

CITY OF CORAL GABLES, FLORIDA

RESOLUTION 2012- ____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA, RELATING TO THE RETIREMENT SYSTEM FOR CITY EMPLOYEES; REVIEWING THE RETIREMENT BOARD'S DECISION TO GRANT A COST OF LIVING INCREASE FOR RETIREES EFFECTIVE JANUARY 1, 2013; FINDING THE RETIREMENT BOARD'S ACTION INCONSISTENT WITH SECTION 112.61, FLORIDA STATUTES; MODIFYING THE RETIREMENT BOARD'S ACTION; PROVIDING FOR FULL FORCE AND EFFECTIVENESS; PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 50-230(c) of the Coral Gables Code of Ordinances ("Code"), provides for a cost of living increase effective January 1 of each year, if the "market value rate of return (as determined by the actuary) on the assets of the retirement system determined from October 1 of the previous year to September 30 of the current year is greater than or equal to ten percent;" and

WHEREAS, Section 112.61, Florida Statutes establishes minimum standards for the operation and funding of public employee retirement systems and plans, and provides that all benefits promised should be part of the funding requirements of the plan at the time the benefit is promised; and that actuarial experience may be used to fund additional benefits only when the cumulative net actuarial experience is positive; and

WHEREAS, Section 112.62, Florida Statutes expressly states that the pension funding provisions of state law are applicable to any and all units of government, including municipal governments, which participate in, operate, or administer a retirement system for public employees, funded in whole or in part by public funds; and, to the extent there are conflicts, state law prevails over local ordinances relating to such retirement systems or plans; and

WHEREAS, the return on assets for October 1, 2011 through September 30, 2012, was calculated to be 16.7%, yet the plan experienced a cumulative net actuarial loss of more than \$82 million as of September 30, 2011; and

WHEREAS, the Retirement Board of the City of Coral Gables Retirement System for City Employees recently decided to approve a cost of living increase of 5.95% effective January 1, 2013 for all persons who received retirement benefits from the Plan during all of 2012; and

WHEREAS, the Retirement Board's decision to grant the cost of living increase will increase the unfunded actuarial accrued liability of the Retirement Plan by more than \$20 million, and increase the city's annual required contribution to the Plan by more than \$1.6 million per year for the next 30 years; and

WHEREAS, based on the express language of sections 112.61 and 112.62, Florida Statutes, and the interpretation of the Florida Division of Retirement, the Retirement Board's decision to grant a cost of living increase is inconsistent with the pension funding requirements of state law; and

WHEREAS, the City Code expressly authorizes the City Commission to review any decision of the Retirement Board, and, with cause, amend or modify the decision.

NOW THEREFORE, the City Commission of the City of Coral Gables, Florida hereby resolves:

Section 1. In accordance with Section 50-93 of the City's Code of Ordinances, the City Commission hereby reviews the Retirement Board's recent decision to approve a cost of living increase of 5.95% effective January 1, 2013 for all persons receiving retirement benefits for all of calendar year 2012. The City Commission finds:

- A. The return on Retirement Plan assets for October 1, 2011 through September 30, 2012, was calculated to be 16.7%.
- B. The Retirement Plan experienced a cumulative net actuarial loss as of September 30, 2011 in the amount of \$82,799,575.
- C. The Retirement Plan has a total unfunded actuarial accrued liability of more than \$200 million, and a 5.95% cost of living increase would increase the City's unfunded liability by an additional \$20 million.

Section 2. The City Commission has been duly advised that Section 50-230(c) of the Coral Gables Code of Ordinances ("Code"), provides for a cost of living increase (COLA) effective January 1 of each year, if the "market value rate of return (as determined by the actuary) on the assets of the retirement system determined from October 1 of the previous year to September 30 of the current year is greater than or equal to ten percent."

Section 3. The City Commission has been further advised that section 112.61, Florida Statutes, provides that all benefits promised should be part of the funding requirements of the plan at the time the benefit is promised, and that actuarial experience may be used to fund additional benefits only when the cumulative net actuarial experience is positive, such that surplus funds are available to fund the benefit. This interpretation of the statutory provision was recently confirmed by the State of Florida Division of Retirement. Additionally, the City has been advised that other cities, including Hollywood, Sunrise and Vero Beach have similar pension COLA provisions, experienced similar returns for the year ending September 30, 2012, but also had cumulative net actuarial losses, and have determined not to implement a cost of living increase because such action would be inconsistent with the funding requirements of section 112.61, Florida Statutes.

Section 4. Section 112.62, Florida Statutes expressly states that the pension funding provisions of state law are applicable to any and all units of government, including municipal governments, which participate in, operate, or administer a retirement system for public employees, funded in whole or in part by public funds; and, to the extent there are conflicts, state law prevails over local ordinances relating to such retirement systems or plans.

Section 5. In consideration of the facts and law set forth above, the City Commission has reviewed the Retirement Board's decision to approve a cost of living increase of 5.95% effective January 1, 2013 for all persons receiving retirement benefits for all of 2012, at a time when the plan has experienced a cumulative net actuarial loss. The City Commission has determined that, under the circumstances, granting a cost of living increase would be inconsistent with the funding requirements of section 112.61, Florida Statutes. Accordingly, the City Commission has determined there is cause to modify the Retirement Board's decision. The City Commission, in an effort to comply with section 112.61, Florida Statutes, and the direction of the State of Florida Division of Retirement, reverses the Retirement Board's action granting the cost of living increase.

Section 6. If any section, sentence, clause or phrase of this resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution.

Section 7. This Resolution shall remain in full force and effect until supplemented, amended, repealed or otherwise altered.

Section 8. This Resolution hereby repeals all resolutions in conflict herewith.

Section 9. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED THIS ELEVENTH DAY OF DECEMBER, 2012.

(Moved by _____, Seconded by _____)
(Passed 0/0 vote)

ATTEST:

WALTER FOEMAN
CITY CLERK

JAMES C. CASON
MAYOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

CRAIG E. LEEN
CITY ATTORNEY