

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2018-

AN ORDINANCE AMENDING CHAPTER 46 OF THE “CODE OF THE CITY OF CORAL GABLES,” ENTITLED “PENSIONS;” AMENDING SECTION 46-253, ENTITLED “NORMAL RETIREMENT INCOME;” AND PROVIDING FOR REPEALER, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, in 2013 two retired City employees filed a putative class action against the City styled as Murree v. City of Coral Gables, Case No. 13-20731 CA (13) (Fla. 11th Cir. Ct.); and

WHEREAS, in that lawsuit, the plaintiffs, on behalf of themselves and all others similarly situated, sought a 2013 and 2014 cost-of-living adjustment (“COLA”) to their retirement benefits, and clarification about what conditions will trigger a COLA in the future; and

WHEREAS, although the City disputed plaintiffs’ claims and denied and continues to deny liability, it decided to settle the litigation without admitting any wrongdoing and executed a Class Action Settlement Agreement dated September 18, 2017 (“Settlement Agreement”) (attached as Exhibit 1); and

WHEREAS, in accordance with the Settlement Agreement, the Court certified a class of “[a]ll persons who have been in receipt of benefits from the Coral Gables Retirement System, pursuant to Chapter 50, Article II, Coral Gables Code, for a full year preceding January 1, 2014, or their Designated Beneficiaries,” which means “any individual or estate that will receive benefits from the Coral Gables Retirement System, pursuant to Section 50-235, Coral Gables Code, upon the death of a plan participant that has been in receipt of benefits from the Coral Gables Retirement System, pursuant to Chapter 50, Article II, Coral Gables Code, for a full year preceding January 1, 2014;” and

WHEREAS, the City enacted a new Coral Gables Code that superseded the prior version and renumbered Chapter 50 to Chapter 46 and Section 50-230 to Section 46-253 (Ordinance No. 2017-41); and

WHEREAS, the Court entered a Final Judgment dated February 26, 2018 (attached as Exhibit 2), which granted final approval of the Settlement Agreement, determined that 792 individuals or estates of deceased individuals identified on a Class List (attached as Exhibit 1-A) compose the class, and ordered the City and the class members to comply with the Settlement Agreement; and

WHEREAS, the Settlement Agreement establishes special procedures that apply to the determination of COLAs for class members for the fiscal year ending September 30, 2017 and each year thereafter; and

WHEREAS, the City agreed, in ¶ 12.1 of the Settlement Agreement, to amend the City Code to “incorporate by reference the Alternative Dispute Resolution Mechanism outlined in ¶ 8.3 of the Settlement Agreement;” and

WHEREAS, pursuant to ¶ 7 of the Settlement Agreement, the Alternative Dispute Resolution Mechanism could be terminated by the parties if certain termination rights are triggered; and

WHEREAS, the determination of a 2018 COLA for class members is pending and subject to the Alternative Dispute Resolution Mechanism.

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

SECTION 1. That the foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance upon adoption.

SECTION 2. That section 46-253 of the “Code of the City of Coral Gables” pertaining to “Pensions” is hereby amended to read as follows (additions appear with a double underline):

Sec. 46-253. Normal retirement income.

* * *

(c) *Cost of living increase.* Effective as of each January 1, each person who has been in receipt of benefits for the full preceding year will receive a permanent increase in monthly benefit calculated as follows:

- (1) The percentage change in the cost of living as measured by the Consumer’s Price Index (CPI-W) from the month of September of the last year in which an increase was granted to September of the current year will be determined.
- (2) This percentage change will be multiplied by 50 percent.
- (3) The amount from subsection (c)(2) of this section will be maximized at 2.75 percent, but will not be allowed to be less than zero percent.
- (4) The increase determined from subsection (c)(3) of this section will be granted 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 the present value of such increase does not exceed the net actuarial experience accumulated from all sources of gains and losses as provided in section 112.61, Florida Statutes, effective from July 1, 1994 forward. However, if the current year is a year that follows a year or years in which no cost of living adjustment was made, then the cumulative rate of return on the assets from the year in which the last adjustment was made must also be greater than zero percent.

(5) For the class members in *Murrhee v. City of Coral Gables*, Case No. 13-20731 CA (13) (Fla. 11th Cir. Ct.), paragraph 8.3 of the Class Action Settlement Agreement dated September 18, 2017 will govern cost of living increases for the fiscal year ending September 30, 2017 and each year thereafter and reads as follows:

8.3 Future COLAs: Alternative Dispute Resolution Mechanism. To resolve disputes among the Parties about the conditions that apply and must be met to trigger future COLAs for the fiscal year ending September 30, 2017 and each year thereafter, the following procedures apply to the determination of such COLAs, for as long as the Alternative Dispute Resolution Mechanism remains in effect. The Retirement Board will make a separate determination as to whether Class Members are entitled to a COLA and the amount of the COLA based solely on the factors identified in the 2013 version of Section 50-230(c) without regard to net Actuarial Experience. If the Retirement Board determines that Class Members should receive a COLA, and net Actuarial Experience is negative, the City Attorney may invoke the Alternative Dispute Resolution

Mechanism by requesting a hearing before the City Commission within sixty (60) days of the Retirement Board's determination. Within sixty (60) days of the City Attorney's request, the City Commission must hold a hearing. At the hearing, the City Commission in its sole discretion may, by a supermajority 4/5 vote, reject the Retirement Board's determination or reduce the amount of the proposed COLA, considering the following factors:

A. Whether the present value of the proposed COLA exceeds the net Actuarial Experience of the Retirement System accumulated from all sources of gains and losses since July 1, 1994;

B. The amount of the Unfunded Actuarial Accrued Liability and whether it has been declining or increasing and the amount of such decline or increase;

C. The amount of the Unfunded Actuarial Accrued Liability and the amount by which it will increase if the proposed COLA is granted;

D. The number of years since the last COLA was granted;

E. The percentage increase of the last COLA that was granted;

F. The single-year Actuarial Experience of the Retirement System for each of the seven years preceding the proposed COLA, and the net Actuarial Experience over the preceding seven years; and

G. The increase or decrease of the Consumer Price Index issued by the U.S. Bureau of Labor Statistics.

8.3.1 If the Commission fails to obtain the supermajority 4/5 vote, then the Retirement Board's determination shall be considered approved by the Commission.

8.3.2 If the Commission obtains the supermajority 4/5 vote specified, then the Commission's decision shall not be overturned unless it is arbitrary and capricious.

8.3.3 Any decision of the Commission to reject the Retirement Board's determination or reduce the amount of the proposed COLA based on the factor specified in ¶ 8.3(A), alone, and regardless of the other factors specified in ¶ 8.3(B)–(G), will not be considered arbitrary or capricious.

8.3.4 The intent of the Alternative Dispute Resolution Mechanism is to comply with law and accomplish the purposes of Chapter 112, Part VII, Florida Statutes, which include maintaining the actuarial soundness of the Retirement System, maximizing the protection of public employee retirement benefits, and prohibiting the use of any procedure the effect of which is to transfer to future

taxpayers any portion of the costs which may reasonably have been expected to be paid by current taxpayers.

8.3.5 The Alternative Dispute Resolution Mechanism applies to Class Members only. The procedures prescribed by Florida law and the Coral Gables Code continue to apply to non-Class Members.

(6) The capitalized terms in paragraph 8.3 of the Class Action Settlement Agreement are defined in paragraph 2 of the Class Action Settlement Agreement, and shall have the following meanings.

- a. “Actuarial Experience” means a measure of the difference between actual experience and that expected based upon a set of actuarial assumptions during the period between two actuarial valuation dates.
- b. “Alternative Dispute Resolution Mechanism” means the agreed procedure for the determination of Future COLAs set forth in ¶ 8.3 (and incorporated by reference into the City Code pursuant to ¶ 12.1) to avoid future disputes about the conditions that must be met to trigger Future COLAs.
- c. “Class Members” means all of the individuals and estates that are members of the Class in *Murrhee v. City of Coral Gables*, Case No. 13-20731 CA (13) (Fla. 11th Cir. Ct.).
- d. “COLA” and “COLAs” mean a permanent cost of living increase to retirement benefits, pursuant to section 46-253(c), Coral Gables Code.
- e. “Future COLAs” means COLAs that will be determined pursuant to the Alternative Dispute Resolution Mechanism for the fiscal year ending September 30, 2017 and each year thereafter.

* * *

SECTION 3. That all sections or parts of sections of the 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 are hereby repealed insofar as there is a conflict or inconsistency.

SECTION 4. That it is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the word “ordinance” may be changed to “section,” “article,” or such other appropriate word or phrases in order to accomplish such intentions.

SECTION 5. That this Ordinance shall become effective upon adoption; but it shall automatically terminate if the Alternative Dispute Resolution Mechanism is terminated by the City or with the City’s approval pursuant to ¶ 7 of the Settlement Agreement.

APPROVED:

RAUL VALDES-FAULI
MAYOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ATTEST:

WALTER J. FOEMAN
CITY CLERK

MIRIAM SOLER RAMOS
CITY ATTORNEY