

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2010-06

AN ORDINANCE AMENDING CHAPTER 50 OF THE "CODE OF THE CITY OF CORAL GABLES," ENTITLED "PENSIONS," PROVIDING FOR CERTAIN CHANGES IN ORDER TO COMPLY WITH AMENDMENTS IN CHAPTER 2009-97, LAWS OF FLORIDA, TO CHAPTERS 175 AND 185, FLORIDA STATUTES, AND PROVIDING AN ADDITIONAL CLARIFICATION; PROVIDING FOR AN EFFECTIVE DATE; AND REPEALING ALL ORDINANCES INCONSISTENT HERewith.

WHEREAS, the City and the City of Coral Gables Retirement System, the Retirement System for Police Officers, and the Firefighters' Pension Trust Fund participate in programs established under and governed by Florida Statutes, Chapters 175 and 185; and

WHEREAS, the Florida Legislature has enacted certain amendments to provisions of those Chapters; and

WHEREAS, the City and the three retirement plans must comply with the Chapters in order to continue participation; and

WHEREAS, the attorneys for the boards of trustees of the three plans have been advised; and

WHEREAS, a clarification to the City of Coral Gables Retirement System is necessary to reflect the City's practice with respect to employee contributions; and

WHEREAS, there is either no bargaining obligation associated with these amendments or, if there is, the relevant employee unions have been appropriately consulted and have waived bargaining as to these amendments;

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this ordinance upon adoption hereof.

SECTION 2. That Section 50-34 of the “Code of the City of Coral Gables” pertaining to “Pensions” is hereby amended to read as follows:

Sec. 50-34. Employee contributions.

Effective October 1, 2005, all employees except police officers and elected and appointed officials shall contribute five percent of their total earnings to the system. Effective September 30, 2009, police officers and elected and appointed officials shall contribute five percent of their total earnings to the system, and all other excluded employees shall contribute ten percent of their total earnings to the system.

SECTION 3. That Section 50-200 of the “Code of the City of Coral Gables” pertaining to “Pensions” is hereby amended to read as follows:

Sec. 50-200. Duties of trustee.

The responsibility of the trustee hereunder shall be to hold the trust fund as provided in the trust agreement and to pay moneys therefrom for the use of the retirement system upon written requisitions drawn upon the trust by the retirement board from time to time. Payments by the trustee may be made out of principal or income or out of both principal and income of the trust fund. The trustee shall pay out of moneys from the trust fund upon such written requisitions and shall not be concerned with the application of such moneys, but the receipt thereof by the person designated shall constitute a full acquittance to the trustee. All drafts may be signed by two individuals designated by the board who are subject to the same fiduciary standards as board of trustees.

SECTION 4. That Section 50-203 of the “Code of the City of Coral Gables” pertaining to “Pensions” is hereby amended to read as follows:

Sec. 50-203. Termination or merger of system and distribution of trust fund.

- (b) Upon termination or partial termination of the system for any reason, or upon written notice to the trustee that contributions thereunder are being permanently discontinued, each participant’s contributions in the system as of the date of termination, partial termination, or written notice to the trustee will be nonforfeitable to the extent funded, as provided in section 50-28.
- (b) Upon merger or consolidation with, or transfer of assets or liabilities, to any other plan, and subsequent termination of the system, each participant in the system will receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit the participant would have been entitled to receive immediately before the merger, consolidation, or transfer, if the plan had then been terminated.

(c) Upon termination of the system for any reason, or upon written notice to the trustee that contributions thereunder are being permanently discontinued, the trust fund shall be distributed in accordance with the following procedure. The retirement board shall:

(1) Determine the date of distribution and the asset value required to fund all nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the municipality if additional assets are required, in which event the municipality shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) Determine the method of distribution of the asset value; whether distribution shall be by payment in cash, the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each class of participants and beneficiaries entitled to benefits under the system, as specified in subsection (c)(3) of this section.

(3) Distribute the asset value as of the date of termination in the manner set forth below, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined above involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

(4) If there is asset value remaining after the full distribution specified in subsections (3) of this section, and after the payment of any expenses incurred with such distribution, such excess will be returned to the city, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality and the state.

(5) Direct the trustee to distribute, in accordance with subsection (c)(2) of this section, the amounts determined under subsection (c)(3) of this section.

SECTION 5. That the pertinent part of Section 50-235 of the "Code of the City of Coral Gables" pertaining to "Pensions" is hereby amended to read as follows:

Sec. 50-235. Designation of joint pensioner or beneficiary.

(a) Each participant shall designate the joint pensioner or beneficiary or beneficiaries to receive the benefit, if any, payable in the event of his death in accordance with this section. Each such designation may be revoked by the participant by signing and filing with the retirement board a new designation of beneficiary. If the participant has made an election pursuant to section 50-234 any such new designation of beneficiary shall be deemed a new election and will be subject to all the limitations of this section. Such designation will name a joint pensioner or one or more primary beneficiaries and may name, if the participant desires, one or more contingent beneficiaries where applicable. Each such designation will be made in writing on a form approved by the retirement board and on completion will be filed with the administrative manager. Any retired participant who desires to change his joint pensioner or beneficiary shall file with the board a notarized notice of such change either by registered letter or on such form as is provided by the administrator of the plan. Retired firefighter and police officer participants may change their designation of joint annuitant or beneficiary up to two times without the approval of the board of trustees or the current joint annuitant or beneficiary. Retired firefighter and police officer participants are not required to provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living. The amount of the retirement income payable to the participant upon the designation of a new joint pensioner or beneficiary shall be actuarially re-determined by the application of actuarial tables and calculations to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit and that there is no impact to the plan. If a deceased participant failed to name a beneficiary in the manner above prescribed, or if the beneficiary named by a deceased participant predecease the participant, the death benefit, if any, shall be paid to the estate of the participant.

SECTION 6. That the pertinent parts of Section 50-282 of the "Code of the City of Coral Gables" pertaining to "Pensions" are hereby amended to read as follows:

Sec. 50-282. Same--Power and authority.

The board of trustees shall have power and authority as follows:

- (1) To invest and reinvest moneys of the fund.
 - (a) In making such investments they shall be governed by the laws of the state relating to the conduct of fiduciaries.
 - (b) The trustees will be allowed to make all investments that are lawful under the laws of the state.

(c) As provided in Florida Statutes Section 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by Florida Statutes Section 215.473, and the manner of the disposition, if any, is reasonable as to the means chosen. For the purposes of effecting compliance with that section, the pension fund shall designate terror-free plans that allocate their funds among securities not subject to divestiture. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of the fund based upon the divestiture of any security pursuant to this paragraph.

* * *

(3) To approve claims, and to authorize payments from the fund by warrants signed by the chairperson and secretary of the board or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees.

SECTION 7. That the pertinent part of Section 50-283 of the "Code of the City of Coral Gables" pertaining to "Pensions" is hereby amended to read as follows:

Sec. 50-283. Custodian of the fund.

* * *

(b) Withdrawals from the fund shall have any two out of three signatures, that of the chairman-trustee, vice-chairman-trustee, and that of the secretary-trustee of the board; or that of two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees. Withdrawals, disbursements, and transactions with investment firms involving amounts over \$350,000.00 shall require all three signatures and all signatures shall be notarized. Warrants in amounts over \$350,000.00 provided by the secretary-trustee as in section 50-282(3) shall require a third signature, that of the vice chairman-trustee. All investment firms (banks, insurance companies, etc.) shall have on record the above requirements of the board.

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SECTION 8. That the pertinent part of Section 50-284 of the "Code of the City of Coral Gables" pertaining to "Pensions" is hereby amended to read as follows:

Sec. 50-284. Death and disability benefits.

(a) If a participant dies while having shares credited to their account, the participant's net credit shall be paid to such beneficiary or contingent beneficiaries as the participant shall have designated by written designation filed with the board. A retired participant may change his or her designation of beneficiary up to two times without the approval of the board of trustees or the current beneficiary. The participant need not provide proof of the good health of the beneficiary being removed, and the beneficiary being removed need not be living. If the participant shall not have designated a beneficiary, the net credit shall be paid to the participant's surviving spouse. If there is no surviving spouse, the net credit shall be paid to the participant's children or to the guardian of the participant's minor children. If there is no surviving spouse and no children, the net credit shall be paid to the participant's estate. Payment will be made as soon as administratively practicable, provided, however, in no event will the distribution occur prior to 30 days following separation, or death.

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SECTION 9. That the pertinent parts of Section 50-320 of the "Code of the City of Coral Gables" pertaining to "Pensions" are hereby amended to read as follows:

Sec. 50-320. Same--Power and authority.

The board of trustees has the sole and exclusive powers and authority of administration, of investments, and making responsibilities for the proper operation of the fund and for making effective the provisions of the F.S. ch. 175 which are vested in the board of trustees as follows:

- (1) To invest and reinvest the assets of the firefighters' pension trust fund in:

* * *

e. Investments shall not be made in any stocks, bonds, or other securities owned or controlled by government other than that of the United States, and by a corporation organized under the laws of the United States. A corporation must be listed on any one or more of the recognized national stock exchanges and, in the case of bonds, hold a rating in one of the three highest classifications by a major rating service. The board of trustees shall not invest more than five percent of its assets in common or capital stock of any one issuing company, nor shall the aggregate investment in

any one issuing company exceed five percent of the outstanding capital stock of that company. The board may invest in stocks or other evidences of indebtedness up to a maximum of 40 percent of the total assets of the fund and up to a maximum of 25 percent of the total assets of the fund in bonds. Any provision of this subsection notwithstanding, the board may invest in bonds issued by the State of Israel and may invest up to twenty-five percent of plan assets in foreign securities.

f. Notwithstanding paragraph (1)e. and as provided in Florida Statutes Section 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by Section 215.473, and the manner of the disposition, if any, is reasonable as to the means chosen. For the purposes of effecting compliance with that section, the pension fund shall designate terror-free plans that allocate their funds among securities not subject to divestiture. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of the fund based upon the divestiture of any security pursuant to this paragraph.

(2) To authorize payments from the fund by warrants signed by the chairman and the secretary-trustee of the board, or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees.

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SECTION 10. That the pertinent part of Section 50-321 of the "Code of the City of Coral Gables" pertaining to "Pensions" is hereby amended to read as follows:

Sec. 50-321. Custodian of the fund.

* * *

(b) Withdrawals from the fund shall have any two out of three signatures, that of the chairman-trustee, vice-chairman-trustee, and that of the secretary-trustee of the board; or that of two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees. Withdrawals, disbursements, and transactions with investment firms involving amounts over \$350,000.00 shall require all three signatures and all signatures shall be notarized. Warrants in amounts over \$350,000.00 provided by the secretary-trustee as in section 50-320(2) shall require a third signature, that of the vice-chairman-trustee. All investment firms (banks, insurance companies, etc.) shall have on record the above requirements of the board.

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SECTION 11. That the pertinent part of Section 50-322 of the "Code of the City of Coral Gables" pertaining to "Pensions" is hereby amended to read as follows:

Sec. 50-322. Death benefits while participant on active duty.

(a) If any participant shall die while in service or prior to payment of his vested net credit after separation, his vested net credit shall be paid to such beneficiary or beneficiaries as he shall have designated by written designation filed with the board. A retired participant may change his or her designation of beneficiary up to two times without the approval of the board of trustees or the current joint annuitant or beneficiary. The participant is not required to provide proof of the good health of the beneficiary being removed, and the beneficiary being removed need not be living. If the participant shall not have designated a beneficiary, his net credit shall be paid in accordance with his last will and testament; if the participant shall die interstate, then in accordance with the laws of descent and distribution of the state.

SECTION 12. That all sections or parts of sections of the City Code of the City of Coral Gables, all ordinances or parts of ordinances and all laws of the City of Coral Gables in conflict herewith, shall be and they are hereby repealed insofar as there is a conflict or inconsistency.

SECTION 13. This Ordinance shall be effective as of July 1, 2009, except as otherwise specified herein.

PASSED AND ADOPTED THIS TWENTY-THIRD DAY OF MARCH, A.D., 2010.
(Moved: Kerdyk / Seconded: Anderson)
(Yeas: Anderson, Cabrera, Kerdyk, Withers, Slesnick)
(Unanimous: 5-0 Vote)
(Agenda Item: E-2)

APPROVED:




DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



ELIZABETH M. HERNANDEZ
CITY ATTORNEY