement death benefits, and post-retirement medical benefits); or (iii) the value of post-retirement cost-of-living increases made in accordance with Treasury Regulations.
- (i) Conversion for optional forms subject to Code Section 417(c)(3). For purposes of applying the maximum permissible amount, retirement benefits payable in an optional form other than a straight life annuity, which are subject to Code Section 417(c)(3) are adjusted to an actuarially equivalent straight life annuity that is equal to the greater of the equivalent annual benefit, computed using the interest rate and mortality table (or other tabular factor) specified in the plan and the equivalent annual benefit computed using the applicable mortality table under Rev. Rul. 2001-62.
  - (ii) Conversion for optional forms not subject to Code Section 417(c)(3). For purposes of applying the maximum permissible amount, retirement benefits payable in an optional form other than a straight life annuity, which are not subject to Code Section 417(c)(3) are adjusted to an actuarially equivalent straight life annuity that equals:
    - (A) For limitation years beginning on or after July 1, 2007, the greater of the annual amount of the straight life annuity (if any) payable under the plan at the same annuity starting date, and the annual amount of a straight

life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using an interest rate of five percent and the applicable mortality table under Code Section 417(e)(3). For limitation years beginning on or after July 1, 2007, the actuarial adjustment is equal to the equivalent annual benefit, computed using (i) the interest rate and mortality table (or other tabular factor) specified in the plan; (ii) a 5.5-percent interest assumption and the applicable mortality table for distributions under Treasury Regulation Section 1.417(e)-1(d)(2); or (iii) the applicable interest rate for the distribution under Treasury Regulation Section 1.417(e)-1(d)(3) and the applicable mortality table for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) divided by 1.05.

- (B) For limitation years beginning before July 1, 2007, the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using whichever of the following produces the greater annual amount: (I) the interest rate and mortality table or other tabular factor specified in the plan for adjusting benefits in the same form and (II) a five-percent interest rate assumption and the applicable mortality table described in Code Section 417(e)(3).
- (c) "Compensation" means a participant's earned income, wages, salaries, and fees for professional services, and other amounts received for personal services actually rendered in the course of employment with the employer (including, but not limited to, commissions paid sales representatives, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses), and excluding the following:
  - (i) Employer contributions to a plan of deferred compensation that are not included in the employee's gross income for the taxable year in which contributed or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation;
  - (ii) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
  - (iii) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option;
  - (iv) Other amounts which receive special tax benefits; and
  - (v) Amounts that do not satisfy the timing rules set forth in the Regulations under Code Section 415.

Compensation for any limitation year is the compensation actually paid or includable in gross income during such year.

Notwithstanding the foregoing, compensation shall include any elective deferral (as defined in Code Section 402(g)(3)) and any amount that is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of Code Section 125 or 457. In addition, compensation shall be increased by the amount by which the participant's compensation is reduced by salary reduction or similar arrangement under Section 132(f)(4) of the Code (i.e., a qualified transportation fringe benefit program).

The annual compensation taken into account shall not exceed the limitations of Code Section 401(a)(17) in effect as of the beginning of the plan year in which it is paid.

- (d) Amounts that would otherwise constitute "compensation" under (c) above but are paid from a nonqualified, unfunded deferred compensation plan sponsored by the employer nevertheless shall constitute "compensation" for purposes of the limitations in Code Section 415 in the year in which such amounts are actually received by the participant, but only to the extent such amounts are includible in the participant's gross income.
- (e) The following amounts also shall constitute "compensation" under (c) above if (i) the amounts are paid by the later of two and one-half months after the participant's severance from employment with the employer or the end of the limitation year that includes the date of the participant's severance from employment, and (ii) the amounts would have constituted compensation under [Subsection](c) above if they were paid prior to the participant's severance from employment with the employer:
  - (i) Payment for unused accrued bona fide sick, vacation or other leave, but only if the participant would have been able to use the leave if employment had continued; and
  - (ii) Amounts received by a participant pursuant to a nonqualified unfunded deferred compensation plan, but only if the payment would have been paid to the participant at the same time if the participant had continued in employment with the employer and only to the extent that the payment is includible in the participant's gross income.

#### Section 8.06 General rule.

Anything contained in the plan to the contrary notwithstanding, effective January 1, 2014, an accrued benefit computed under Article 10 shall be limited to the maximum permissible amount under Code Section 415(b) and the regulations thereunder, as applicable to a governmental plan (as defined in Code Section 414(d)), which are hereby incorporated by reference.

(Ord. No. 7733, 6/11/2014, § 3)

ARTICLE IX  
Application, Benefit Payments and Claim Procedures

Section 1. Benefits payments generally.

- A. A participant who is eligible to receive benefits under this plan and makes application in accordance with the rules of this retirement plan shall be entitled upon retirement to receive the monthly benefits provided for the remainder of his life, subject to the provisions of this plan. Benefit payments shall be payable commencing with the first full calendar month in which the participant has fulfilled all the conditions for entitlement to benefits.
- B. However, in no event shall deferral of commencement of benefits be allowed whereby it can be reasonably anticipated (except on account of premature death) that benefits will inure primarily to a beneficiary rather than to the employee.
- C. Pension payment shall end with the payment for the month in which the death of the pensioner occurs, except as provided in accordance with a joint and survivor benefit.
- D. Pension benefits shall be payable commencing with the month following the month in which the claimant has fulfilled all the conditions for entitlement to benefits, including the requirement of section 2 of the filing of an application and notice of retirement with the pension board. The first day of such first month is what is meant by the "effective date" of the pension.

An employee may elect, in writing filed with the pension board, to receive benefits first payable for a later month, provided that no such election may postpone the commencement of benefits to a date later than April 1 following the calendar year in which the employee will reach age 70½, or, if later, retires.

- E. In order to properly calculate all duty performed, the issuance of the first pension check will occur no later than the fifteenth day of the month in which benefits are payable. Subsequent pension checks will be issued on or before the first day of the month in which benefits are payable.
- F. If a participant's beneficiary is not his surviving spouse, the payment of any benefits under the plan that become payable on account of the participant's death shall begin no later than one year from the date of death and shall be distributed over the life of the beneficiary (or a period not extending beyond the life expectancy of such beneficiary).

(Ord. No. 7836, 9/9/2015, § 1)

Section 2. Filing an application for benefits.

A participant must file an application for benefits under the plan no earlier than 90 days and no later than 30 days in advance of the date benefit payments are to commence. Such request may be in any form adequate to give reasonable notice to the pension board and shall set forth the basis of such application and shall authorize the pension board to conduct such examinations as may be necessary to facilitate the payment of any benefits to which the participant or beneficiary may be entitled under the plan.

### Section 3. Claims.

Any payment to a participant, or beneficiary, or to their legal representatives, in accordance with the provisions of the plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the pension board or the city, either of which may require such participant, beneficiary, or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the pension board or the city, as the case may be.

### 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.

(Ord. No. 7965, 6/14/2017, § 2)

#### Section 5. Errors in computation of benefits.

Any overpayments or underpayments from the plan to a retired participant or to a beneficiary caused by errors of computation shall be adjusted. Underpayments shall be made up from the plan.

### 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 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 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.

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 of 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 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.

Education. As mandated by Georgia law, each appointed pension board member (including ex officio) or staff member as designated by the board shall complete appropriate education applicable to his or her fiduciary duties and obligations under the plan.

Applicable education shall include education and training in the following areas:

1. Laws applicable to public retirement systems, which may include federal and state laws applicable to specific public retirement systems, laws applicable to public retirement system trustees, the applicable common law duties of trustees listed in Title 53 of the Georgia Code, and laws related to open meetings and open records;
2. Roles, duties, and responsibilities of public retirement system trustees;
3. Ethics and conflicts of interest;

4. Governance, administration, and funding of public retirement systems;
5. Investments; investment management, portfolios, and strategies; and measurements of performance; and
6. Audit and actuarial principles and methods related to public retirement systems.

Applicable education may include:

1. Seminars, conferences, or schools sponsored by educational institutions or professional organizations;
2. Online continuing education coursework;
3. Continuing education received at any public retirement system meeting; or
4. Any other continuing education approved by the Board.

The secretary shall maintain a record of each member's applicable trustee education and provide a report to the Board and Council on an annual basis, with the first report due not later than March 31, 2020. Each member or designated staff member first appointed or elected on or after July 1, 2019, shall complete a minimum of eight hours of education designated to orient new public retirement system trustees in the areas described in this Section within one year of becoming a new trustee. If the member from Posts 1 through 9 or one of the chiefs of public safety fails to complete such requirement within 14 months, such member shall be deemed removed from his or her position as trustee by operation of State law (currently O.C.G.A. 47-1-17 and as later amended) and shall be removed without any further action, and the Council shall appoint a new member in accordance with this Section. Each appointed member or designated staff member who was appointed or elected prior to July 1, 2019, or who has served one or more years as a public retirement system trustee shall complete a minimum of 12 hours of continuing education every two years in the areas described in this Section. If the member from Posts 1 through 9 or one of the chiefs of public safety fails to complete such requirement within 26 months, such member shall be deemed removed from his or her position as trustee by operation of State law (currently O.C.G.A. 47-1-17 and as later amended) and shall be removed without any further action, and the Council shall appoint a new member in accordance with this Section.

(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; Ord. No. 8078, 2/13/2019, § 2; Ord. No. 8118, 10/10/2019, § 2)

ARTICLE XI  
Amendment and Termination

Section 1. Amendment of the plan.

The governing authority shall have the right at any time, and from time to time, to amend, in whole or in part, any or all of the provisions of the Plan following the review and recommendation by the Pension Board; provided, however, that no such amendment shall:

- A. Reduce the accrued benefits of any employee participant or employee beneficiary as defined in Article III Section 1, however expressly an amendment may reduce or add benefits to elected or appointed members and applicable beneficiaries of the governing body from time to time as provisions under the City Pension Plan vary between employee and elected officials with the effective date being January 8, 2014, or
- B. Authorize or permit any part of the trust fund held by the provider to be diverted to purposes other than for the exclusive benefit of participants and their beneficiaries, and
- C. No amendment shall operate to derive any participant or beneficiary of any rights or benefits irrevocably vested in him under the plan prior to such amendment except that the governing authority may make any and all changes and modifications necessary to qualify the plan or to keep the plan qualified under the Internal Revenue Code and the regulations thereunder, or any amendment thereto.

(Ord. No. 7926, 10/13/2016, § 1)

Section 2. Termination of the plan.

- A. The employer expects the plan to be continued indefinitely but, of necessity, reserves the right to terminate the plan and contributions thereunder at any time by action of the governing authority. Upon receipt of written notice from the governing authority of termination of the plan, the board shall prepare a list of all participants showing for each, as of the date of plan termination, the following:
  - 1. For each retired participant and beneficiary receiving payment of benefits, the amount and terms of payment of such benefits.
  - 2. For each terminated participant entitled to a deferred benefit, the amount, commencement date, and terms of payment of such benefit.
  - 3. For each active participant the amount of his accrued benefit.
- B. The board shall arrange for the liquidation of all assets held in the plan maintained in connection with the plan and shall prepare a statement of the liquidated value of such assets. The governing authority, in its sole discretion, may direct the board to purchase from an insurance company an annuity contract or contracts which provide the benefits to which each participant or beneficiary is entitled or to pay a lump sum

to each participant or beneficiary, such lump sum amount to be [the] actuarial equivalent of the benefit to which such participant or beneficiary is entitled.

- C. The board shall then deduct from the assets total remaining expenses incurred or to be incurred by the board on behalf of the plan. The board shall, except as otherwise provided in this section, then allocate the remaining assets for distribution in accordance with the classes listed below. The benefits of each class shall be satisfied before proceeding to the next class. If at any time the remaining plan assets would be insufficient to provide the accrued benefits for the class in question, the remaining assets would be applied on a pro rata basis within that class, and all subsequent classes would receive no benefit.

Class 1—Retired participants or beneficiaries who are receiving payments on the termination date.

Class 2—Participants delaying retirement.

Class 3—Participants eligible for early retirement.

Class 4—Former employees who are terminated participants.

Class 5—All other participants on a pro rata basis.

- D. Upon distribution of the assets as specified above, the plan shall be regarded as terminated and no participant or beneficiary shall have any further rights or claim therein.

## ARTICLE XII Miscellaneous

### Section 1. Construction.

- A. The plan shall be construed in accordance with the laws of the State of Georgia.
- B. In the event that any section, subsection, sentence, clause or phrase of this agreement shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions or the other section or section, subsections, sentences, clauses, or phrases of this agreement, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part hereof. The governing authority hereby declares that it would have passed the remaining parts of this agreement or retained the previously existing provisions if it had known that such part or parts hereof would be declared or adjudicated invalid or unconstitutional.

### Section 2. Non-alienation of benefits.

None of the benefits, payments, proceeds, or distributions payable under the plan shall be subject to the claim of any creditor of any participant or to the claim of any creditor of any beneficiary hereunder, or to any legal process of levy or attachment by a creditor of any such participant or beneficiary; and no such benefits shall be in any manner liable for or subject to the debts, liabilities, engagements, or torts of any participant or beneficiary; and neither any such participant or beneficiary shall have any right to

alienate, commute, anticipate, transfer, encumber, pledge or assign any of the benefits, payments, proceeds, or distributions under the plan. If any participant or beneficiary shall become bankrupt or attempt to anticipate, assign, or pledge any benefits, then such benefits shall, in the discretion of the pension board, cease, and in that event the pension board shall have authority to cause the same, or any part thereof, to be held or applied to or for the benefit of such member, his spouse, his children, or other dependents, or any of them, in such manner and in such proportion as the pension board may think proper.

### Section 3. Legally incompetent.

Any participant or beneficiary receiving or claiming benefits under the plan shall be conclusively presumed to be mentally competent and of age until the pension board receives a written notice, in a form and manner acceptable to it, that such person is incompetent or a minor, and that a guardian or other person legally vested with the care of his estate has been appointed. In the event that the pension board finds that any person to whom a benefit is payable under the plan is unable to properly care for his affairs, or is a minor, then any payment due (unless a prior claim therefor shall have been made by a duly appointed legal representative) may be paid to the spouse, a child; a parent, or a brother or sister, or to any person deemed by the pension board to have incurred expense for such person otherwise entitled to payment. In the event a guardian of the estate of any person receiving or claiming benefits under the plan shall be appointed by a court of competent jurisdiction, payments shall be made to such guardian provided that proper proof of appointment is furnished in a form and manner suitable to the pension board. Any payment so made shall be a complete discharge of liability therefor under the plan.

### Section 4. Benefits supported only by trust fund.

Any person having any claim under the plan will look solely to the assets of the trust fund for satisfaction. In no event will the employer, or any of its employees or agents, be liable in their individual capacities to any person whosoever, under the provisions of the plan.

### Section 5. Discrimination.

The employer through the pension board, shall administer the plan in a uniform and consistent manner with respect to all participants and shall not permit discrimination in favor of supervisory or highly paid employees, elected or appointed members of the governing authority, the chief legal officer or any associate legal officer of the city, or any municipal officer elected or appointed to preside over the court of said city.

### Section 6. Limitation of liability; legal actions.

- A. It is expressly understood and agreed by each employee who becomes a participant hereunder that, except for its or their willful neglect or fraud, neither the employer, nor the pension board, shall be in any way subject to any suit or litigation, or to any legal liability, for any cause or reason or thing whatsoever, in connection with the plan or its operation, and each such participant hereby releases the employer, all its employees and agents, and the pension board, from any and all liability or obligation.

- B. To any action or proceeding involving any rights under the plan or the proper administration thereof, the city and the pension board shall be the only necessary parties and no participant, or his beneficiary, or any other persons having or claiming to have an interest in the plan shall be entitled to any notice or process. Any final judgment which is not appealed or appealable that may be entered in any such action or proceeding shall be binding and conclusive on the parties hereto and all persons having or claiming to have an interest.

#### Section 7. Service in the Armed Forces.

Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u). A participant who dies during a period of qualified military service shall be treated as having returned to employment with the city on the day before his death and died the next day for purposes of any survivor benefits including preretirement survivor benefits and any accelerated vesting. Such participant shall receive service for vesting purposes for such period of military service but shall not receive service for purposes of accruing benefits for such period of military service.

(Ord. No. 6340, 12/12/2001, § 15; Ord. No. 7514, 1/12/2011, § 3)

#### Section 8. Rollovers.

- (a) General rule. 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 pension board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

- (b) Definitions.

(1) 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 ten years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); and (iii) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.) A distributee may not elect a direct rollover with respect to an eligible rollover distribution during the plan year that is less than \$200.00. If the distributee elects to have only a portion of an eligible rollover distribution paid to an eligible retirement plan, that portion must be equal to at least \$500.00. Eligible rollover distributions from this plan as limited to refunds of participant contributions.

(2) Eligible retirement plan. An eligible retirement plan is (i) an individual retirement account described in Section 408(a) of the Code, (ii) an individual retirement

annuity described in Section 408(b) of the Code, (iii) an annuity plan described in Section 403(a) of the Code, (iv) a qualified trust described in Section 401(a) of the Code, (v) an annuity contract described in Code Section 403(b), and (vi) an eligible plan under Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state agrees to separately account for amounts transferred into such plan from this plan. An eligible retirement plan must agree to accept the distributee's eligible rollover distribution before an eligible rollover distribution may be transferred from this plan to such eligible retirement plan. This definition also shall apply in the case of an eligible rollover distribution to the participant's surviving spouse. Effective as of January 1, 2008, an eligible retirement plan shall include a Roth IRA established under Code Section 408A for purposes of eligible rollover distributions.

- (3) Distributee. A distributee includes a participant or former participant. In addition, the participant's or former participant's surviving spouse and the participant's or former participant's spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse. For distributions on and after January 1, 2007, "Distributee" shall include a nonspouse beneficiary of an eligible rollover distribution to the extent permitted by IRC Section 402(c)(11).
- (4) Direct rollover. A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(Ord. No. 6340, 12/12/2001, § 16; Ord. No. 6483, 2/12/2003, § 3(3); Ord. No. 7514, 1/12/2011, §§ 4—6)

#### Section 9. Limitations of Federal law.

For purposes of the plan, any provisions mandated by Federal law shall remain in effect only so long as such provisions are currently required. If any such provisions are found to be unconstitutional or unenforceable, are rescinded, or are repealed or become discretionary, those portions of the plan shall be deleted automatically, rescinded and revoked consistent with such action without any further action of the City Council of the City of Marietta.

(Ord. No. 7514, 1/12/2011, § 7)

IN WITNESS WHEREOF, the City has caused the signatures of its authorized officers to be affixed this 11th day of February, 1987.

CITY OF MARIETTA, GEORGIA  
/s/Vicki Chastain  
Mayor

DATE: February 11, 1987



ATTEST:

/s/Lillian C. Harris  
City Clerk

Section 10. Exclusive benefit.

The assets of the trust fund shall be for the exclusive benefit of participants and persons claiming under or through them and for defraying reasonable expenses of administering the plan. All contributions made pursuant to Article IV, Section 1, shall be based on the initial qualification of the plan under Code Sections 401 and 501(a). All such contributions shall be irrevocable and such contributions as well as the trust fund, or any portion of the principal or income thereof, shall never revert to or inure to the benefit of the city except that (1) any contributions which are made under a mistake of fact may be returned to the city within one year after the contributions were made and (2) any funds remaining after all liabilities of the plan have been met may be returned to the city.

(Ord. No. 7733, 6/11/2014, § 4)

**Editor's note**— Ord. No. 7733, § 4, adopted June 11, 2014, amended the Code by the addition of Section 11; however, said provisions have been redesignated as § 10 at the editor's discretion for purposes of maintaining numerical sequence.

Footnotes:

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**Editor's note**—Ord. No. 7733, § 3, adopted June 11, 2014, amended Art. VIII in its entirety to read as set out herein. Former Art. VIII pertained to similar subject matter and derived from Ord. No. 7514, § 2, adopted Jan. 12, 2011.

**Note**—Refer to section 8.05 for the definitions of certain terms used in this Article VIII.