

*The Revised Municipal Code of
the City and County of Denver*



Section 18-391 through 18-430.7

December 2018

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*Editors Note: Ord. No. 960-05 § 3, adopted Dec. 19, 2005, repealed division 5, sections 18-433.11—18-433.4, in its entirety. Former division 5 pertained to the Special Incentive Retirement Plan for members of the Plan, being derived from Ord. No. 703-03, enacted September 15, 2003

CHAPTER 18, ARTICLE XII. RETIREMENT*

*Editor's note: Ord. No. 960-05, §§ 1, 2, adopted Dec. 19, 2005, repealed article XII, sections 18-391, 18-392, 18-401--18-132, in its entirety and replaced it with a new article XII, sections 18-391--18-393, 18-401--18-419, 18-422--18-430.7. Former article XII pertained to similar material and derived from the Code of 1950, §§ 142.1, 142.25--142.29; Ord. No. 37-87, § 1, adopted Jan. 26, 1987; Ord. No. 235-87, §§ 1--3, 5, adopted May 4, 1987; Ord. No. 588-87, § 1, adopted Oct. 19, 1987; Ord. No. 710-87, § 1, adopted Dec. 7, 1987; Ord. No. 18-88, § 1, adopted Jan. 11, 1988; Ord. No. 551-88, §§ 1, 3, adopted Aug. 29, 1988; Ord. No. 40-89, §§ 1--3, adopted Jan. 30, 1989; Ord. No. 478-89, §§ 1--13, adopted Sept. 5, 1989; Ord. No. 83-90, § 1, adopted Feb. 12, 1990; Ord. No. 398-90, §§ 1--4, adopted July 9, 1990; Ord. No. 296-91, § 1, adopted April 29, 1991; Ord. No. 816-91, §§ 1--21, adopted Nov. 4, 1991; Ord. No. 350-92, §§ 1--5, adopted June 8, 1992; Ord. No. 727-92, §§ 1--3, adopted Oct. 13, 1992; Ord. No. 842-93, § 1, adopted Nov. 1, 1993; Ord. No. 1030-95, §§ 1--6, adopted Dec. 11, 1995; Ord. No. 263-96, §§ 1--4, adopted April 1, 1996; Ord. No. 666-96, §§ 1, 5, adopted Aug. 5, 1996; Ord. No. 1106-96, § 1, adopted Dec. 16, 1996; Ord. No. 1110-96, § 1, adopted Dec. 16, 1996; Ord. No. 798-97, §§ 1--9, adopted Nov. 10, 1997; Ord. No. 142-99, §§ 1--17, adopted Feb. 22, 1999; Ord. No. 372-99, §§ 1, 3, adopted May 10, 1999; Ord. No. 524-99, §§ 1--8, adopted July 12, 1999; Ord. No. 580-00, §§ 1--4, adopted July 17, 2000; Ord. No. 24-01, § 1, adopted Jan. 2, 2001; Ord. No. 527-02, § 1, adopted July 1, 2002; Ord. No. 1025-02, § 9, adopted Dec. 16, 2002; Ord. No. 3-03, § 1, adopted Jan. 6, 2003; Ord. No. 4-03, § 1, adopted Jan. 6, 2003; Ord. No. 155-03, § 1, adopted March 3, 2003; Ord. No. 547-03, § 1, adopted July 7, 2003; Ord. No. 571-03, § 1, July 14, 2003; Ord. No. 703-03, § 1, adopted Sept. 15, 2003; Ord. No. 313-04, §§ 1--3, adopted May 17, 2004; Ord. No. 457-04, §§ 1, 2, adopted July 12, 2004; Ord. No. 458-04, §§ 1--4, adopted July 12, 2004; Ord. No. 459-04, §§ 1--3, adopted July 12, 2004; Ord. No. 457-05, §§ 1, 3--7, adopted July 5, 2005; Ord. No. 960-05, adopted Dec. 23, 2005 [the reenactment]; Ord. No. 864-06, adopted Dec. 29, 2006; Ord. No. 264-07, adopted June 15, 2007; Ord. No. 774-07, adopted Dec. 28, 2007; Ord. No. 402-08, adopted Aug. 8, 2008; Ord. No. 513-09, adopted Sept. 25, 2009; Ord. No. 514-09, adopted Sept. 25, 2009; Ord. No. 632-09, adopted Nov. 6, 2009; Ord. No. 634-09, adopted Nov. 6, 2009; Ord. No. 641-09, adopted Nov. 13, 2009; Ord. No. 636-10, adopted , 2010; Ord. No. 341-11, enacted June 24, 2011; Ord. No. 349-11, enacted July 1, 2011; Ord. No. 350-11, adopted July 1, 2011; Ord. No. 530-11, adopted Oct. 28, 2011; Ord. No. 506-12, adopted , ? 2012; Ord. No. 567-13, adopted November 15, 2013; Ord. No. 568-13, adopted November 15, 2013; Ord. No. 0700, adopted November 25, 2014; Ord. No. 0701, adopted November 25, 2014; Ord. No. 15-0591, adopted September 22, 2015; Ord. No. 16-1123, adopted December 6, 2016; Ord. No. 17-1007, adopted October 3, 2017; Ord. No. 18-1248, adopted November 20, 2018.

DIVISION 1. GENERALLY

Sec. 18-391. City employees exempt from state retirement plan.

The city is hereby exempted from the purview of an Act of the General Assembly of the State of Colorado entitled, "An Act relating to pensioning of certain classes of county, municipal, and school district employees after retirement from office," approved April 19, 1943, as enacted and as it may be repealed and reenacted or amended from time to time (C.R.S. 1973, 24-51-201 et seq.; see L. 1987, S.B. 143 § 1).

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-392. Termination of retirement and disability plan.

The retirement and disability plan or system of the city, as established by Ordinance No. 84, Series of 1946, as amended, was discontinued and terminated as of September 19,

1953. Such termination and provisions related thereto in the 1950 Revised Municipal Code (sections 142.25--142.29) are hereby saved from repeal and continued in effect (Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-393. Provisions of 1963 Retirement Plan as of December 31, 2005, saved from repeal.

The ordinances creating and describing the 1963 Retirement Plan with all amendments thereto, up to and including Ordinance No. 457, Series 2005, as codified in sections 18-401 through and including 18-422, chapter 18, of the Revised Municipal Code, are hereby saved from repeal and continued in effect only, however, as they pertain to and provide for privileges, rights, and obligations of former and current members, including active, deferred, and retired members, their spouses and beneficiaries, and their respective obligations and rights to benefits vested under this article as of December 31, 2005.

(Ord. No. 960-05, § 1, 12-19-05)

Secs. 18-394--18-400. Reserved.

DIVISION 2. 1963 RETIREMENT PLAN

Sec. 18-401. Declaration of policy.

It is hereby declared to be the policy of the city that all contributions paid by the city under the terms of the plan, as provided for below, and all earnings thereon, are exclusively the property and for the exclusive benefit of those members, former members, retired members or their beneficiaries who may be eligible for payments under terms and conditions of the plan. No part of the corpus or investment return on the corpus of the trust shall be diverted to or used for purposes other than for the payment of benefits to members of the plan or other persons entitled to benefits under the terms of the plan and expenses incidental to the operation of the plan and the protection and enhancement of the trust. The plan, effective January 1, 1963, and this division 2, as restated with amendments and re-enacted as of January 1, 2006, are to further the objective of the employer in employment matters under, inter alia, section 6, article XX, of the state constitution and, therefore, are declared to be matters strictly of local and municipal concern of the city.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-402. Definitions.

Terms used in this article or in the plan not defined generally in the Code shall have those meanings set forth specifically in definitions found in various sections of this division or in the administrative rules and regulations duly adopted by the board. As used in this division, the following words and phrases (and their declensional, inflected and

conjugated forms) shall have the meanings in this section ascribed to them, unless it appears from the context that such word or term shall have been used in another sense:

- (1) *Accumulated contributions* shall mean, for employees employed prior to January 1, 1979, or employees not yet vested in the plan, the sum of a regular member's employee contributions to the plan, together with interest at a rate set annually by the Retirement Board, with a minimum rate of one (1) percent, not to exceed three (3) percent, per annum, compounded annually as of June 30th of each year.
- (2) *Active member* shall mean a member who is currently employed by the employer.
- (3) *Actuarial equivalent* or *actuarially equivalent*, including the phrase *actuarially determined present value*, shall mean a form of benefit differing in time, period or manner of payment from the normal form of benefit and determined on the basis of the mortality table and interest rate specified in the plan. The present value of any benefit and the amount of any distribution under the terms of the plan will be the actuarial equivalent of the normal form of benefit to the extent the limits of the Internal Revenue Code are not exceeded.
- (4) *Appointed official* shall mean any person occupying the following positions: manager of aviation, manager of public works, manager of environmental health, manager of safety, city attorney, manager of finance, manager of parks and recreation, manager of general services, manager of human services, and manager of community planning and development.
- (5) *Authorized leave of absence* means an unpaid, temporary cessation from active service with the employer, regardless of the reason, pursuant to an established nondiscriminatory policy of the employer, for which credited service is not given.
- (6) *Board* or *retirement board* means the five-member board appointed by the mayor as trustees to formulate, amend and administer the plan.
- (7) *Bridged benefit* means the total of a member's monthly benefit paid upon retirement following:
 - (a) an initial retirement; and
 - (b) receipt of benefits from the Plan; and
 - (c) any subsequent re-retirement benefits.Two or more separately calculated retirement benefits combined into one monthly payment shall be known as and called a "bridged benefit."
- (8) *Contractual entity* shall mean any governmental agency or public entity exempt from the payment of federal income taxes by reason of express or implied governmental immunity under the Constitution or laws of the United States of America that joins the retirement plan, with the legislative approval of the city, by contracting with the retirement board upon and after review by and approval from the plan's regularly employed actuary. The contribution rates, retirement benefits, schedules and refund privileges shall be the same for the contractual entity's employees as for city employees. The effective date for contractual entity employees shall be the date of the contract; however, the contractual entity's employee may have credit for current service between the contractual entity's effective date and January 1, 1963, if paid for with the contributions required for regular membership together with the applicable interest rate by both the employee and the contractual entity.

- (9) *Credited service* shall mean the number of years and months of service for which contributions on behalf of the member were received by the plan based on the member's compensation, and the number of years and month of permissive service credit (subject to the terms provided in this division) obtained by the member prior to the retirement date and credited to such member by the retirement board. The use of permissive service in the calculation of credited service shall only be for the calculation of benefits and shall not entitle a member to the receipt of a particular benefit, nor shall it entitle a member to vest in a particular benefit.
- a. Years and months of "military service duty," which shall have the meaning given the term "uniformed service" in the federal Uniformed Service Employment and Reemployment Rights Act of 1994, as amended from time to time (the Act), for re-employment rights purposes, shall be counted as credited service and benefits shall be accorded in compliance with and as limited by the Internal Revenue Code, provided that the member meets the qualifications and requirements of the Act.
 - b. A member may change the class of employment without causing a break in credited service so long as the member maintains eligibility.
 - c. In determining credited service, the plan shall count current service for fractional years on the basis of one-twelfth of one (1) year for each full calendar month of service.
 - d. Subject to eligibility requirements, credited service shall include the aggregate of periods of current service commencing with an employee's first day of employment or reemployment and ending on the date a break in service begins, or the date an employee terminates employment with the employer. Service credit for properly authorized leave of absence without pay can be obtained upon payment by the member into the trust fund of an amount equal to the employee contribution, if any, and the employer contribution for the complete period of the leave of absence. Partial paybacks for a leave of absence shall not be allowed. Unpaid disciplinary leave or an unpaid disciplinary suspension are not authorized leaves of absence and a member is prohibited from purchasing or receiving credited service for any period of unpaid disciplinary leave or suspension. Any payment for an authorized leave of absence must be completed prior to the member's termination from employment. No payment shall be allowed to be made to the Plan for a purchase of service credit following a member's termination of employment. If payment is made for an authorized leave of absence within twenty-four (24) months following a member's return to work the cost shall be calculated based upon the required contributions plus interest to the date of repayment at the rate of three (3) percent per annum, compounded annually as of June 30th of each year. The cost for a member wishing to receive credited service for an authorized leave of absence who does not repay the required contributions, with interest, within twenty-four (24) months following the employee's return to work, shall be calculated at the full actuarial cost for such service in accordance with Section 18-415(c)(2). The hours of service credited shall be those which would normally have been credited but for such absence, or, in any case in which the plan is unable to determine such hours normally credited, eight (8) hours of service per day of absence.

- (10) *Deferred member* shall mean a member who does not complete and submit the required retirement application and all required documents to the plan within thirty (30) days of separation from service or termination of employment.
- (11) *Effective date* shall mean January 1, 1963, the date when the retirement plan shall be first put into effect.
- (12) *Elected official* shall mean any person occupying the following positions: councilmember, mayor, auditor, district attorney or clerk and recorder.
- (13) *Employee* shall mean any employee of the city who regularly works for the city at least twenty hours per week, but shall not mean or include those reemployed pursuant to section 18-408(j)(7) of this article or persons holding on-call positions (“on-call position” shall mean and include those positions which have no established work schedule and for which no employee benefits are available). The term "regularly works" shall mean and apply to a person who works at least twenty (20) hours per week for a total of twelve (12) or more weeks in a rolling twelve (12) month period. *Employee* shall also mean and include (excepting personnel holding on-call positions) any appointed official of the city, any elected official of the city, any employee designated by the mayor to be exempt from career service as an administrative position, and any employee of:
- (a) The city council;
 - (b) The auditor;
 - (c) The retirement board (or the plan);
 - (d) The library commission;
 - (e) The civil service commission;
 - (f) The board of adjustment-zoning;
 - (g) The clerk and recorder;
 - (h) The county court (except the judges of the county court);
 - (i) The career service authority;
 - (j) The district attorney;
 - (k) The undersheriff;
 - (l) Any other person employed by the city who is eligible for employee benefits defined in part 1, article IX of the Charter (2003 codification) (but excepting employees who are members of the classified service as defined in parts 4, 5 and 6 of said article IX); and
 - (m) In the case of contractual entities, any person who qualifies for participation in the plan and is an employee of an employer.
- (14) *Employer* shall mean the city or any contractual entity.
- (15) *Gross pay, compensation and salary* shall mean that amount of remuneration, including wages, salaries, other amounts received for personal services actually rendered in the course of employment with the employer, and other amounts actually included or that could be included in gross income of and due to an employee, including employees on disability leave as provided for in division 4 of article V of this chapter 18, or otherwise, from the employer in the full amount as calculated before any reductions or deductions are made therefrom for any purpose, including reductions or deductions by reason of sections 125, 132(f)(4) or 457 of the Internal Revenue Code, but not including distributions made from a plan of the employer

designed to be eligible under section 457. The calendar year shall be the limitation year (determination period) for purposes of section 415 of the Internal Revenue Code.

Gross pay, compensation and salary shall not include any amounts paid to a member whose service with the employer begins, or whose reemployment with the employer begins, after December 31, 2009 for the unused portion of the employee's bank of accumulated paid time off upon the employee's separation from employment with the employer. Employees who were employed on or before December 31, 2009, who are thereafter laid off and then re-instated (as defined in the career service rules), shall continue to have included in the calculation of their retirement benefit as gross pay, compensation and salary the unused portion of the employee's bank of accumulated paid time off upon the employee's subsequent separation from employment with the employer.

Employer provided fringe benefits receiving special tax benefits, such as premiums for group term life insurance (to the extent excludible from gross income), shall be excluded from the definition of compensation. Gross pay, compensation and salary shall not include any lump-sum amount paid to a member under a settlement agreement entered into between the employer and the member, unless the adverse employment action which led to the settlement agreement is rescinded and the member is reinstated to employment with the employer back to the effective date of the adverse employment action and the lump-sum settlement amount equals the exact gross pay, compensation and salary the member would have received for personal services actually rendered in the course of employment with the employer, but for the adverse employment action being taken, and the lump-sum payment is classified as back-pay wages in the settlement agreement. Payments made to employees pursuant a retirement incentive program shall be excluded from the definition of compensation and shall not be used in calculating an employee's retirement benefit.

- (16) *Internal Revenue Code* shall mean the Internal Revenue Code of 1986, as the same may be amended from time to time, and regulations and policies duly adopted or promulgated thereunder from time to time.
- (17) *Investment manager* shall mean any person who is a registered investment advisor under the Investment Advisors Act of 1940 who has the power to manage, acquire, or dispose of plan assets and acknowledges in writing the manager's fiduciary responsibility to the plan.
- (18) *Investment policy* shall mean the document which contains the current and long-term goals and objectives for the trust fund and the policies and procedures to be used by the retirement board, the trustees, investment managers, custodians, or any of them, in the management and safekeeping of the trust fund.
- (19) *Joint and survivor annuity* or *joint and survivor benefit* means an annuity for the life of the participant with a continued annuity for either the life of the spouse, if the participant is married at the time of retirement, or for a named beneficiary, and, subject to the minimum distribution incidental benefit requirements of the Internal Revenue Code, which is the actuarial equivalent of a single straight life annuity for the life of the participant. Under this option the member's benefit is reduced to

provide for the lifetime monthly benefit of either the spouse or a named beneficiary following the death of the member.

- (20) *Normal retirement.* Normal retirement for members originally employed before July 1, 2011, shall mean retirement at the earlier of the age of sixty-five (65) or the first day of any calendar month after which a member has attained his or her fifty-fifth (55th) birthday and where the member's age and credited service, while an active member, are or were equal to the sum of seventy-five (75). The rule-of-75 is determined by adding the age of the employee while employed with the employer to the years of credited service as an employee with the employer. If the total equals or exceeds the sum of seventy-five then the requirements for the rule-of-75 have been met. The rule-of-75 must be attained by the member, while employed as an active member, prior to termination of employment. If the employee terminates employment, after earning the required service credit to be granted rule-of-75 unreduced benefits, but prior to reaching the age of fifty-five (55), the member may not apply for or receive retirement benefits under the rule until reaching age fifty-five (55).

For members first employed on or after July 1, 2011, *normal retirement* shall mean, for members who have vested, the earlier of the age of sixty-five (65), or the first day of any calendar month after which a member has attained his or her sixtieth (60th) birthday and where the member's age and credited service, while an active member, are or were equal to the sum of eighty-five (85). The "rule-of-85" is determined by adding the age of the employee while employed with the employer to the years of credited service as an employee with the employer. If the total equals or exceeds the sum of eighty-five (85) then the requirements for the rule-of-85 have been met. The rule-of-85 must be attained by the member, while employed as an active member, prior to termination of employment. If the employee terminates employment, after earning the required service credit to be granted rule-of-85 unreduced benefits, but prior to reaching the age of sixty (60), the member may not apply for or receive retirement benefits under the rule until reaching age sixty (60).

- (21) *Participant* or *member* shall mean any employee or official of an employer after the effective date, who qualifies for participation in the plan and who has not for any reason become ineligible to participate further in the plan. The term "participant" or "member" shall also include "active member," "deferred member" and "retired member."
- (22) *Permissive service credit* or *purchase of service credit* shall have the meaning given to it in section 415(n) of the Internal Revenue Code, and shall not mean the credited service granted a member under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended and as provided by federal law, or credited service for purposes of qualifying for a benefit available under the plan.
- (23) *Plan* shall mean the employees' retirement plan as presently set forth in this division or as the same may hereafter be amended. The name of the plan shall be "Denver Employees Retirement Plan." The term "plan" may also be used to refer to the administration of the plan and those who administer the plan.

- (24) *Pre-retirement survivor annuity* shall mean an annuity form of payment for the life of the surviving spouse of a participant who dies prior to the member's retirement date.
- (25) *Regular member* shall mean an employee who is eligible to be covered by the retirement plan and who is making all contributions required by the plan to be made by a regular member.
- (26) *Retired member* shall mean a former employee whose membership service has terminated by reason of retirement or disability and who is receiving or is entitled to receive benefits under this plan.
- (27) *Retirement benefits* shall mean any annuity payment to retired members, their spouses, beneficiaries or dependents provided for under the plan.
- (28) *Service* shall mean service rendered for compensation as an employee.
- (29) *Single straight life annuity* or *maximum benefit* shall mean an annuity for the lifetime of the member only which has not been reduced to provide a lifetime monthly benefit to a spouse or a beneficiary which becomes payable upon the death of the member. A member who is married at the time of his or her retirement shall not be allowed to take a single straight life annuity without the written permission of the member's spouse.
- (30) *Trust* or *trust fund* shall mean the fund established by this division and having its inception by authority of Ordinance No. 388, series of 1962, and shall have the meanings and be governed by the authority as set forth in section 18-403, for the purpose of providing pension benefits and benefits incident thereto, and, except for reporting and record-keeping purposes, the term shall also include, for custodial, investment and fiduciary purposes, the health benefits account.
- (31) *Vest, vesting* or *vested* shall mean a member meeting or having met a stated requirement for a privilege or right as stated in the plan. Unless otherwise specifically indicated in this article, a member appointed before January 1, 1987, shall be vested after ten (10) years of credited service; a member appointed on or after January 1, 1987, but before July 1, 2011, shall be vested after five (5) years of credited service or upon reaching the age of sixty-five (65), whichever is earlier. A member appointed on or after July 1, 2011, regardless of their age upon appointment, shall be vested after five (5) years of credited service. A vested member, who terminates employment and is subsequently re-employed or re-hired by the employer, even if subject to a different benefit formula than the one applied or to be applied to the initial employment and credited service of the member, does not have to re-vest in the plan. Upon meeting the eligibility and years-of-credited service requirements for a benefit, a member shall be vested in the benefit accruing under the terms of this article.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 264-07, § 19, 6-11-07; Ord. No. 774-07, § 1, 12-26-07; Ord. No. 775-07, 12-26-07; Ord. No. 513-09, § 2, 9-25-09; Ord. No. 514-09, § 1, 9-25-09; Ord. No. 634-09, § 5, 11-06-19; Ord. No. 641-09, § 1, 11-13-09; Ord. No. 349/350-11, § 1, 7-1-11; Ord. No.-11, §1)

Sec. 18-403. Establishment and management of trust fund.

- (a) *Creation of trust and exclusive benefit rule.* There is hereby established a trust fund which shall be managed, invested and expended under the direction of the retirement board for the sole purpose of enabling the plan to make the payments of retirement benefits required under the plan. The plan shall be a governmental defined benefit plan that is consistent with the terms and conditions of this article and qualified under section 401(a) of the Internal Revenue Code. The trust shall be exempt from tax under section 501(a) of the Internal Revenue Code. The trust fund shall not include for record-keeping purposes, but shall include for investment, fiduciary and custodial purposes, the assets and earnings thereon of the health benefits account. All moneys, choses in action, and other property accounted for, deposited into, as, or made a part of such trust fund, excepting for accounting and record-keeping purposes the health benefits account, are hereby declared to be held in trust for the sole use and purpose of payment of the retirement benefits provided by this plan and the trust is hereby declared to be irrevocable, except as it may be modified in accordance with the terms of this division and the plan.
- (b) *Fiduciary standards.* Any fiduciary acting with regard to the management, investment, receipt or expenditure of the trust assets shall discharge the duties with respect to the plan solely in the interest of the members, retired members, and their beneficiaries:
- (1) For the exclusive purpose of:
 - a. Providing benefits to participants and their beneficiaries; and
 - b. Defraying reasonable expenses of administering the plan;
 - (2) With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent investor acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
 - (3) By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
 - (4) In accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this plan.
- (c) *Use of group trusts and separate accounts.* The board may authorize the investment of a portion of the trust in group trusts, other collective or commingled investment trusts or separate insurance accounts in accordance with the Internal Revenue Code and provisions of the rules and regulations established by the board.
- (d) *Use of trustees, custodians and investment managers.* Trustees acting under trust agreements, or custodians acting under custodial agreements, or both trustees and custodians, may be selected by the retirement board or its designee.
- (1) The retirement board may delegate investment powers to trustees, or in the case of a custodial account, such powers may be delegated to any investment manager or group of investment managers selected by the board. Trustees, investment

- managers or custodians may be removed by the retirement board at any time, and, in such event, new trustees, investment managers or custodians may be selected by the retirement board. Trustee, investment management and custodial expenses shall be paid out of the trust fund subject to the approval of the retirement board. The retirement board or the executive director, upon direction of the retirement board, is hereby authorized to execute the appropriate trust, investment management and/or custodial agreements, not inconsistent with the provisions of the plan, as indicated above.
- (2) The duties of the trustees, investment managers or custodians shall include the following:
 - a. They shall invest and reinvest their share of the corpus and income of the trust fund subject to the requirements of the investment policy covering trust fund investments as set forth in the trust or custodial agreement.
 - b. They shall maintain such records and accounts of their share of the trust fund and shall render such financial statements and reports thereof as may be required, from time to time, by the retirement board.
 - (3) If the retirement board should determine that trustees or investment managers, or any combination thereof, will best serve the purpose of the plan, the assets of the plan, exclusive of those plan assets managed under the direction of the executive director, may be managed by trustees or investment managers. Plan assets may in the board's discretion, be managed by the plan, itself, under the direction of the executive director. In the absence of a plan custodian, the city treasurer shall provide safekeeping of the fund's securities which shall be registered in the fund's nominee name.
- (e) *Operating expenses, budgets and audits.*
- (1) All expenses of the administration and operation of the retirement plan shall be paid out of the trust fund established by this article. The investment management expenses of the plan shall be limited to one-quarter of one (0.25) percent of the average market value of the trust fund assets as of each calendar quarterly period. The administrative expenses (all expenses of the plan other than investment management expenses) shall be limited to one-eighth of one (0.125) percent of the asset value of the trust fund (cost or market value, whichever is higher) as of the end of each current year calendar quarterly period annualized. Upon direction of the board, expenses of custodial accounts, reports, and educational materials may be paid or partially paid through commissions generated by the purchase and sale of the plan's assets by plan trustees or investment managers.
 - (2) The board shall adopt a budget for the succeeding calendar year not later than November thirtieth of the current calendar year, and a copy thereof shall be filed with the mayor and city council. Once adopted, the executive director is authorized to pay operational expenses in conformity with the established budget. Expenses outside of the annual budget may be authorized upon approval of the retirement board at the request of the executive director for good cause being shown or upon an emergency basis.

- (3) The board shall cause to be made, once each year, a complete audit of the trust fund, including the health benefits account, and shall furnish to the mayor, the city council and the city auditor a written report showing the result of such audit.
 - (4) The city auditor may, at the auditor's discretion, audit the trust fund, including the health benefits account, at any time.
 - (f) *Unclaimed Benefits.* Any benefits, interest, or property held by the Plan which remain unclaimed for more than five (5) years after such benefits, interest, or property becomes payable or distributable to the claimant (including creditors of the Plan who are not members or beneficiaries), shall not be reported as unclaimed property to the Treasurer of the State of Colorado, but shall remain in the trust; however, any benefits, interest, or properties so forfeited shall not be used to increase benefits except in accordance with general funds available in the trust and subject to the requirements and provisions of the Internal Revenue Code.
 - (g) *Administration of trust.* The trust fund established by this division and the plan itself shall be administered by the retirement board.
- (Ord. No. 960-05, § 1, 12-19-05; Ord. No. 402-8, § 1, 8-4-08)

Sec. 18-404. Qualification requirements—Internal Revenue Code.

Internal Revenue Code preemption. Notwithstanding other provisions of this article and the plan, the following qualification requirements and limitations shall take precedence over and govern conflicting provisions that do not meet the minimum requirements applicable to governmental plans for qualification under section 401(a) of the Internal Revenue Code:

- (1) No part of the corpus of the trust or income derived therefrom may be used for or diverted to any purpose other than that of providing benefits to members and their beneficiaries and defraying reasonable expenses of administering the trust and plan.
- (2) Forfeitures arising from severance of employment, death or any other reason may not be applied to increase the benefits any member or beneficiary would otherwise receive under the plan.
- (3) To the extent of available funds in the trust, in the event of the permanent discontinuance of all contributions or upon termination or partial termination of the plan, each member will be fully vested in the benefits the member has accrued at the date of the discontinuance or termination (or partial termination), and, upon meeting eligibility requirements for a particular benefit under the terms of the plan, the member will be fully vested in the accrued benefit.
- (4) A member's benefit shall begin no later than April 1 of the calendar year following the calendar year in which the member reaches the age of seventy and one-half (70 ½) years or retires, whichever is later.
- (5) The benefits paid under this plan may not exceed the limitations specified by section 415 of the Internal Revenue Code, as automatically adjusted January 1 of each year under section 415(d) of the Internal Revenue Code. The annually adjusted dollar limit shall apply to the benefits of all current, former and retired members (with benefits limited by section 415(b)), as specified in applicable regulations. The compensation taken into account for benefits under the plan shall not exceed the applicable amount permitted under section 401(a)(17) of the Internal Revenue Code; however, for any

participant who became a member before January 1, 1996, the limitation on annual compensation taken into account shall not be less than the amount which was allowed to be taken into account under the Ordinance as in effect on July 1, 1993 as determined and set forth in Ordinance No. 1030, Series 1995 (which was \$200,000, adjusted for changes in the cost of living under section 415(d) of the Internal Revenue Code). The Internal Revenue Code provisions are hereby incorporated by reference as the limitations applicable to this article and plan, and shall take precedence over, and control where inconsistent with the provisions set forth in this article or plan.

- (6) Any member or beneficiary (“distributee”) who is entitled to an eligible rollover distribution, or is entitled to make an eligible rollover distribution, as defined in section 402(c)(4) of the Internal Revenue Code, may elect to have the portion of the distribution that would otherwise be included in the gross income of the distributee for federal income tax purposes transferred directly to an eligible retirement plan, as defined in section 402(c)(8)(B) of the Internal Revenue Code, designated by the distributee.
- (7) All benefits paid from the trust pursuant to the plan shall be distributed in accordance with the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code, including those Treasury Regulations pertaining to non-spousal beneficiaries.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 350-11, § 2, 7-1-11; Ord. No. 530-11, §1, 10-28-11)

Sec. 18-405. Retirement board.

(a) *Established.*

- (1) The plan shall be administered under the direction of a retirement board in which is vested authority to determine eligibility for membership in the plan for both retirement and health benefits, as well as the responsibility for the proper operation of the retirement plan, all such authority to be exercised in ways consistent with this division. The retirement board may, in administering the benefits payable under plan, conclusively rely upon the statements and representations sworn to or acknowledged before one authorized to administer oaths, in the form of affidavits, certificates, or other similar proof offered by members, spouses or beneficiaries with regard to eligibility for benefits, amount of benefits, membership, marital status, and other matters affecting rights or privileges under the plan.
- (2) The retirement board shall consist of five (5) voting members, all of whom shall be appointed by the mayor. At least one of the appointed members shall be an active employee and at least one of the appointed members shall be either a retired member or a deferred member. The terms of office shall be six (6) years, and the members of the retirement board shall be eligible for reappointment. Any vacancy in the membership of the retirement board shall be promptly filled for the unexpired portion of the term by appointment by the mayor. Vacancies occurring by reason of the expiration of the term of any member shall be promptly filled by the mayor. Members of the retirement board shall not receive compensation from

the city for their services as such members. No member shall by reason of membership on the retirement board forfeit or be denied the right to any compensation, salary, or other remuneration to which the member is entitled for other services rendered by the member.

(b) *Additional powers.* In addition to the general authority granted to the retirement board to carry out and administer the plan and the trust assets, and in no way in limitation of such authority, the board shall have the following powers:

- (1) The authority to determine membership status, eligibility for retirement, death and health benefits, and the amount of credited service and salary to be used in calculating benefits pursuant to this article.
- (2) The authority to accept or reject on behalf of the plan any moneys or properties received in the form of donations, gifts, appropriations, bequests, forfeitures or otherwise, or income derived therefrom.
- (3) The authority to recover from benefit recipients, through legal process or benefit offset, any benefits or premiums improperly paid to them or on behalf of them to which they or their beneficiaries are not entitled, and to assess interest on such money at the general statutory rate. When a benefit offset is not available as a means to collect, the Plan may employ any collection method available, including assigning such accounts to private counsel or private collection agencies. If a legal suit is brought, then reasonable collection costs, attorney's fees, and legal expenses shall be added to the amount due. In the case of dishonored bank drafts and other negotiable instruments, in addition to the fee provided for below, the Plan may pursue all remedies provided for in the Colorado Revised Statutes. Whenever any account or debt due the Plan becomes delinquent and is referred for collection, the following collection fees will be added to the original debt amount:

Amount of debt	Collection fee
\$0.01 to 50.00	\$20.00
\$50.01 to 100.00	\$30.00
\$100.01 to 150.00	\$40.00
\$150.01 to 200.00	\$60.00
\$200.01 to 300.00	\$80.00
\$300.01 and above	30% of the debt amount

The benefit recipient or their beneficiary(ies) shall be liable for repayment of the total of the amount outstanding plus the collection fee. The Plan may, at its option, waive the collection fee for good cause shown.

- (4) The authority to use and hold property in a nominee partnership composed of trustees or employees of the plan, designated by the board through appropriate motion or resolution, to facilitate sale and exchange transactions. The partners of

- the nominee partnership may be insured against liability which arises out of or in connection with performance of duties on behalf of the plan.
- (5) The authority and discretion to hold discussions in executive sessions, called by a two-thirds (2/3) vote of a quorum of the board, which shall be closed to the public, regarding investments, financial matters (excluding matters required to be reported by this article), litigation, potential litigation or personnel matters, or other matters under the law in which an executive session is authorized to be held.
 - (6) The authority to hold title to interests, including the fee simple absolute, in real property, either for its administrative office needs, or for investment, in either the name of the plan or in the name of a title-holding organization, including a corporation, created and controlled by the retirement board for the purpose of holding title to interests in real property.
 - (7) The authority to adopt its own rules of procedure and by-laws for conducting business, including the establishment of committees made up of board members or board members and staff members as the board deems necessary. If a committee created by the board consists of a majority of board members, the open meetings laws shall apply, unless the matter to be discussed is subject to the executive session rules listed in subsection (b)(5) above.
 - (8) The authority to establish and administer, through the promulgation of rules and regulations, a qualified governmental excess benefit arrangement that satisfies the requirements of section 415(m) of the Internal Revenue Code, in order to provide to retired members such retirement benefits as would otherwise be payable under the plan, but for the application of the limitations on benefits of section 415(b) of the Internal Revenue Code. The benefits payable under this subsection shall be paid from contributions that otherwise would be made to the trust fund pursuant to section 18-407. In lieu of deposit in the trust, an amount determined by the board, upon the advice of its actuaries, to be necessary to pay benefits and reasonable and necessary expenses shall be paid monthly to the credit of an account or grantor trust established for this purpose. The board reserves the right to amend or terminate this arrangement at any time. Such action may be retroactive to the extent that the board deems such action necessary to maintain the tax-qualified or funded status of the plan or the status of this arrangement as a qualified governmental excess benefit arrangement.
 - (9) The authority to administer other or related employee benefit plans for the employer, including but not limited to, early retirement incentive programs and deferred retirement option plans.
 - (10) The authority to file an action in interpleader with the district court for the Second Judicial District of the State of Colorado, in those instances in which multiple claimants having differing interests contest the right to, or amount of, benefits.
 - (11) The authority to sue or be sued in its own name or in the name of the plan.
 - (12) The authority and power to construe disputed or doubtful terms in the plan.

(c) *Meetings and notices.*

- (1) Regular meetings of the retirement board shall be held on regular business days chosen by the retirement board.
- (2) An annual meeting shall be held immediately following a regular meeting during a month designated and publicized in advance by the board.
- (3) Special meetings may be called by not less than two (2) retirement board members and shall be held on a regular business day as chosen by the retirement board. Notice of the date of special meetings shall be transmitted to each member of the retirement board within a reasonable period of time before such meetings are held.
- (4) All meetings of the retirement board shall be public and shall be held in the offices of the retirement plan unless another location within the city is selected by the board by giving notice thereof in advance. All notices shall be published and provided in accordance with the open meetings laws and shall be posted on the Plan's internet website at least one (1) week before each meeting indicating the time and place of the meeting. Three (3) members of the retirement board shall constitute a quorum at any meeting, and each member shall be entitled to one (1) vote. Annually the retirement board shall elect one (1) of its members to preside over the board and its meetings as chairperson, and to perform such related duties as may be required by the retirement board. The retirement board shall also elect another member as vice-chair to perform those duties in the absence of the member routinely presiding.

(d) *Advisory committee.*

- (1) Composition. The advisory committee shall be composed of three (3) members elected by the membership and one (1) member who is appointed by the career service board. At least one (1) elected member must be a retired member of the plan and at least one (1) elected member must be an active member of the plan who has five (5) years or more credited service. The member who is appointed by the career service board must either be a career service board member or an administrative staff member of the Career Service Authority department. The term of office for all advisory committee members shall be three (3) years.
- (2)
 - a. Elections. Each year, one (1) of the three (3) elected members shall be elected for a three-year term to the advisory committee in accordance with the election procedures authorized by the retirement board. This elected member shall be announced at a regular board meeting following the election, and assume office on the July 1st immediately following the election.
 - b. The member appointed by the career service board shall be designated prior to, and assume office effective on, July 1st in the year in which a term expires. Any vacancy in the appointed advisory committee position shall be promptly filled by the career service board for the unexpired portion of the term.

- (3) Vacancy of office. If an advisory committee member should vacate the office before the term expires, the office shall be filled by the person receiving the second highest number of votes at the election immediately preceding the vacancy who meets the qualifications of this division. The person appointed to fill the vacated office shall serve until the next regular election where the office shall be filled by the person receiving the second highest number of votes at that election who meets the qualifications of this division.
- (4) Re-election. All advisory committee members shall be eligible for re-election.
- (5) Role of advisory committee members. The duty and function of the advisory committee shall be to present to the retirement board, but not to trustees or investment managers, suggestions and questions which are in the interest of the general membership of the plan.

(e) *Executive director*

- (1) The retirement board shall hire an executive director, who, subject to the policy direction of the board, shall be the managing and chief administrative officer of the plan, and as such, shall have charge of the retirement office and all accounts and records of the plan. Such accounts and records, other than personnel documents, membership files and records, and financial and investment records which are confidential under the Colorado Open Records Law, as well as temporary notes and drafts or documents in process but not finalized or adopted, shall be available for public inspection during regular business hours. A member's file and records may be inspected during regular business hours by that member or the member's duly authorized representative upon notice in writing to the retirement office, and upon making an appointment for such inspection.
- (2) The executive director shall:
 - a. Have the authority to employ, supervise and dismiss the employees of the retirement office. All employees of the retirement office shall be paid salaries comparable to career service authority recommendations for similar job classifications.
 - b. Be the secretary of the retirement board and shall keep the records of its proceedings.
 - c. Make all disbursements from the trust fund in accordance with the provisions of this article.
 - d. Apply and enforce all provisions of this article and of the rules and regulations of the retirement board pertinent to the operation of the retirement plan.
 - e. Sign and execute all contracts for the plan as required by this article or as authorized by the retirement board.
 - f. Prepare, execute and file all documents pertaining to the retirement plan as required by the Internal Revenue Service or by any other regulatory agency of government having jurisdiction.
 - g. Obtain a determination from the commissioner of the Internal Revenue Service that the plan and all amendments to the plan that could affect the

qualification of the plan are qualified under section 401(a) of the Internal Revenue Code, and the trust fund is exempt under section 501(a) of the Internal Revenue Code.

- (f) *Advisors.* The retirement board shall have the authority to retain such actuaries, consultants, attorneys and advisors by contract or otherwise as may be deemed necessary and advisable. The city attorney shall provide legal counsel to the plan, in an advisory or representative capacity, upon request of the board.
- (g) *Rules and regulations; adoption and amendment of the plan.* The board shall adopt an investment policy setting forth policies for investment of the trust and general standards for investment managers to follow. The board may also adopt its own rules of conduct and procedure, and by-laws governing its operations. As the need arises, because of changes in the applicable governing law, including this division and the Internal Revenue Code, or as deemed necessary by the board, the board may modify, from time to time, the investment policy and the rules and by-laws governing its conduct and the operations of the plan. The board shall be responsible for the resolution or settlement of claims or disputes, for the formation and adoption of rules and regulations pertinent to the operations of the retirement plan and for recommendations to the city council for amendments to the plan when, in the judgment of the retirement board, such changes are necessary or desirable. No recommendations for an amendment to the plan which may affect the cost of or contributions to the plan shall be made to the mayor and city council unless accompanied by a report from the plan's actuary clearly setting forth the effect of such amendment on future contributions by the city and by the employees.
- (h) *Reports.*
 - (1) The retirement board shall submit a quarterly report, on a timely basis, to the mayor and to the city council on the financial status of the trust fund, a summary of any important decisions made by the retirement board during the quarter, including membership changes in the board or the advisory committee, the performance of the trust fund's investments, and on the performance of the trustees or investment managers. This report shall be compiled by a consultant who is an expert in the area of investment performance reporting.
 - (2) The board shall cause to be made, once each year, a complete audit of the trust fund, including the health benefits account, and shall furnish to the mayor, the city council and the city auditor a written report showing the result of such audit.
 - (3) An annual report of the retirement board to the membership shall be made available to all members.
- (i) *Public records.* Unless otherwise excepted, all official reports called for in this division shall be public documents under the Colorado Open Records Laws and shall be available for inspection at the retirement plan office.

Exceptions:

- (1) If disclosure of financial information would be likely to impair the plan's ability to gain necessary information or to cause substantial harm to the competitive financial position of the person providing the information, the financial information shall be deemed confidential under the statutory exemptions

- regarding public records currently codified in part 2 of article 72, title 24, Colorado Revised Statutes.
- (2) A record received, prepared, used or retained by an investment fiduciary in connection with an investment or potential investment of the plan that relates to investment information pertaining to a portfolio company in which the investment fiduciary has invested or has considered an investment or that relates to investment information whether prepared by or for the investment fiduciary regarding loans and assets directly owned by the investment fiduciary is exempt from the disclosure requirements of the public records law.
 - (3) If a public record described in this subsection is an agreement or instrument to which an investment fiduciary is a party, only those parts of the public record that contain investment information are exempt from the disclosure requirements of the public records law.
 - (4) "Investment information" means information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause a portfolio company or an investment fiduciary significant competitive harm. Investment information includes, but is not limited to, financial performance data and projections, financial statements, lists of co-investors and their level of investment, product and market data, rent rolls and leases.
 - (5) *Member Records*. All information contained in individual records of members, former members, inactive members, retired members, benefit recipients and their dependents, shall be confidential and shall not be disclosed to anyone except insofar as may be necessary for the administration of this Article, or upon order of a court of competent jurisdiction, or upon written authorization by the member.
- (j) *Bond for diversion of funds*. If, in the course of the operation of the plan, it shall become possible for funds or other assets of the trust fund to be diverted to the use of any member of the board or employee of the plan, the board shall give bond to the city with a sufficient responsible surety company approved by the mayor in such sums as are recommended by the retirement board and approved by the mayor.
- (k) *Liability for misconduct*. The retirement board and individual members thereof shall not be liable to the sponsor, an employer, the membership (individually or collectively), or the beneficiaries (individually or collectively) of the plan for mere errors of judgment in administering the plan or the trust, provided that the board or individual members of the board, as the case may be, shall be subject to removal by the mayor, and shall be liable for their willful default, misconduct, or gross negligence, in administering the plan or the trust resulting in loss or injury to the trust and members and beneficiaries thereof; however, none of the members of the retirement board shall be responsible or liable for the acts or omissions of any other of the members of the board, of any predecessor, or of a custodian, agent, depository, or counsel selected with reasonable care. Further, the board may, through operating rules or otherwise, provide for standards of conduct for board members and plan staff, indemnify actions undertaken in good faith, authorize the settlement of disputes, and purchase fiduciary insurance.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 349/350-11, 7-1-11)

Sec. 18-406. Eligibility.

- (a) *Immediate participation.* Each employee appointed or re-appointed, elected or re-elected, on or after the effective date, shall be a member of the plan as of the date of employment.
- (b) *Breaks in service.* If an employee has an interruption or break in service before satisfying a requirement under the plan for a particular benefit, or for being vested in or with regard to a particular benefit, service before such interruption or break in service shall not be taken into account except as expressly provided in this article in meeting eligibility or vesting requirements for the benefit. This section does not apply to a member who applies for and receives retirement benefits from the plan, nor does it apply to members re-employed under section 18-408(j)(1) after receiving retirement benefits from the plan. If the employee, who is not vested, returns to eligible employment with the employer, the employee shall be entitled to obtain credit for the years and months of service for which his or her contributions were refunded if the amount refunded, including interest accrued to the date of repayment at the rate of three (3) percent per annum, compounded annually as of June 30th of each year, is repaid to the trust within twenty-four months of the employee's re-employment date. A re-employed employee who does not repay the refunded contributions, with interest, within twenty-four months of the employee's re-employment date, may still, upon repayment, receive credit for the years and months of service for which his or her contributions were refunded; however, the repayment will be calculated at the full actuarial cost for such service in accordance with section 18-415(c)(2).
- (c) *Employment with disability.* Plan membership shall not be denied on the basis that an individual is a "qualified individual with a disability" under the Americans with Disabilities Act, 42 U.S.C. section 12101, et seq.; provided, however, that no form of disability retirement shall be available under the plan if the disability arises from a medical condition as it existed before the member's last employment with the employer.
- (d) *Leave of Absence.* Service credit for properly authorized leave of absence without pay can be obtained upon payment by the member into the trust fund of an amount equal to the employee contribution, if any, and the employer contribution for the complete period of the leave of absence. Partial paybacks for a leave of absence shall not be allowed. Unpaid disciplinary leave or an unpaid disciplinary suspension are not authorized leaves of absence and a member is prohibited from purchasing or receiving credited service for any period of unpaid disciplinary leave or suspension. No payment shall be allowed to be made to the Plan for a purchase of service credit following a member's termination of employment. If payment for an authorized leave of absence is made within twenty-four (24) months following a member's return to work, the cost shall be calculated based upon the required contributions plus interest to the date of repayment at the rate of three (3) percent per annum, compounded annually as of June 30th of each year. The cost for a member wishing to receive credited service for an authorized leave of absence who does not repay the required contributions, with interest, within twenty-four (24) months following the employee's return to work, shall be calculated at the full actuarial cost for such service in accordance with Section 18-415(c)(2). The election to purchase service credit for a properly authorized leave of absence shall be irrevocable and no refund

shall be made to a member for any amount paid to the Plan to purchase service credit. The hours of service credited shall be those which would normally have been credited but for such absence, or, in any case in which the plan is unable to determine such hours normally credited, eight (8) hours of service per day of absence.

- (e) *Furlough Days*. If a member's average monthly salary is impacted by days designated by the employer as "furlough days," the negative impact on an employee's retirement benefit may be alleviated upon payment by the member into the trust fund of an amount equal to the employee contribution, if any, and the employer contribution on foregone gross pay which resulted from the furlough day. A member with multiple furlough days may choose which furlough days or how many furlough days to redeem, however, less than a full-day or partial redemptions for less than a full-day shall not be allowed. No payment shall be allowed to be made to the Plan for a redemption of a furlough day following a member's termination of employment. The cost for a member wishing to negate the impact on their average monthly salary of a furlough day shall be based upon the required contributions in effect at the time of the furlough day plus interest to the time of payment at the rate of three (3) percent per annum, compounded each June 30th. Interest shall not be applied to the required payment if the redemption occurs between the furlough day and the June 30th immediately following such furlough day. The election to pay the required contributions to redeem a furlough day shall be irrevocable and no refund shall be made to a member for any amount paid to the Plan to redeem a furlough day.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 350-11, § 4, 7-1-11)

Sec. 18-407. Contributions; payroll deductions.

- (a) *Actuarial soundness of the plan*. The employer intends to continue the plan and to contribute regularly to the trust each payroll period for each member such amounts as are necessary to maintain or assist in maintaining the plan on a sound actuarial basis as prescribed by applicable law and, particularly, the Internal Revenue Code for defined benefit pension plans qualified under section 401(a) thereof. Employees shall contribute regularly to the trust each payroll period in such amounts as are necessary, in the judgment of the city, to assist in maintaining the plan on a sound actuarial basis in accordance with the Internal Revenue Code.
- (b) *Excess contributions*. Contributions determined to be in error shall be returned or credited promptly to the employer or employee.
- (c) *Insufficient employer contributions*. If the employer makes insufficient contributions to the plan, it shall promptly pay the amount of the deficiency to the plan.
- (d) *Insufficient employee contributions*. The plan shall notify members, at least annually, of insufficient payroll deductions for mandatory and elective employee contributions and shall require payment of the amount of the deficiency. If the back payment is not made within one (1) year after notification, interest shall accrue at the rate of three (3) percent per annum, compounded annually as of June 30th of each year from the date of the employee contribution error. If the back payment is not made by the member's date of retirement, the full amount due including interest shall be withheld from the member's retirement benefit payments using a schedule approved or directed by the plan.

(e) *Employer contributions.* From and after the date a person first becomes an active member, and until the actual retirement date or prior termination of employment, the manager of finance and each contractual entity shall transfer into the trust fund each payroll period from such sources as shall, in the case of the city, be designated by ordinance, the amounts listed in this section which have been determined, on an actuarial basis, to be sufficient to provide for the benefits of eligible members.

(1) For each active member, including each elected official, the employer shall contribute thirteen (13.0) percent¹ of the member's gross salary. In the case of a contractual entity, the employer shall, as a condition necessary to becoming or remaining a contractual entity, also make any actuarially determined supplemental contributions necessary to fund the current cost of benefits available under the plan payable to current and future employees of the contractual entity.

(2) For accounting, reporting, and record-keeping purposes, a portion of said contributions shall be contributed so that it can be allocated and apportioned to the health benefits account created by section 18-412 based upon the determination made, from time to time, by the plan's actuary of the amount necessary for the actuarial soundness of the health benefits account, such portion not to exceed, however, two (2) percent of said total gross salary. Expenses relating to the administration and investment of the health benefits account shall be charged thereto with the same limitations imposed thereon as are set forth in section 18-403 regarding the administration of pension benefits.

(f) *Employee contributions.* Each active member shall contribute to the trust fund, by means of payroll deductions which shall be withheld by the manager of finance or contractual entity and transferred each payroll period directly to the trust, the following amounts:

(1) For each active member, including each elected official, the employee shall contribute eight and one-half (8.5) percent² of his or her gross salary to the trust fund.

(2) For the employee contributions required under paragraph (1) above and subject to the requirements of section 414(h) of the Internal Revenue Code the employer shall pick-up the designated employee contributions as an employer pick-up of the contributions. If an active member terminates employment prior to being vested, upon request of the member, the plan shall refund to the terminated employee in a lump sum the employee contribution plus interest at a rate set annually by the Retirement Board, with a minimum rate of one (1) percent, not to exceed three (3) percent, per annum, compounded annually as of June 30th of each year, attributable to the employee's contributions to the trust fund. Employee contributions attributable to an employee who is vested or eligible to receive a retirement benefit from the plan, shall not be considered "accumulated contributions" as that term is defined in this division, and shall not be refunded to

¹Effective on January 1, 2019

²Effective on January 1, 2019

the employee at any time but shall remain a part of the trust fund and used to fund, but not increase, retirement benefits.

- (g) *Actuarial valuation.* For the purpose of making its annual recommendation of contributions to be made by the employer, the retirement board shall cause to be made, at least every other year, an actuarial valuation or valuations of the plan and trust fund including the health benefits account. When practicable, such valuations shall be based upon appropriate actuarial investigations into mortality, service, salary experience, and other data pertaining to the members and retired members of the plan.

The retirement board shall have its actuary or actuaries conduct an actuarial experience investigation of the plan at least every fifth year of the plan's operation. If the actuarial experience investigation determines that the assumptions previously adopted by the retirement board no longer reflect the actual experience of the plan, the retirement board shall adopt, upon the advice of its actuary or actuaries, new assumptions, or modify current assumptions, or retain current assumptions if there is no actuarial impact on the plan, in order to accurately reflect the experience which occurred during the period reflected in actuarial experience investigation and the future experience which is anticipated will occur. The new assumptions shall remain in use until the next actuarial experience investigation. The retirement board shall adopt, from time to time, upon the advice of its actuary or actuaries, and in accordance with applicable federal law or regulation, such mortality and other tables or interest rates as it may deem necessary or appropriate for the proper operation of the plan.

- (h) *Authorization for payroll deductions.* The city manager of finance is directed and empowered to make necessary payroll deductions, and the manager of finance and all other city officers and employees are directed and empowered to take whatever other action may be necessary to facilitate the accomplishment of the purposes of the retirement plan.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 854-06, § 1, 12-26-06; Ord. No. 775, § 27, 12-26-07; Ord. No. 632, § 1, 11-06-09; Ord. No. 341-11, § 1, 7-24-11; Ord. No. 350, § 5, 7-1-11)

Sec. 18-408. Retirement categories.

In order for a member to receive any retirement benefits, the member must first have completely separated from service or terminated employment with the employer and must have successfully completed and submitted a retirement application and all required documents to the plan. For members who are retiring directly from active service, in order to receive retirement benefits payable as of the first business day of the calendar month following the member's termination of employment with the employer, the member shall, not later than thirty (30) days from the date of separation from service or termination of employment, successfully complete and submit a retirement application and all required documents and information to the plan. A member who does not complete and submit the required application and documents to the plan within thirty (30) days of separation from service or termination of employment shall be considered to be a deferred member and any subsequent retirement shall be a deferred retirement. Except for payments for members retiring directly from active service where, within thirty (30) days from the date of termination, the member has successfully completed and submitted a

retirement application to the plan, or for a disability retirement where the benefit may be partially paid retroactively to the member's date of termination, all other retirement benefits are to be paid prospectively and will be paid only after successful completion of all of the retirement application requirements.

Eligible members who shall resign, become disabled, die while in the service of the employer, be discharged, or have their employment terminated for any other reason, shall be entitled to retire according to the following categories of retirement:

- (a) *Normal retirement.* Members employed before July 1, 2011 shall be eligible for a normal retirement payable on the first business day of the calendar month following termination of employment and upon the earlier of the member's sixty-fifth (65th) birthday, or payable on the first business day of any calendar month after which a member has attained his or her fifty-fifth (55th) birthday and where the member's age and credited service while an active member are or were equal to or greater than the sum of seventy-five (75) (the "rule-of-75"). A member shall become fully vested in the member's accrued benefit, and this benefit shall become nonforfeitable on the member's normal retirement date under the rule-of-75 or the member's sixty-fifth (65th) birthday, whichever is earlier.

Members first employed on or after July 1, 2011, who are vested shall be eligible for a normal retirement payable on the first business day of the calendar month following termination of employment and upon the earlier of the member's sixty-fifth (65th) birthday, or payable on the first business day of any calendar month after which a member has attained his or her sixtieth (60th) birthday and where the member's age and credited service while an active member are or were equal to or greater than the sum of eighty-five (85) (the "rule-of-85"). A member shall become fully vested in the member's accrued benefit, and this benefit shall become nonforfeitable upon the member becoming eligible for normal retirement as defined herein.

A member who meets the requirements for a normal retirement can retire without a reduction in the member's retirement benefit as is required for an early retirement.

- (b) *Early retirement.* Members employed before July 1, 2011, shall be eligible for an early retirement payable on the first business day of any month following termination of employment with the employer, after the member reaches the age of fifty-five (55), but before the member reaches eligibility for a normal retirement, provided that member must have completed five (5) years of credited service at the date of such early retirement.

For members first employed on or after July 1, 2011, a member shall be eligible for an early retirement payable on the first business day of any month following termination of employment with the employer, after the member reaches the age of sixty (60), but before the member reaches eligibility for a normal retirement, provided that such member must have completed five (5) years of credited service at the date of such early retirement.

- (c) *Deferred retirement.* Members employed before July 1, 2011, who are vested and who terminated employment with the employer and, upon termination, were not eligible for or, if eligible, opted not to receive their normal or early retirement (“deferred members”), upon reaching age fifty-five (55) or older, may elect, at any time prior and up to the age that mandatory distributions are required under section 401(a)(9) of the Internal Revenue Code, to apply for and receive a retirement benefit. Deferred members first employed on or after July 1, 2011, upon reaching age sixty (60) or older, may, at any time prior and up to the age that mandatory distributions are required under the Internal Revenue Code, apply for and receive a retirement benefit. The calculation of a deferred retirement benefit shall be based on the formula in effect at the time of the member’s termination of employment with the employer and, with the exception of qualifying for normal retirement under the rule of 75 (for those first employed before July 1, 2011), or qualifying for a normal retirement under the rule-of-85 (for those first employed on or after July 1, 2011) the member’s age at the time of application.
- (d) *Disability retirement resulting from service duty.* Disability retirement resulting from service duty shall be available to any active member who becomes totally and permanently disabled as defined below in this subsection (d) prior to the member’s normal retirement date. The effective date of retirement shall be the first day of the month following termination of employment with the employer by reason of the disability.
- (1) Total and permanent disability for disabilities which occur on or after January 1, 1996, and before August 1, 2005, shall be awarded when, and the phrase “totally and permanently disabled” for disabilities which occur on or after January 1, 1996, and before August 1, 2005, is defined as occurring when:
- a. The member is disabled by compensable injury or occupational disease occurring through accidental means that arises out of and in the course of the member’s employment with the employer; and
 - b. The injury or occupational disease occurs not more than twenty-four (24) months before the effective date of retirement; and
 - c. The member has been awarded in a final order permanent total disability under the Workers’ Compensation Act of Colorado, Articles 40 to 47, Title 8, C.R.S., as amended (the “Workers’ Compensation Act”) or has received, after reaching maximum medical improvement, a permanent medical impairment rating of twenty-six (26) percent or more or has, according to the schedule set forth in section 8-42-107 of the Colorado Revised Statutes, as amended from time to time, suffered an injury or injuries that, when totaled, allow workers’ compensation for a period of at least one hundred seventy-five (175) weeks when calculated as set forth in the Workers’ Compensation Act, based on the medical condition of the member as of the effective date of the member’s retirement, and based on an injury or occupational disease sustained while employed by the employer and which occurred not more than twenty-four (24) months prior to the effective date of retirement, as certified to the

- retirement board by the appropriate official of the employer and by one (1) physician selected and paid for by the retirement plan;
and;
- d. The Social Security Administration has awarded the member a disability insurance benefit for the same impairment upon which the member is basing a claim for a disability retirement from the plan. Denial of social security disability payments for any reason shall disqualify the member for disability retirement payments provided by this section; and
 - e. When the member has terminated his employment by reason of disability and the member notifies the retirement board of his or her intent to apply for a disability benefit within ninety (90) days of such termination due to disability.
- (2) Total and permanent disability for disabilities which occur after July 31, 2005, shall be awarded when, and the phrase “totally and permanently disabled” for disabilities which occur on or after August 1, 2005, is defined as occurring when:
- a. The member is disabled by a compensable injury occurring through accidental means or an occupational disease, either of which arises out of and in the course of the member’s employment with the employer; and
 - b. The injury or occupational disease occurs not more than twenty-four (24) months before the effective date of retirement; and
 - c. The member has received, and has provided to the plan, a true copy of the final letter of “admission of liability” filed by the employer with the State of Colorado by the risk management division of the City of Denver, or by the risk management division of the Denver Health and Hospital Authority; and
 - d. Either:
 - 1. The Social Security Administration has awarded the member a disability insurance benefit for the same impairment which led to the member’s termination from employment; or
 - 2. If the member is not eligible to apply for a Social Security disability benefit because the member is employed by an employer which does not participate in Social Security or the member does not have the requisite number of quarters to qualify, a physician chosen and paid by the plan has certified, within a reasonable degree of medical certainty, that the member would, if otherwise eligible under the Social Security Act, qualify for a disability insurance benefit from Social Security based on the same disability which led to the member’s termination from employment; and
 - e. When the member has terminated his employment by reason of disability, which is verified by the employer, and the member submits a written disability application to the plan that is received in the plan’s offices no later than ninety (90) days immediately following such termination due to disability; and
 - f. The requirements for disability retirement have been met within three (3) years from the date of termination. Exceptions to this three-year requirement may be made by the executive director upon a showing of good cause and due diligence on the part of the member in actively pursuing all requirements necessary to be awarded a disability retirement.

- (3) Regardless of the date of the occurrence of the disability, if the member should die within thirty-six (36) months after termination of employment and while awaiting approval of his disability retirement application, he shall be deemed an active member upon his date of death.
 - (4) The retirement board shall have the right to order medical examinations of any retired member on disability retirement for the purpose of obtaining a recommendation for the continuation, termination, or suspension of the benefit.
 - (5) The disability benefit will cease upon reemployment of any kind generating income at or above the "substantial gainful activity" amount as at that time defined in the regulations of the Social Security Administration. Denial, suspension, or termination of Social Security disability insurance payments for any reason shall disqualify the affected member for disability retirement payments provided by this section.
 - (6) Upon application for disability benefits under this section, a member who is or may be eligible for Social Security disability insurance benefits shall be required to authorize the plan to obtain from the Social Security Administration any and all information regarding the member by signing a "Release of Information" or similar form whereby the member shall give the plan permission to contact the Social Security Administration and receive any and all information regarding the member from the Social Security Administration. The information sought may include such information as, but not limited to, wages earned by the member and from what employment during any disability period, the member's medical records, doctors' reports, determinations of continued eligibility, suspensions or terminations of eligibility for Social Security disability insurance benefits, the dates the benefits began, ended, were interrupted, and were reviewed. The authorization shall remain in effect the entire period for or during which the member seeks eligibility, claims to be, or is eligible to receive disability benefits from the plan.
- (e) *Disability retirement not resulting from service duty.* As set forth below in this subsection (e), disability retirement not resulting from service duty shall be available to all totally and permanently disabled active members whose appointment occurs after December 31, 1962, upon completion of ten (10) years of credited service; and shall also be available to all totally and permanently disabled active members whose appointment occurs after December 31, 1988, upon completion of five (5) years of credited service.
- (1) For disabilities that occur on or after January 1, 1996 and before August 1, 2005, disability retirement not resulting from service duty for total and permanent disability shall be awarded when:
 - a. The member's disability is caused by but not limited to a disease or an accidental injury other than one which occurred, was contracted, or suffered during or as a result of the member's engagement in or commission of a

- felony, during military service duty, or because of an intentionally self-inflicted injury; and
- b. The member has received, as of the effective date of the member's retirement as certified to by two (2) physicians selected and paid for by the member and one (1) physician selected and paid for by the retirement plan, the equivalent of, after reaching maximum medical improvement, a permanent medical impairment rating of twenty-six (26) percent or more or has, according to the schedule set forth in section 8-42-107 of the Colorado Revised Statutes, as amended from time to time, suffered an injury or injuries that, when totaled, would allow, if incurred on the job, workers' compensation for a period of at least one hundred seventy-five (175) weeks when calculated as set forth in the Workers' Compensation Act; and
 - c. The Social Security Administration has awarded the member a disability insurance benefit for the same impairment upon which the member is basing a claim for a disability retirement from the plan. Denial of Social Security payments for any reason shall disqualify the member for disability retirement payments provided by this section; and
 - d. When the member has terminated his employment by reason of disability and the member notifies the retirement board of his or her intent to apply for a disability benefit within ninety (90) days of such termination due to disability.
- (2) For disabilities that occur on or after August 1, 2005, disability retirement not resulting from service duty for total and permanent disability shall be awarded when:
- a. The member's disability is caused by but not limited to a disease or an accidental injury other than one which occurred, was contracted, or suffered during or as a result of the member's engagement in or commission of a felony, or because of an intentionally self-inflicted injury; and
 - b. The disease or accidental injury occurs not more than twenty-four (24) months before the effective date of retirement; and
 - c. Either:
 1. The Social Security Administration has awarded the member a disability insurance benefit for the same impairment which led to the member's termination from employment; or
 2. If the member is not eligible to apply for a Social Security disability insurance benefit because the member is employed by an employer which does not participate in Social Security or the member does not have the requisite number of quarters to qualify, a physician chosen and paid by the plan has determined within a reasonable degree of medical certainty that the member would, if otherwise eligible under the Social Security Act, qualify for a disability insurance benefit from Social Security based upon the same disability which led to the member's termination from employment; and
 - d. When the member has terminated his employment by reason of disability, which is verified by the employer, and the member submits a written

disability application to the plan that is received in the plan's offices no later than ninety (90) days immediately following such termination due to disability; and

- e. The requirements for disability retirement have been met within three (3) years from the date of termination. Exceptions to this three-year requirement may be made by the executive director upon a showing of good cause and due diligence on the part of the member in actively pursuing all requirements necessary to be awarded a disability retirement.
 - (3) Regardless of the date of the occurrence of the disability under subsection (1) above, the effective date of retirement shall be the first day of the month following termination of employment with the employer.
 - (4) If a member should die within thirty-six (36) months after termination of employment and while awaiting approval of his retirement application, the member shall be deemed an active member upon date of death.
 - (5) The disability benefit will cease upon reemployment of any kind generating income at or above the "substantial gainful activity" amount as at that time defined in the regulations of the Social Security Administration. Denial, suspension, or termination of Social Security disability insurance payments for any reason shall disqualify the affected member for disability retirement payments provided by this section.
 - (6) The retirement board shall have the right to order medical examinations of any retired member on disability retirement for the purpose of obtaining a recommendation for continuation, termination, or suspension of the benefit.
 - (7) Upon application for disability benefits under this section, a member who is or may be eligible for Social Security disability insurance benefits shall be required to authorize the plan to obtain from the Social Security Administration any and all information regarding the member by signing a "Release of Information" or similar form whereby the member shall give the plan permission to contact the Social Security Administration and receive any and all information regarding the member from the Social Security Administration. The information sought may include such information as, but not limited to, wages earned by the member and from what employment during any disability period, the member's medical records, doctors' reports, determinations of continued eligibility, suspensions or terminations of eligibility for Social Security disability insurance benefits, the dates the benefits began, ended, were interrupted, and were reviewed. The authorization shall remain in effect the entire period for or during which the member seeks eligibility, claims to be, or is eligible to receive disability benefits from the plan.
- (f) *Temporary early retirement pending approval of disability application.* An active member who has submitted an application to the retirement board for a disability retirement may elect temporary early retirement, if so qualified, pending approval of such disability application. If the member so applies, the member shall be deemed a retired member upon the effective date of early retirement, and the death benefits provided for under section 18-411 shall not be payable, but the member and the member's spouse shall receive a joint and survivor benefit under this form of

retirement unless the member and the member's spouse consent to a different form of benefit as described in section 18-410.

In the event of the approval of the disability application, the retired member shall receive a retroactive adjustment to reflect the difference in the disability retirement benefit as compared to the early retirement benefit.

If the member has not qualified for a disability retirement within three (3) years from the effective date of the temporary early retirement (or during any period of extension of the three years by the executive director permitted under this section 408), the member shall be awarded either a regular early retirement or, if the member elects, a benefit as provided for by section 18-410.

- (g) *Date of termination of employment.* After any retirement benefit has been paid, no change or adjustment shall be allowed to be made by the member in either the amounts or the form of the retirement benefit elected by the member upon retirement regardless of whether there has been a change of the member's termination date by the employer.
- (h) *Current employees ineligible for refunds.* No refund of accumulated contributions shall be made to any member of the plan who is currently employed by the employer.
- (i) *Vested employees ineligible for refunds.* Unless contributions were made by the employee to the plan prior to January 1, 1979, no refund of accumulated contributions shall be made to any member of the plan who is vested.
- (j) *Re-employment by the employer.* Unless a member meets the requirements set forth below in paragraph (7) of this subsection 18-408(j), the following shall apply:
 - (1) Retirement and death benefits, if any, shall be immediately suspended upon the effective date of the member's re-employment with the employer and shall be resumed only upon the subsequent termination of the member from employment. A member, who receives a retirement benefit from the plan who later returns to work in a position subject to this article, shall receive a new separate retirement benefit calculated solely upon the credited service earned and the benefit formula in place following the member's re-employment with the employer. A member re-employed pursuant to this section on or after July 1, 2011, shall receive retirement benefits and death benefits, for any credited service earned subsequent to the re-employment, calculated pursuant to the post July 1, 2011 employment sections. A member who has received a retirement benefit from the plan shall not have his/her previous credited service included with or added to service credit earned following a member's re-employment in order to calculate a single retirement benefit or to increase a previously received retirement benefit. A member's previously calculated and received retirement benefit shall not change in form or amount following a member's re-employment, and shall be reinstated as it originally was calculated upon a member's subsequent retirement and added to any newly earned and calculated retirement benefit. A member with multiple re-employment periods following receipt of retirement benefits may have two (2) or more separately calculated benefit payments. Two (2) or more separately calculated retirement benefits combined into one benefit payment shall be known as and referred to as a "bridged benefit." Upon a subsequent retirement following

a member's re-employment, a member shall accept a death benefit which shall be reduced by the death benefit payments the member received during the previous period or periods of retirement. A member re-employed pursuant to this section shall be considered vested as of the date of their re-employment and the member shall not be required to obtain a specified amount of new or subsequent credited service prior to being eligible for a "bridged benefit."

- (2) If an employee hired after January 1, 1979, has not received retirement or death benefits, and returns to employment with the employer, he or she is entitled to restore credit for the years and months of service for which employee contributions were refunded if the amount, including interest to the date of repayment at the rate of three (3) percent per annum, compounded annually as of June 30th of each year, is repaid to the trust within twenty-four (24) months of the employee's re-employment date. A re-employed employee who does not repay the refunded contributions, with interest, within twenty-four (24) months of the employee's re-employment date, may still, upon repayment made to the plan prior to termination from employment, receive credit for the years and months of service for which his or her contributions were refunded, however, the repayment will be calculated at the full actuarial cost for such service in accordance with Section 18-415(c)(2). No repayment shall be allowed to be made to the Plan for a purchase of refunded contributions following a member's termination of employment.
- (3) If a member, hired before January 1, 1979, receives a refund pursuant to section 18-409(e)(2) and later resumes covered service under the plan, the member is entitled to restore credit for the years and months of service for which employee contributions were refunded if the amount, including interest to the date of repayment at the rate of three (3) percent per annum, compounded annually as of June 30th of each year, is repaid to the trust within twenty-four (24) months of the employee's re-employment date. A re-employed employee who does not repay the refunded contributions, with interest, within twenty-four (24) months of the employee's re-employment date, may still, upon repayment made to the plan prior to termination from employment, receive credit for the years and months of service for which his or her contributions were refunded, however, the repayment will be calculated at the full actuarial cost for such service in accordance with Section 18-415(c)(2). No payment shall be allowed to be made to the Plan for a purchase of refunded contributions following a member's termination of employment.
- (4) A non-vested member, upon termination, shall have the option of either leaving the member's accumulated contributions, if any, in the trust fund for use if the member resumes service with the employer, or receiving a refund of the member's accumulated contributions. If such non-vested member leaves the accumulated contributions in the trust fund and returns to the service of a covered employer before the member applies for and receives a retirement benefit from the plan, or before the member reaches an age in which required minimum distributions must begin to be paid by the plan (which for a non-vested member is a complete refund of contributions), the credited service which the member had prior to termination shall, upon re-employment, be reinstated to the member and

the member shall only be required to complete the remaining amount of credited service required to vest in the plan that is set forth in the Ordinance at the time of the member's re-employment. If such member leaves the accumulated contributions in the trust fund and does not return to the service of the employer before the member's normal retirement date, the accumulated contributions, as of the member's normal retirement date, shall then be paid to the member. If such a member should die before the accumulated contributions are paid, there shall be paid to the beneficiary designated by the member, if such beneficiary is living, otherwise to the member's contingent beneficiary, if such contingent beneficiary is living, otherwise to the member's estate, the amount of accumulated contributions, if any, as of the date of the member's death.

- (5) Those members who participate or participated in the deferred retirement option plan (DROP) available under division 3, article XII, of chapter 18 of the Code and who elect or elected to continue employment with the employer after the termination of their term in DROP shall not be considered by making such election to be re-employed with the employer under the terms of this division for purposes of calculating retirement benefits and, therefore, the retirement benefits of such members shall be calculated, upon the member's termination from employment, in accordance with sections 18-406 and 18-409(a).
- (6) If a member is re-employed by the employer or is considered reinstated by the employer and the member receives backpay, remuneration or any compensation from the employer following the member's initial retirement date and such compensation and re-employment period overlaps or coincides with the payment of retirement benefits, the member shall reimburse the plan for any amount the member has received in retirement benefits. If payment is not made in full within one (1) year from re-employment or re-instatement of the member, interest will accrue on the outstanding balance at a rate of three (3) percent per annum compounded annually as of June 30th of each year. If payment in full is not made prior to the member's subsequent retirement, the outstanding balance owed plus such interest accrued on the balance will be withheld from the member's subsequent retirement payments until the amount has been paid in full.
- (7) A retired member who meets all of the following requirements will not be considered to be re-employed by the employer and, therefore, subject to paragraph (1) of this subsection:
 - a. the member has been separated from service and has not received any remuneration from the city or any other covered employer for a minimum of thirty (30) days, including any settlement and payment of accrued vacation and accrued sick leave in accordance with section 18-134 of the Revised Municipal Code; and
 - b. the member does not work more than 1,000 hours in any calendar year after the initial date of reemployment by the employer following the member's retirement. For purposes of this Section, re-employment shall mean employment in any capacity, where a member receives remuneration of any kind from the City, other than as a self-employed independent contractor (as

that term is defined by the Internal Revenue Service and the Department of Labor).

- (8) Any member who works more than 1,000 hours in a calendar year, for his/her previous employer, shall not meet the requirements of paragraph (7) listed above, and
- a. shall instead be considered to be reemployed by the employer and subject to the provisions of paragraph (1) of this subsection 18-408(j) as of the first hour worked in excess of the 1000 hours; and,
 - b. shall have the applicable retirement benefit and death benefit immediately suspended; and
 - c. shall not be eligible to receive a subsequent or continuation of the retirement and death benefits until the first day of the calendar year following the previous suspension of benefits, after which the member may not work for more than 1,000 hours during the calendar year without being again subject to paragraph (1) above and having retirement and death benefits suspended as set forth in this subsection 18-408(j).
- (9) For any and all hours worked by a member during the calendar year in excess of the authorized 1,000 hours, where the member will be considered reemployed pursuant to Section 18-408(j)(1), both the employer and member shall, beginning with the first pay period following such reemployment, contribute to the Plan all amounts required for active members of the Plan. The member shall receive service credit and shall be considered an employee entitled to participate in the Plan as set forth in section 18-406 of this Article for any hours worked in excess of the authorized 1,000 hours. The member shall not receive, and shall not be entitled to receive, credited service for the first 1,000 hours worked in any calendar year following retirement.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 854-06, § 2, 12-26-06; Ord. No. 774, §§ 2, 3, 12-26-07; Ord. No. 402-08, § 2, 8-4-08; Ord. No. 514-09, § 2, 9-25-09; Ord. No. 349/350-11, § 3/6, 7-1-11)

Sec. 18-409. Retirement benefits.

Subject to the requirements and limitations set forth in this division and for qualification of the plan under section 401(a) of the Internal Revenue Code, the following benefits shall be paid to members of the plan:

(a) *Normal retirement.*

- (1) Upon retirement at or after the normal retirement date, each member whose service with the employer begins before September 1, 2004, and terminates after December 31, 1999, shall receive, for credited service during which the member made, was not required to make, or had to the credit of the member's account, required contributions for regular membership a monthly retirement benefit equal to two (2) percent of the monthly salary (averaged over the highest thirty-six (36) consecutive months of credited service prior to the actual retirement date), multiplied by years and fractional years of credited service as a regular member. If the plan is required to calculate a retirement benefit for a member who has less

than thirty-six (36) months of consecutive credited service, the calculation of the member's benefit will be averaged over the total consecutive months of credited service which the member actually earned following employment or re-employment.

- (2) Upon retirement at or after the normal retirement date, each member whose service with the employer begins, or whose reemployment with the employer begins, on or after September 1, 2004, but before July 1, 2011, shall receive for credited service following August 31, 2004, during which the member made, was not required to make, or had to the credit of the member's account, required contributions for regular membership, a monthly retirement benefit equal to one and one-half (1.5) percent of the monthly salary (averaged over the highest thirty-six (36) consecutive months of credited service after August 31, 2004, but prior to the actual retirement date) multiplied by years and fractional years of credited service as a regular member. A member whose first service with an employer begins before July 1, 2011, and who terminates employment and later becomes re-employed on or after July 1, 2011, before applying for and receiving benefits from the plan, shall, upon re-employment, have his or her benefit calculated under this section 18-409(a)(2). A member whose first service with an employer begins before July 1, 2011, and who terminates employment and who applies for and receives a retirement benefit from the plan, and then later becomes re-employed on or after July 1, 2011, shall, upon re-employment and subsequent retirement, have his her initial benefit remain unchanged and calculated under this section 18-409(a)(2), as defined and explained in section 18-408(j), and any subsequent benefit earned following re-employment shall be calculated pursuant to section 18-409(a)(3). If the plan is required to calculate a retirement benefit for a member who has less than thirty-six (36) months of consecutive credited service, the calculation of the member's benefit will be averaged over the total consecutive months of credited service which the member actually earned following employment or re-employment.
- (3) Upon retirement at or after the normal retirement date, each member whose initial service with the employer first begins, or whose re-employment under section 18-408(j)(1) begins on or after July 1, 2011, shall receive for credited service, during which the member made, was not required to make, or had to the credit of the member's account, required contributions for regular membership, a monthly retirement benefit equal to one and one-half (1.5) percent of the monthly salary (averaged over the highest sixty (60) consecutive months of covered service on or after July 1, 2011, but prior to the actual retirement date) multiplied by years and fractional years of credited service as a regular member. If the plan is required to calculate a retirement benefit for a member who has less than sixty (60) months of consecutive credited service, the calculation of the member's benefit will be averaged over the total consecutive months of credited service which the member actually earned following employment or re-employment.
- (4) For those members subject to sections 18-408(j)(8) or 18-408(j)(9), subsection (3) of this section 18-409 shall not apply.

(b) *Early retirement.* Upon early retirement each member shall receive a reduced retirement benefit which shall be the percentage shown in the following table of that portion of the retirement benefit to which the member would otherwise be entitled at the normal retirement date as is based on years and fractional years of credited service prior to the date of actual retirement.

Members employed before July 1, 2011, after vesting, shall be entitled to an early retirement payable on the first business day of the month following the month the member reaches age fifty-five (55) and after the member submits and completes all plan requirements and forms for being awarded an early retirement. The reduction for members employed before July 1, 2011, is three (3%) percent for each year that the member is under age 65 in accordance with the following table:

Age at Retirement for members employed before July 1, 2011	Percentage of Normal Retirement Benefit
Under 55	00.00
55	70.00
56	73.00
57	76.00
58	79.00
59	82.00
60	85.00
61	88.00
62	91.00
63	94.00
64	97.00
65	100.00

Members first employed on or after July 1, 2011, after vesting, shall be entitled to an early retirement payable on the first business day of the month following the month the member reaches age sixty (60) and after the member submits and completes all plan requirements and forms for being awarded an early retirement. The reduction for members first employed on or after July 1, 2011, is six (6%) percent for each year that the member is under age 65 in accordance with the following table.

Age at Retirement for members first employed on or after July 1, 2011	Percentage of Normal Retirement Benefit
Under 60	00.00
60	70.00
61	76.00
62	82.00
63	88.00

64	94.00
65	100.00

- (c) *Disability retirement incurred in the performance of service duty.* Upon retirement for disability incurred in the performance of service duty, the active member shall receive the retirement benefit to which the member should otherwise be entitled at the normal retirement date based on the higher of twenty (20) years service or actual service plus ten (10) years, but in either case not to exceed the service the member would have earned to age sixty-five (65).
- (d) *Disability retirement not incurred in the performance of service duty.* Upon retirement for disability not incurred in the performance of service duty, the active member shall receive a reduced retirement benefit which shall be the higher of seventy-five (75) percent of the amount calculated in accordance with subsection 18-409(c) or the early retirement amount calculated in accordance with subsection 18-409(b).
- (e) *Deferred retirement.*
- (1) If a vested member of the plan, employed prior to July 1, 2011, ceases to be an employee for any reason other than retirement, disability or death, the member shall be entitled, upon reaching the age of fifty-five (55) to either normal retirement benefits under the rule-of-75 as provided under subsection (a) above, or early retirement benefits as provided under subsection (b) above for the member's category of membership based on credited service to the date employment is terminated.
 - (2) If a vested member of the plan, first employed on or after July 1, 2011, ceases to be an employee for any reason other than retirement, disability or death, the member shall be entitled, upon reaching the age of sixty (60) to either normal retirement benefits under the rule-of-85 as provided under subsection (a) above, or early retirement benefits as provided under subsection (b) above for the member's category of membership based on credited service to the date employment is terminated.

In lieu of any retirement benefits as provided by this section, any member who was employed prior to January 1, 1979, may receive a refund of accumulated contributions, if any, as of the date of such refund at any time after terminating service but before the first payment of a retirement benefit hereunder. Election and receipt of such refund shall be final and conclusive and neither the member nor any beneficiaries shall have any right to later claim a retirement benefit except as provided in this article. All applications for refunds of accumulated contributions or retirement benefits must be made in writing and with spousal consent, if the member is married, as provided in section 18-410 and filed with the retirement plan. The member's refund check of accumulated contributions shall be issued within ninety (90) days from the receipt by the retirement plan of a request for a refund on a properly completed form supplied by the plan.

- (3) Any non-vested member, upon termination from employment, who is not eligible for the benefits described in (e)(1) of this section, shall have the option of leaving the member's accumulated contributions, if any, in the trust fund for use if the member resumes service with the employer, or receiving a refund of the member's accumulated contributions. If such member leaves the accumulated contributions in the trust fund and does not return to the service of the employer before the normal retirement date, the accumulated contributions as of the member's normal retirement date shall then be paid to the member. If such member should die before the accumulated contributions are paid, there shall be paid to the beneficiary designated by the member, if such beneficiary is living, otherwise to the member's contingent beneficiary, if such contingent beneficiary is living, otherwise to the member's estate, the amount of accumulated contributions, if any, as of the date of the member's death.
- (f) *Forfeited benefits.* Any amount forfeited either because of termination of employment of an active member prior to having acquired a fully vested right to retirement benefits, or because of the death of any member, or for any other reason, shall not be applied to increase the benefits provided by the plan unless such benefits are increased by appropriate amendment in accordance with the Internal Revenue Code.
- (g) *Distribution of present value of benefits.* If, upon retirement, the present value of the lifetime benefit available to the member under this Plan is less than the value set forth in the Internal Revenue Code (currently codified in section 411(a)(11) of the Internal Revenue Code), the member may request, in writing, an immediate distribution of the present value of the benefit. The distribution may be made directly to the member or may be made in accordance with the rollover provisions found in section 18-416 of this division.
- (h) *Actuarial and other matters.*
- (1) Actuarial assumption and interest rates: Effective October 1, 2017, the interest rate used for the actuarial assumption of investment return shall be seven and one-half (7.50%) percent.
 - (2) Mortality assumption: To determine the present value of benefits or actuarial equivalents, the mortality table to be used shall be the table that is based on the Internal Revenue Commissioner's prevailing standard table or any other table adopted by the retirement board which is applicable to qualified government plans.
 - (3) For purposes of calculating actuarial equivalents, both the applicable interest rate and the mortality table are to be for the "look-back month" that precedes the annuity starting date for the distribution. The look-back month is the month of December preceding the full calendar year for which the data are to remain constant and during which distribution is to be made.
- (i) *Social Security make-up.* For all members who were employed before July 1, 2011 and who retire on or after January 1, 1996, other than those retiring under a disability form of retirement pursuant to subsections 18-409(c) and 18-409(d) of this Code, a Social Security make-up benefit shall be paid monthly beginning at the later of the

member’s retirement or on the first business day of the next calendar month immediately following the month of the member’s sixty-second birthday, as follows:

The member’s estimated primary Social Security benefit multiplied by a factor determined, thus:

The years of credited service of the member during which the member contributed towards Social Security income replacement benefits (up to a maximum of thirty-five (35) years) divided by thirty-five (35) and multiplied by the applicable percentage, as shown in the following table:

Year of Birth	Applicable Percentage
<i>Before 1938</i>	0.00%
1938	1.25%
1939	2.50%
1940	3.75%
1941	5.00%
1942	6.25%
1943-1954	7.50%
1955	8.75%
1956	10.00%
1957	11.25%
1958	12.50%
1959	13.75%
1960	15.00%
After 1960	15.00%

As used in this subsection (i), “estimated primary social security benefit” shall mean the estimated monthly amount payable to the member under Title II of the Social Security Act at the later of the member’s reaching the age of sixty-two (62) or the member’s actual retirement date if retiring after age sixty-two (62). The determination of the amount of a member’s primary Social Security benefit shall be made based on available information, and, for prior years for which that information is unavailable, the plan may assume that the member’s wages had increased each calendar year at the same rate as the average of the total wages (the “national average wage index,”) defined in section 209(k)(1) of the Social Security Act for such calendar years as specified in section 215(b)(3)(A)(ii) of the Act for such calendar years. If a member is receiving a Social Security benefit at the time the member becomes eligible for the Social Security make-up benefit, the initial entitlement amount of that Social Security benefit shall be used to calculate the member’s Social Security make-up benefit, even if that Social Security benefit is based on a Social Security benefit or earnings of a person other than the member (e.g. widow/widower’s benefit, spousal benefit, etc.).

Subsection 18-409(i), *Social Security make-up*, shall be inapplicable, and there shall be no Social Security make-up, for those members first employed on or after July 1, 2011.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 402-08, § 3, 8-4-08; Ord. No. 349/350, § 4/7, 7-1-11)

Sec. 18-410. Joint and survivor benefits.

(a) *Spousal consent, incidental benefit requirements and required distributions.*

(1) Married members. If a member is married at the time of the annuity starting date, unless the member elects and the member's spouse consents in writing to the maximum benefit that may be elected as provided for in subsections 18-409(a) or 18-409(b) of this division within the ninety (90) day period ending on the date benefit payments commence, the member and the member's spouse will receive a retirement benefit on an actuarially equivalent basis for the member and the member's spouse for their joint lives and, following the member's death, a retirement benefit payment to the member's spouse, if living at the time of death, in the same amount (a full joint and survivor annuity of one hundred (100) percent), or seventy-five (75) percent, or fifty (50) percent of that amount. The failure of the member and the member's spouse to consent to a distribution which is immediately payable shall be deemed an election to receive a joint annuity and survivor annuity, which is the actuarial equivalent of the single straight life annuity for the life of the member, and which shall be an annuity payable during the joint lives of the participant and the spouse, and following the member's death, a survivor annuity to the spouse in the amount of fifty (50) percent of the joint annuity.

(2) Maximum benefit; non-spousal beneficiary. If the member is married at the time of the annuity starting date and wishes to receive either a single straight life annuity or name a beneficiary other than the member's spouse, the member must:

- a. Have the spouse's consent in writing to such benefit (if the spouse can be located with reasonable effort); and,
- b. On the consent form, designate a beneficiary (and a form of benefits) which may not be changed without the consent of the spouse (unless the original consent of the spouse expressly permits future designations by the member (before retirement) without any requirement of further consent by the spouse); and,
- c. Have the spouse's acknowledgement of the effect of such consent and designation of benefit; and,
- d. Have the acknowledgement witnessed by a plan representative or a notary public.

(3) Unmarried members. A member who is unmarried at the time of the annuity starting date may elect a similar benefit to that described immediately above and select anyone as a designated beneficiary. The election may be made at any time within ninety (90) days before the annuity starting date and shall be subject to the minimum distribution incidental benefit requirements of section 401(a)(9) of the

Internal Revenue Code concerning the disparity in age of the member and the designated beneficiary.

- (4) Death of spouse or named beneficiary. If the designated beneficiary or spouse dies prior to the annuity starting date and no new beneficiary is duly designated in accordance with the terms of the plan, and the member does not marry or remarry prior to the annuity starting date, the retirement benefit shall be increased to the full single straight life annuity for the member's life with no further benefit to be paid upon the member's death. If the spouse or designated beneficiary dies after the actual retirement date of such member, a new beneficiary may not be designated and the benefit paid to the member shall, commencing on the payment date of the month immediately next following the month of the beneficiary's death, be increased to the full single straight life annuity for the remainder of the member's life with no further benefit to be paid upon the member's death.
- (5) Disability survivor annuity. Unless the member and his spouse consent in writing to the maximum benefit provided for in subsections 18-409(c) or 18-409(d), the member and the member's spouse will receive such disability retirement benefit on an actuarially equivalent basis for the life of the member and the member's spouse and, following the member's death, a retirement benefit to the member's spouse, if living at the time of the member's death, in the same amount (a full joint and survivor annuity of one hundred (100) percent), or seventy-five (75) percent, or fifty (50) percent of this amount. If the spouse or designated beneficiary dies after the actual disability retirement date of such member, a new beneficiary may not be designated, and the benefit paid to the member shall, commencing on the payment date of the month immediately next following the month of the death of the spouse or designated beneficiary, be the benefit as would have been paid under subsections 18-409(c) or 18-409(d) as the full single straight life annuity for the member's life with no further benefit to be paid upon the member's death. No joint and survivor optional benefits shall be permitted under this subsection unless the total monthly payment amounts to more than forty dollars (\$40.00).
- (6) Minimum distribution requirements. Notwithstanding any other provision of the plan, the entire interest of a member under the plan, including incidental death benefits and any other non-retirement benefits provided under the plan, shall be paid in accordance with the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code, including those provisions pertaining to non-spousal beneficiaries, to the extent such requirements are applicable to governmental plans. Pursuant to such requirements, the interest of each member in the plan must be distributed beginning not later than the member's required beginning date, if such date is earlier than the date on which benefits otherwise would begin under the terms of this plan. The required beginning date of a member is the April 1 of the calendar year following the calendar year in which the member attains age seventy and one-half (70 ½) or retires, whichever is later.
 - a. In the event a member dies before distributions have commenced to the member in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the plan, the entire interest of such member must

be distributed within five (5) years after the death of such member, unless the member's interest is payable, under the terms of the plan, to the member's surviving spouse or designated beneficiary over the life expectancy of such surviving spouse or designated beneficiary. In that event, distribution of the member's interest must begin not later than one (1) year after the death of the member. Notwithstanding the above, if the member's interest is payable, under the terms of the plan, to the member's surviving spouse, the date on which distributions must begin under this paragraph (5) will not be earlier than the date on which the member would have attained age seventy and one-half (70 ½) and, if the surviving spouse dies before distributions to such surviving spouse begin, this paragraph (5) will be applied as if the surviving spouse were the member.

- b. In the event a member dies after distributions have commenced to the member in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the plan, the remaining interest of such member must be distributed to the surviving spouse or other designated beneficiary entitled thereto under this article at least as rapidly as under the method of distribution being used as of the date of the member's death.

(7) Minimum monthly payment. No joint and survivor optional benefits under this subsection (a) shall be permitted unless the total monthly payment for the joint and survivor benefit amounts to more than forty dollars (\$40.00).

- (b) *Explanation of annuities and right to change elections.* The plan shall provide a written explanation of annuities and other options, and the effect of them and the participant's right to revoke them within the time periods set by and in accordance with regulations or policies of the Internal Revenue Service. Subject to overriding regulations or policies of the Internal Revenue Service, a participant may revoke an election not to take a joint and survivor annuity or choose again to take a joint and survivor annuity at any time ending on the date benefit payments commence.
- (c) *Designation of beneficiary.* Notwithstanding other provisions of the Code, and except as otherwise provided in Section 18-411 of the Code, a member can designate any person to receive, upon the member's death, the benefits set forth herein. A member may designate only one person as a beneficiary. An active or deferred member may designate a contingent beneficiary who shall become the primary designated beneficiary if the primary designated beneficiary predeceases the active or deferred member, and the active or deferred member does not submit a new beneficiary designation form to the plan prior to the active or deferred member's death. If a member designates more than one person as either a beneficiary or a contingent beneficiary, the beneficiary designation shall fail and shall be treated as if the member has no beneficiary on file with the plan. If a member is married, the spouse must be designated as the beneficiary, unless the spouse waives, in writing, his/her right to these benefits. A member must name an individual and may not designate a fictional or artificial person as a beneficiary. In order for a beneficiary designation, or change in beneficiary designation, to be effective, the Plan must receive, in its offices, a completed and notarized beneficiary designation form prior to a member's death. A member's employer is not authorized to receive the form instead of the Plan. Section 18-418 of the Code prohibits a member from transferring or assigning benefits, thus

the member cannot designate a trust as his/her beneficiary. Retired members may not designate a contingent beneficiary.

- (d) *Changes in designated beneficiary.* A member may change a designated beneficiary or, in the case of an active or deferred member, a contingent beneficiary only prior to the actual retirement date; provided, that such new designation must be made in the same manner as provided above for the filing of the written election. Once benefit payments commence, neither the retirement benefit nor the beneficiary may be changed. If the designated beneficiary, contingent beneficiary, or spouse dies prior to the actual retirement date of such member and no new beneficiary or contingent beneficiary is duly designated, the retirement benefit shall be paid under subsections 18-409(a), 18-409(b), 18-409(c) or 18-409(d) of this article, as a single straight life annuity for the member's life with no further benefit to be paid upon the member's death. If the designated beneficiary or spouse dies after the actual retirement date of such member, a new beneficiary may not be designated and the benefit paid to the member shall, commencing on the payment date of the month immediately next following the month of the beneficiary's death, be the full benefit as would have been paid had the maximum retirement benefit available under subsections 18-409(a), 18-409(b), 18-409(c) or 18-409(d) been in effect and no joint and survivor benefit been selected.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-411. Death benefits.

- (a) *Termination of benefits prior to receiving all contributions on deposit.* For members employed prior to January 1, 1979, if, upon the termination of retirement benefit payments, a retired member and the retired member's beneficiary have not received in the form of retirement benefits an amount equal to the member's accumulated contributions, if any, which the member had on deposit at the date of retirement, the beneficiary, the member's estate, or the beneficiary's estate shall be paid such difference.
- (b) *Death of an active member incurred in the performance of service duty.* Upon death incurred as a result of the performance of service duty, the active member's surviving spouse, if any, shall be entitled to receive the retirement benefit to which the member would have been entitled based on the higher of fifteen (15) years' credited service or actual credited service plus five (5) years but in either case not to exceed the credited service the member would have earned to age sixty-five (65). The active member shall be deemed to have retired on the first day of the month following the month in which death occurs. If it is determined that, notwithstanding the above-listed calculation where additional service is credited to the member, the surviving spouse would have received a larger benefit under the 100% joint and survivor annuity option (with no additional service being credited to the member), then the surviving spouse shall receive the larger 100% joint and survivor benefit. The retirement benefits to the surviving spouse shall terminate upon the surviving spouse's death.
- (c) *Death of an active member not incurred in the performance of service duty.* Upon death not resulting from service duty, the active member's surviving spouse, if any, shall be entitled to receive seventy-five (75) percent of the benefit calculated in accordance with subsection (b) of this section. The active member shall be deemed to

have retired on the first day of the month following the month in which death occurs. The retirement benefit payments to the surviving spouse shall cease upon the surviving spouse's death. If it is determined that, notwithstanding the above-listed calculation where additional service is credited to the member, the surviving spouse would have received a larger benefit under the 100% joint and survivor annuity option (with no additional service being credited to the member), then the surviving spouse shall receive the larger 100% joint and survivor benefit.

A member who dies while performing qualified military service [defined in IRC Section 401(u)] shall be considered to have resumed employment on the day preceding the death, and then terminated employment due to the death on the actual date of death, and therefore said member's surviving spouse, if any, or other qualified beneficiary as set forth in this Section 411, shall be entitled to a death benefit calculated in accordance with this subsection (c).

(d) *Single lump-sum payment.* Upon the death of a retired member, a single lump-sum payment shall be paid, if the member retired within one (1) month after the date of the member's termination of employment, to the beneficiary designated by the member if the beneficiary is living, otherwise to the member's estate. The benefit payment shall be made in accordance with the following schedule:

(1) For members employed before July 1, 2011, for normal retirement except where the member has fewer than five (5) years of credited service: \$5,000.00. No death benefit shall be paid to a member that is age sixty-five (65) or older who retires having less than five (5) years of credited service. For members first employed on or after July 1, 2011, no death benefit shall be paid to a member that has not vested in the plan. Members first employed on or after July 1, 2011, who vest with the plan and who are awarded a normal retirement, shall receive a death benefit of \$5,000.00. If a member is re-employed pursuant to section 18-408(j) the member shall not be entitled to a subsequent single lump-sum death benefit payment for the re-employment period. The single lump-sum death benefit payment sum calculated at the time of the original retirement shall be the death benefit to which the re-employed member is entitled.

(2)

a. For members employed before July 1, 2011, for early retirement at age:

64 \$4,750.00	59 \$3,500.00
63 4,500.00	58 3,250.00
62 4,250.00	57 3,000.00
61 4,000.00	56 2,750.00
60 3,750.00	55 2,500.00

b. For members first employed on or after July 1, 2011 for early retirement at age:

64	\$4,500.00
63	4,000.00
62	3,500.00
61	3,000.00
60	2,500.00

(3) For temporary early retirement pending approval of disability application, limited to three (3) years after the effective date of the temporary early retirement: the amount which is calculated for an early retirement pursuant to section 18-411(d)(2)(a) or section 18-411(d)(2)(b).

(4) For disability retirement at or after age sixty-five (65): \$5000.00.

(5) For disability retirement before age sixty-five (65) a sum equal to one and one-half (1.5) times the member's annualized average monthly salary, limited to fifty thousand dollars (\$50,000.00). This amount shall be reduced to five thousand dollars (\$5,000.00) upon the date the disabled member reaches age sixty-five (65). This benefit under this subsection (d) is in addition to all other benefits listed within this article.

In lieu of the single lump-sum payment of this subsection (d) that would be paid upon death, except for a member who is receiving a temporary early retirement, a retired member may elect to receive the appropriate death benefit limited to five thousand dollars (\$5,000.00) in the form of periodic payments. These payments shall be based on one-fiftieth (0.02) or one-one-hundredth (0.01) of the appropriate amount as elected by the member. In the event of the member's death before the amount has been paid out, the balance remaining shall thereupon be paid within sixty (60) days of death to the surviving spouse, if any, in lump sum, or, if there is no surviving spouse, to the member's designated beneficiary. If the member leaves neither a spouse nor a named beneficiary, the balance shall be paid to the decedent's estate. The payments may be started upon any regular retirement check payment date as selected by the member. The payments may be changed or stopped once each calendar year. These payments shall be added to the member's regular retirement benefit, and the dates for making payment of retirement benefits shall govern the payment of any combined benefit. The option to receive periodic payments of this benefit shall not be available to an applicant for disability retirement receiving an early retirement pending approval of his or her disability application.

(e) *Death with surviving children under twenty-one (21) and no surviving spouse.* If a member of the plan dies without a surviving spouse, but has children under age twenty-one (21), then any benefit payable to a spouse or a surviving spouse under subsections (b) or (c) of this section shall be paid to the guardian or other legal representative for the children under age twenty-one (21) at the date of the member's death. Monthly benefit payments shall continue unabated, per stirpes, for those children under age twenty-one (21) until the end of the month in which the youngest child becomes age twenty-one (21), at which time all benefits shall cease.

- (f) *Death of a deferred member.* If a deferred member, first employed before July 1, 2011, having such credited service as required in this article dies before applying for retirement benefits as provided for in section 409(e), there shall be paid to the surviving spouse, if living at the time the member reached or would have reached age fifty-five (55) (the earliest date the member would have been eligible to receive benefits under this division), a survivor annuity calculated in accordance with this section 18-411 for the life of the surviving spouse. If a deferred member, first employed on or after July 1, 2011, having such credited service as required in this article dies before applying for retirement benefits as provided for in section 409(e), there shall be paid to the surviving spouse, if living at the time the member reached or would have reached age sixty (60) (the earliest date the member would have been eligible to receive benefits under this division), a survivor annuity calculated in accordance with this section 18-411 for the life of the surviving spouse.

If a member under this section dies without a surviving spouse, but has children under the age of twenty-one (21) at the time of death, then any benefit which would have been payable to the member under this section shall be paid beginning the month following the member's death to the guardian or other legal representative for the children under age twenty-one (21) at the date of the member's death. For members first employed before July 1, 2011, the survivor's benefit for children under the age of twenty-one (21) shall be equal to the sum which the member would have received if the member had attained the age of fifty-five (55). For members first employed on or after July 1, 2011, the survivor's benefit for children under the age of twenty-one (21) shall be equal to the sum which the member would have received if the member had attained the age of sixty (60). Monthly benefits shall continue, unabated, per stirpes, for those children under age twenty-one (21) until the end of the month in which the youngest child becomes age twenty-one (21), at which time all benefits shall cease.

If a member under this section dies without a surviving spouse and without children under the age of twenty-one (21), but who during the course of covered employment had a committed partner as that term is defined in Section 28-200 (sometimes known and cited as Section 200, Chapter 28) of the Revised Municipal Code, or had a spousal equivalent as that term is defined in Section 18-171 (sometimes known and cited as Section 171, Chapter 18) of the Revised Municipal Code, and submits a copy of the certified certificate of committed partnership or the affidavit of spousal equivalency previously filed with the employee benefits section of the Career Service Authority to the Plan and named the committed partner or spousal equivalent as the member's named beneficiary, and had not terminated the committed partnership or spousal equivalency and continued to be in the relationship with the committed partner or spousal equivalent at the time of the member's death, then there shall be paid to the committed partner or spousal equivalent, if, for members first employed before July 1, 2011, the individual is living at the time the member reached or would have reached age fifty-five (55), or if, for members first employed on or after July 1, 2011, the individual is living at the time the member would have reached age sixty (60) (the earliest date the member would have been eligible to receive benefits under

this division), a survivor annuity calculated in accordance with this section 18-411 for the life of the committed partner.

If there is no surviving spouse or children under the age of twenty-one (21), or a committed partner or spousal equivalent, there shall be paid to the beneficiary designated by the member, if the beneficiary is living at the time the member would have reached the earliest date to have been eligible to receive benefits under this division, otherwise to the member's contingent beneficiary, if such contingent beneficiary is living at the time the member would have reached the earliest date to have been eligible to receive benefits under this division, a survivor annuity calculated in accordance with this section 18-411 for the life of the beneficiary or contingent beneficiary. For members first employed before July 1, 2011, the earliest date to have been eligible to receive benefits under this division is age fifty-five (55), and for members first employed on or after July 1, 2011, the earliest date to have been eligible to receive benefits under this division is age sixty (60).

(g) *Unmarried active members.* Unmarried active members may designate a beneficiary, or contingent beneficiary who shall become the primary designated beneficiary if the primary designated beneficiary predeceases the active member and the active member does not designate a new primary beneficiary, who shall be eligible to receive an equivalent benefit available to surviving spouses, subject to the requirements of the Internal Revenue Code, under the terms of this section. However, such designation of a beneficiary or contingent beneficiary by an unmarried active member shall be void for all purposes should the member die with a surviving spouse. And, further, this subsection (g) shall not apply to members who die without leaving a surviving spouse but who die leaving surviving children any one (1) of whom is under the age of twenty-one (21) at the date of the member's death, except that such beneficiary may serve as the guardian or the legal representative for such children as provided in subsection (e) of this section.

(h) *Death of an active or deferred member with no beneficiary or contingent beneficiary.* If there is no surviving spouse or children under the age of twenty-one (21), and the active or deferred member either failed to name a beneficiary or contingent beneficiary, or the named beneficiary and contingent beneficiary, if any, have predeceased the active or deferred member, and the active or deferred member failed to name a new beneficiary or contingent beneficiary, there shall be paid to the active or deferred member's estate, the amount of accumulated employee contributions paid by the active or deferred member to the plan, as of the applicable date of death.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 854-06, § 3, 12-26-06; Ord. No. 774-07, §4, 12-26-07; Ord. No. 349/350-11, § 5/8, 7-1-11)

Sec. 18-412. Health insurance for retirees.

(a) *General provisions.*

(1) The retirement board shall provide health insurance at group rates (group health insurance) for retired members, their spouses and the members' dependents. The group health insurance shall provide benefits for sickness, accident,

hospitalization and medical expenses. Where necessary, as determined by the retirement board, certain health insurance shall be made available by the city as an adjunct to the city's health insurance contract and such health insurance usage shall be charged by the insurance carrier to the city's contract for rate making purposes. In such cases, there may be a separate health insurance agreement made with the retirement plan, but the coverage and premiums offered to the eligible retirees by any such agreement shall be the same coverage and premiums offered by the city to its active employees.

- (2) In accordance with all applicable laws, when necessary, the retirement board shall adopt policies, procedures or rules to administer the health insurance benefits. A portion of the employer contribution may be allocated and apportioned separately from the trust fund to maintain the health benefit account. The purpose of the allocation is to provide separate record-keeping and actuarial soundness of the health benefit account. The mayor and city council find and declare that the portion of employer contribution paid toward this health benefit account is necessary, reasonable and appropriate.

(b) *The account.*

- (1) The plan shall set up and maintain the health benefit account in accordance with the requirements applicable to governmental pension plans under 401(h) of the Internal Revenue Code, including the requirement that all assets accruing in the account shall remain in the account. If section 401(h) of the Internal Revenue Code becomes inapplicable to governmental pension plans, any unused assets and earnings remaining in the account, after satisfying outstanding liabilities, shall revert to and become part of the trust fund for providing pension benefits. No part of the corpus or earnings on such corpus in the account shall be used for, or diverted to any purpose other than providing health benefits described in this section.
- (2) The health benefit account shall remain separate and apart from the trust fund for record-keeping purposes. The payments and contributions toward this account shall not exceed twenty-five (25) percent of the aggregate employer contributions made to the plan. This limitation shall not include the contributions to fund past credited service to benefit eligible retired members, their spouses and dependents who qualify for the plan's health benefit.
- (3) The account shall provide for the payment or partial payment of premiums for health insurance. The account may be charged with administrative expenses necessary to administer health benefits.
- (4) If the plan is terminated the health benefit account shall be treated in accordance with the requirements under section 401(h)(5) of the Internal Revenue Code applicable to governmental pension plans. The retirement board may, at any time, in its sole judgment, consistent with the current and long-term fiscal soundness of the plan, discontinue or reduce the health benefits. Disposition of the account assets due to termination shall be in accordance with the requirements of section 401(h)(5) of the Internal Revenue Code. If however, section 401(h)(5) of the Internal Revenue Code becomes inapplicable, the assets in the account shall,

within sixty (60) days of termination, reduction or discontinuation of the health benefits account, be paid into the trust fund for retirement benefits.

(c) *Authority of the retirement board.* When necessary, to administer the health insurance benefit the retirement board is empowered to adopt rules, procedures or practices, including the following:

- (1) Set forth criteria for determining eligibility.
- (2) Establish the time, terms and conditions of enrollment.
- (3) Acting by and through its executive director make contracts and disbursements including but not limited to contracting with insurance companies, health care providers and organizations or associations licensed or authorized under any state's laws to provide (directly or indirectly) health care services or benefits. For certain eligible retirees the board may make payments, partial payments or provide reimbursement or partial reimbursement for health insurance premiums consistent with the requirements of section 401(h) of the Internal Revenue Code.
- (4) Develop a system or formulae to determine the rates for the health insurance premium reduction by using the member's years of credited service at retirement, disability or death.
- (5) At any time, either at a special or regular monthly meeting, change the design of the health benefit (by either increasing, decreasing or otherwise modifying the benefit). It shall however provide members notice of any changes at least thirty (30) days prior to the effective date of change.
- (6) Authorize, as necessary, the plan to withhold from retirement benefits, obtain from retirees, and use the health benefits available to retirees under this section, funds necessary to pay to applicable group insurance carriers, as made available to and selected by retired members, their spouses and dependents, all premiums necessary to provide health insurance to eligible members.

(d) *Member's responsibility.* The retired members, their spouses, and the members' dependents shall bear the entire cost of the health insurance at the available group rates provided by the plan. The plan may deduct all or part of the health insurance premium not paid under this section from the member's pension benefit. In the event of the death of the retired member, subject to the requirements, terms, and conditions of existing health care provider agreements, the spouse or the dependent may be eligible for the plan's group health insurance coverage. However, the spouse or the dependent shall not, after the death of the member, receive any health benefits payable from the health benefit account unless the spouse or dependent is also the designated beneficiary of the member's joint and survivor annuity. In no event shall a surviving spouse or dependent be eligible for the health benefit provided by this section if the member chose to receive during retirement a single straight-life annuity with no rights in the survivor beneficiary to a joint and survivor annuity. Each month the member, or in the case of the death of the member, the spouse or dependent, shall in a timely manner pay to the plan the required health insurance premium.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-413. Monthly payment of benefits.

(a) *Duration.* Monthly retirement benefit payments to the retired member shall become payable on the first business day of the month following the member's effective retirement date and shall continue to be paid on the first business day of the month thereafter until the last monthly payment prior to death. If retirement benefit payments become payable to a member's spouse or named beneficiary, such payments to the spouse or named beneficiary shall be made in monthly installments commencing, except as otherwise set forth in this article, on the first business day of the month following the month in which the retired member died and shall continue until the last monthly payment prior to the death of such spouse or named beneficiary or prior to such other authorized termination of benefit payments as are called for in this division. Benefits authorized and issued but unpaid to and unclaimed by members, spouses or beneficiaries after three (3) years from the date of issuance shall escheat to the trust.

(b) *Delivery.*

(1) For members who retire before January 1, 2011, the payments shall, at the request of the retired member, spouse or named beneficiary, either:

a. Be placed in the mail of the United States Postal Service on the first business day of each month directed to either the last-known address of the payee shown on the records of the retirement plan or the address last designated in writing by the retired member, spouse or named beneficiary to which the payment is to be sent on record with the retirement plan, or

b. Be deposited directly in an intermediary bank selected by the retirement board so as to be available to the payee on the first business day of the month in the account of the payee at the payee's designated depository financial institution, and notice of such deposit shall be placed promptly in the mail of the United States Postal Service directed to the last-known address of the payee shown on the records of the retirement plan, or delivered in any other manner offered by the plan.

(2) For members who retire on or after January 1, 2011, or for beneficiaries who become eligible for a monthly retirement benefit on or after January 1, 2011, the payments shall be deposited directly in an intermediary bank selected by the retirement board so as to be available to the payee on the first business day of the month in the account of the payee at the payee's designated depository financial institution, and notice of such deposit shall be placed promptly in the mail of the United States Postal Service directed to the last-known address of the payee shown on the records of the retirement plan, or delivered in any other manner offered by the Plan.

(3) For two consecutive months, if the United States Postal Service returns to the plan as undeliverable a retirement payment [for those members who receive a check under section 18-413(b)(1)a], or returns to the plan as undeliverable a notice of deposit [for those members who have direct deposit under either section 18-413(b)(1)b or section 18-413(b)(2)], or returns to the plan any correspondence mailed to the member to the last known address shown in the records of the retirement plan, or if any other agreed upon delivery method for any member

communication fails, a member's monthly retirement benefit shall be suspended until the plan is able to confirm the address or delivery details of the member or his or her beneficiary. The plan shall not be held liable for the non-payment of the benefit and the loss of the opportunity of use of any payments temporarily withheld under this section pending the determination of the status or location of the member. Additionally, the benefit payments and interest or earnings on those benefits and future benefits, if any, continuing to be withheld pending the determination of the status or location of the member, shall be held by the plan as unclaimed property and held and disposed of in accordance with the terms thereof.

- (c) *Verification of entitlement to benefits.* The plan shall periodically verify that all retired members, their spouses or beneficiaries, who are receiving retirement payments, are entitled to receive such payments and shall verify annually that all retired members and beneficiaries who are receiving retirement benefits and who are over age seventy (70) are entitled to receive such payments.
- (d) *Recovery of overpayments.* Pursuant to the procedures set forth in Section 18-405(b)(3) the plan shall obtain repayment of any overpayments from any future benefits to be paid to the member, the spouse of a member, or the named beneficiary of a member, or, upon the death of a member, spouse or beneficiary, where no further payments are to be made, from the estate of the member, of the member's spouse or of the member's named beneficiary. The recovery of overpayments includes amounts paid to a member prior to the member's re-employment or re-instatement as set forth in section 18-408(j).

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 854-06, § 4, 12-26-06; Ord. No. 350-11, § 9, 7-1-11)

Sec. 18-414. Adjustments to benefits.

- (a) *Benefit adjustments.* The retirement board may, from time to time, but not more often than annually, adjust retirement benefits to retired members and beneficiaries. These adjustments may be made up or down in any full percentage amount.
 - (1) Benefit increases or upward adjustments shall not exceed the lower of:
 - a. Five (5) percent per year, or
 - b. The sum of the actual increases in the Bureau of Labor Statistics Consumer Price Index for the United States, all items, accrued since the effective date of the last cost-of-living adjustment.
 - (2) Benefit decreases or downward adjustments shall not exceed the sum of the actual annual decreases in the Bureau of Labor Statistics Consumer Price Index for the United States, all items, accrued since the effective date of the last cost-of-living adjustment.(3) No adjustment shall reduce any benefit below the amount determined as of a member's retirement date.
- (b) *Effective date.* Such adjustment shall be effective as of the January first preceding such determination by the retirement board. Such adjustments shall not be retroactive to the member's retirement date.

(c) *Calculation.* The adjustment shall be determined by multiplying the current monthly benefit by the percentage increase or decrease authorized by the retirement board from the occurrence of the last of:

- (1) January 1 of the second calendar year following the calendar year in which the member retires, or
- (2) January 1 of the year following the year used in the previous adjustment under this section, or
- (3) The first day of the year selected by the retirement board.

(d) *Additional Payment.* Apart and separate from the benefit adjustment set forth in Section 18-414, Subsections (a), (b) and (c), the retirement board may, in 2008, grant an additional payment to retired members and beneficiaries using such methodologies, categories, or formulas deemed appropriate by the board. Such additional payment shall not be permanently added to the retirement benefit received by a retired member or the member's beneficiary.

(e) *Advice of actuary.* All adjustments to benefits and additional payments shall be made only upon receipt and review by the board of actuarial cost data from the actuary employed by the board, regarding such adjustments or additional benefit payments. All such adjustments and additional payments shall be subject to the availability of funds for that purpose.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 402-08, § 4, 8-4-08; Ord. No. 350-11, § 10, 7-1-11)

Sec. 18-415. Purchase of service credits.

(a) *Purpose and intent.* Subject to the procedures established by the plan and the requirements of section 415(n) of the Internal Revenue Code, and providing there is no actuarial cost to the plan, an active member who is eligible under the terms of the plan, may purchase, in accordance with the definitions, terms and conditions of the plan, permissive service credit. The plan, in accordance with its procedures, shall determine the eligibility and qualifications of an active member to purchase permissive service credits. A member cannot use purchased permissive service credit for vesting purposes or for qualifying for a different category of benefits or subsidies other than that for which the member is otherwise entitled through credited service earned while employed by a covered employer.

(b) *General provisions.*

- (1) *Non-governmental service.* An active member of the plan may purchase up to a maximum of five (5) years of non-governmental (nonqualified) service credit as defined in section 415(n) of the Internal Revenue Code. The purchase will be permitted only with respect to service for which the member is not and will not be entitled to a pension from the plan or another prior non-governmental employer. Further, that member shall not be eligible to purchase such service credits unless the member has had a minimum of five (5) years of credited service with the plan prior to making an application to purchase such prior non-governmental service credit.

(2) *Prior governmental service.* An active member of the plan may purchase any amount of prior governmental service for which the member is not and will not be entitled to a pension from the plan or the previous governmental employer. A member shall not be eligible to purchase such prior governmental service credits from the plan unless the member has a minimum of five (5) years of credited service with the plan prior to making application to purchase such prior governmental service credit.

(c) *Requirements.*

(1) Payment options.

- a. An active member may purchase permissive service credits in accordance with the requirements and limitations imposed by the Internal Revenue Code. The board may set forth, in the requirements for eligibility, methods for computing actuarial equivalents, and other terms and conditions governing the purchase of permissive service credit.
- b. With the exception of direct rollover trustee-to-trustee transfers permitted under the Internal Revenue Code, as applied to governmental plans, an active member may, prior to retirement, make only after-tax direct contributions to purchase service credit.
- c. Subject to the limitations imposed by the Internal Revenue Code, such payments may be made only for full months of service in full payment for each month of permissive service credit purchased, provided, that additional months of service credit may be purchased thereafter, up to the limit imposed by subsection (b) of this section.
- d. An active member may use all or part of an eligible rollover distribution from another qualified plan (or other plan so permitted under the Internal Revenue Code) to pay for all or part of the amount needed to purchase the permissive service credit, subject to the limitations imposed under section 415(n) of the Internal Revenue Code.
- e. The election to purchase prior permissive service credit shall be irrevocable and no refund shall be made to a member for any amount paid to the Plan to purchase service credit.
- f. No member shall receive service credit for any service for which payment has not been completed pursuant to this provision before the effective date of the member's termination from employment. No payment shall be allowed to be made to the Plan for a purchase of service credit following a member's termination from employment.

(2) Cost.

- a. A member must elect to pay, and thereafter pay in accordance with such election, the amount determined by the plan to be the current actuarial cost of the service credit purchased.

- b. The cost of the service credit purchased pursuant to this section shall be the actuarial amount required to provide the credited service based upon the member's age and years of service at the time of election and purchase.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 350-11, § 11, 7-1-11)

Sec. 18-416. Rollover distributions.

- (a) *Notice.* In accordance with requirements of the Internal Revenue Code, the plan shall provide, within a reasonable period of time before the plan makes an eligible rollover distribution under this article, a written notice containing an explanation to those members, if any, who are recipients of an eligible rollover distribution, covering the direct rollover rules, the mandatory income tax withholding on distributions not directly rolled over, the tax treatment of distributions not rolled over (including the special tax treatment available for certain lump sum distributions), and when distributions may be subject to different restrictions and tax consequences after being rolled over.
- (b) *Rollovers to purchase credited service.* The plan may accept any portion of an eligible rollover distribution in payment of all or a portion of a member's purchase of credited service where such purchase of service or buyback is allowable under this article and the terms of the Internal Revenue Code.
- (c) *Rollovers to an eligible retirement plan.* A distributee (defined below) may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to a specified eligible retirement plan, as defined by the Internal Revenue Code.
- (d) *Definitions applicable to this section.*
 - (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, including after-tax employee contributions which are not includible in gross income, except that an eligible rollover distribution does not include: any distribution that is one (1) 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 (10) years or more; and any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code, or the corresponding section of any future amendment.
 - (2) *Eligible retirement plan:* An eligible retirement plan is any program defined in the Internal Revenue Code from which the member has a right to an eligible rollover distribution as follows:
 - a. An individual retirement account described in section 408(a) of the Internal Revenue Code,
 - b. An individual retirement annuity described in section 408(b) of the Internal Revenue Code,

- c. An annuity plan or contract described in section 403(a), 403(b) or an eligible deferred compensation plan described in section 457 of the Internal Revenue Code, or
 - d. Any qualified trust or deferred compensation plan described in the Internal Revenue Code that accepts the distributee's eligible rollover distribution.
- (3) Distributee: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse or former spouse under a domestic relations order accepted by the plan, are distributees with regard to the interest of the spouse or former spouse.
- (4) Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee, and also certain trustee to trustee transfers to the plan as permitted by this division, made within the time and in the manner and subject to the conditions of the Internal Revenue Code.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-417. Denial of benefits; hearing procedures.

(a) Petition for reconsideration.

- (1) Petition; time limit. Any member or beneficiary or person claiming to be a member or beneficiary ("petitioner") who is denied benefit payments or who questions the amount of benefit payments made by the plan may petition the executive director for reconsideration of that decision. The petition shall be in written form and must be received at the retirement plan office within ninety (90) days after the denial of, or initial payment of, benefits by the plan.
- (2) Reasons for appeal. The petition shall set forth specific reasons for the petitioner's belief that the decision of the plan is incorrect and shall set forth the reasons the member or beneficiary is entitled to the benefit payments.
- (3) Documents. The petition shall include copies of any and all documents and authority (legal or otherwise), if any, which the petitioner is relying upon to support the petitioner's position.
- (4) Decision. The executive director shall render a decision on the matter within sixty (60) days from receipt of the petition for reconsideration. The decision shall be in writing and shall set forth the reasons for the decision. The decision will be mailed to the address of the petitioner or the petitioner's named agent contained in the petition. It shall be the petitioner's responsibility to notify the plan of any change of address which occurs within the reconsideration period.
- (5) Decision binding. Unless a timely appeal has been received as set forth in subsection (b) below, upon the expiration of thirty (30) days from entry of the decision by the executive director, the decision shall be binding and conclusive on all interested persons.

(b) Appeal of executive director's decision.

- (1) Appeal; time limit. Any petitioner who is denied benefit payments after filing a timely petition for reconsideration and receiving a decision by the executive director

may appeal that decision by requesting a hearing before the retirement board. The request shall be in written form and must be received at the retirement plan office within thirty (30) days after the date the executive director's decision was entered.

- (2) Scheduled hearing. The retirement board may, at its sole discretion, either set the matter to be heard by the retirement board or refer the matter to a hearing officer selected by the board who is licensed to practice law in the State of Colorado. If the hearing is to be held by the retirement board the hearing shall be scheduled by the plan staff, and shall take place during a regularly scheduled meeting of retirement board held within one hundred eighty (180) days from the plan's receipt of the petition. If the matter to be heard involves medical records, personnel information or any other item declared by law to be confidential, the hearing shall take place in executive session. Notice of the hearing date shall be sent to the petitioner or to the attorney representing the petitioner and to the attorney representing the plan in a timely manner and such hearing may be rescheduled upon written request filed with the plan at least seven (7) calendar days before the scheduled date of the hearing upon good and sufficient cause being shown. If the matter is referred to a hearing officer, the hearing officer will schedule a date and time for the hearing acceptable to both parties, but within the time limitations applicable to hearings before the board.
- (3) Relevant material from files available. Within ten (10) business days after receipt by the plan of the request of the petitioner, the plan shall provide without cost one (1) copy of the materials in the petitioner's file. At least twenty (20) business days prior to the date of the scheduled hearing, petitioner shall furnish to the plan, for transmittal to the plan's attorney, a pre-hearing statement containing a written summary of any additional or supplemental evidence the petitioner intends to offer at the hearing, including any legal authority in support of petitioner's position. The pre-hearing statement shall include the names and addresses of any witnesses to be called at hearing and a summary of their proposed testimony. The plan's attorney shall then, at least ten (10) business days prior to the date of hearing, furnish to the petitioner a pre-hearing statement containing the same required information. Both parties shall be prohibited from introducing any additional or supplemental evidence, legal authority or witnesses not contained in the pre-hearing statement, unless, upon good and sufficient cause being shown, it is proved that the additional or supplemental evidence, legal authority or witnesses could not have been and were not discovered by the party until after the pre-hearing statement was required to be given to the other party.
- (4) Record of proceedings. The proceedings before the retirement board or hearing officer shall be recorded. If the decision of the retirement board or the hearing officer is to deny the petition, the plan shall provide without cost one (1) copy of the record made during the hearing to the petitioner, upon written request. The plan shall provide any additional copies requested by the petitioner at the rate of one dollar (\$1.00) paid in advance for each page of the transcript of proceedings and exhibits received or offered into evidence. All witnesses shall testify under oath administered by the Chairperson of the retirement board or the hearing officer, and each witness under subpoena shall be paid by the subpoenaing party, in advance, for attendance the fees and mileage provided for a witness in a court of record in Colorado.

- (5) The hearing. If the hearing is scheduled in front of the retirement board, the hearing shall be conducted by the chairperson, if present, or, if not present, by an appointed board member. The rules of procedure and evidence set forth generally in the State Administrative Procedure Act of Colorado shall apply unless in conflict with express provision herein.
- (6) Authority of board. In conducting a hearing, the retirement board shall have the authority to accept offers of proof and rule upon offers of, and receive, evidence; dispose of motions relating to jurisdiction, time, the discovery and production of relevant documents and items for inspection, copying or photographing; direct the parties to appear and confer to consider the simplification of the issues, admissions of fact, authenticity and relevancy of documents to avoid unnecessary proof, and to limit the number of expert witnesses; limit or exclude redundant or cumulative evidence; reprimand or exclude from the hearing any person for any improper or indecorous conduct in the hearing; and issue subpoenas.
- (7) Issuance of subpoenas. Subpoenas shall be issued without discrimination between public and private parties by the executive director of the plan upon the request of either party. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the party concerned, with the approval of the retirement board, may petition the Denver district court, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena; in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records or other evidence, upon penalty of punishment for contempt in case of contumacious failure to comply with the order of the court.
- (8) Time limit for rendering of decision. A decision with respect to the matter under review shall be rendered by the board or hearing officer within sixty (60) days from the date the hearing is closed. The decision or a copy thereof shall be mailed or delivered to the plan, the petitioner and the petitioner's attorney at their last known addresses. The date of the decision by the board or hearing officer shall be deemed the date of the entry of the decision into the plan's records.
- (9) Judicial review. Judicial review may be obtained by filing an action within thirty (30) days of the entry of decision by the retirement board or the hearing officer in the District Court for the Second Judicial District under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, or such similar rule in the nature of certiorari established for judicial review of administrative decisions as may be promulgated by the Supreme Court of the State of Colorado. The standard for judicial review shall be abuse of discretion by the board or hearing officer or the board or hearing officer acting beyond its jurisdiction.
- (10) Decision binding. Upon the expiration of thirty (30) days from entry of the decision by the retirement board or the hearing officer, the decision shall be binding and conclusive on all interested persons.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 854-06, § 5, 12-26-06; Ord. No. 350-11, § 12, 7-1-11)

Sec. 18-418. Anti-alienation provision.

(a) *General.* Active members, retired members, vested members, spouses of such members, and all beneficiaries under the plan are hereby restrained from selling, transferring, anticipating, assigning, hypothecating, or otherwise disposing of their retirement benefit, prospective retirement benefit, or any other rights or interest under the plan, and any attempt to anticipate, assign, pledge, or otherwise dispose of the same shall be void from the initiation of the attempt (and not merely voidable). Except as otherwise specifically preempted by law superseding this section, such as in the case of court orders for child support, said retirement benefit, prospective retirement benefit and rights and interests of said active members, retired members, vested members, spouses of such members, or beneficiaries shall not at any time be subject to the claims of creditors or subject to payment or execution upon judgment for the liabilities or torts of said active members, retired members, vested members, spouses of such members, or beneficiaries of members; neither shall such benefits, rights, or interests be liable or subject to attachment, garnishments, execution or other legal process; and this provision is hereby found, determined and declared to be a matter strictly of local and municipal concern to the city in the interest of retaining, maintaining, and attracting skilled personnel of the highest caliber and quality to serve the citizens of the City and County of Denver.

(b) *Domestic relations orders (DRO).* The plan shall permit the division of a member's retirement benefit through a DRO which meets all the requirements set forth in this subsection.

(1) Notwithstanding the anti-alienation provision set forth in subsection (a) above, effective July 1, 2004, the plan shall honor an agreed upon DRO issued on or after July 1, 2004, by a court of record having jurisdiction in such matters where the decree of dissolution of marriage, legal separation, or declaration of invalidity was final on or after July 1, 2004. The member's retirement benefit shall be divisible directly by the plan only upon written agreement of the parties made pursuant to or in conjunction with a DRO in actions for dissolution of marriage, legal separation, and declaration of invalidity of marriage.

(2) A plan-approved DRO shall permit the alienation of retirement benefits only between the member and a former spouse of the member. Both parties to the action must agree to follow the DRO and agree to all of its terms and conditions. If the parties cannot reach a written agreement, the plan will not honor a DRO dividing a member's retirement benefit. The plan's initial approval of the DRO is required before the DRO is submitted to the court for the court's approval, and the court must enter the DRO as an order either incorporating the agreement or approving the parties' fully executed agreement attached to the order. The DRO with the attached agreement must be approved and entered by the court either upon the entry of the decree and permanent orders, or within 180 days thereafter. The DRO with the agreement must be submitted to the plan within ninety (90) days after the entry of the DRO by the court. The plan has thirty (30) days to approve the court approved DRO after the DRO has been submitted to the plan in accordance with the provisions herein. A court shall have no jurisdiction to modify an order approving a written agreement of the parties dividing the benefit unless the parties have agreed in writing

to the modification. A court may retain jurisdiction to supervise the parties to the DRO in the implementation of the DRO.

(3) The plan-approved DRO shall not:

- a. Provide any benefit of a type or form, or any option, not otherwise provided under the terms of the plan.
- b. Provide for payments for which the member and spouse would not otherwise be eligible if there were no dissolution of marriage, legal separation, or declaration of invalidity.
- c. Provide for payment of benefits to an active member or former spouse prior to the member's retirement.

(4) If the member dies prior to retirement the following terms shall govern regarding the DRO:

- a. If the member dies before reaching the age of fifty-five (55) for members first employed before July 1, 2011, or before reaching the age of sixty (60) for members first employed on or after July 1, 2011, and the member has no current spouse, no children under age 21, and had not yet named a beneficiary or contingent beneficiary, payment will be made to the former spouse from the amount of accumulated employee contributions to be paid to the member's estate, only if the parties opted to have the former spouse paid a percentage of the retirement benefit earned during marriage. Payment shall be made in a lump sum to the former spouse based on the percentage earned during the period of marriage as set forth in the DRO. No payment shall be made to the former spouse from the amount of accumulated employee contributions to be paid to the member's estate if the DRO orders that an exact amount of monthly retirement benefits be paid to the former spouse, as there will be no monthly retirement benefit payment to divide in such a manner.
- b. If the member dies either before or on or after reaching the age of fifty-five (55), for members first employed before July 1, 2011, or before or on or after reaching the age of sixty (60), for members first employed on or after July 1, 2011, and the member has a current spouse, or children under age 21, or has a named beneficiary on file with the plan, the member's former spouse may receive monthly payments of the benefit agreed in the DRO calculated as follows:

1. The DRO payment to the former spouse shall commence the first business day of the month following the date when the member would have (but for death) reached age and other requirements for a normal retirement benefit under the terms of the plan.

2. Subject to the provisions of section 18-411 of this division, the decedent member's spouse or designated beneficiary, if any, at the time of the member's death shall receive a survivor annuity. This annuity shall be made available and calculated subject to the plan's requirements and the terms of the DRO.

3. The former spouse's portion of the retirement benefit shall be actuarially reduced for and paid over the lifetime of the former spouse.

4. If, at the time the member would have reached age and other requirements for a normal retirement benefit, no retirement benefit payments are being made by the plan, and no benefit payment will be made by the plan in the future, no payment will be made to the former spouse, as there is and will be no benefit to divide.
- (5) If the member dies after retirement the following terms shall govern regarding the DRO:
 - a. The payments to the former spouse shall terminate unless the former spouse agrees at the time of initial payment pursuant to the DRO to the option of a continued method of benefit payment following the member's death in accordance with the plan's requirements.
 - b. If so agreed, the continued payments to the former spouse shall begin no later than the first business day of the month following thirty (30) days from the date of the member's death and shall continue to be paid until the death of the former spouse.
 - c. The member's designated beneficiary, or spouse, if any, at the time of retirement may receive, subject to the plan's requirements and the terms of the DRO, a joint and survivor annuity based on the deceased member's portion of the benefit.
- (6) The DRO shall provide that payments to the former spouse terminate with the death of the former spouse and no payments shall be made to the estate of the former spouse. Each former spouse may be charged an administrative fee for the alienation of the member's retirement benefit pursuant to a DRO.
- (7) Subject to the terms and options available to the member and the former spouse, the plan shall make appropriate calculations of benefit payments to the member and the former spouse at the time of the entry of the DRO; and for the member and the member's current spouse, if any, or a designated beneficiary, if any, at the time of the member's retirement or death.
- (8) No health benefits available under the plan shall be paid to, or made available for the use of, the former spouse.
- (9) The retirement board may when necessary promulgate rules and procedures governing the implementation of orders for the division of retirement benefits. Such rules and procedures shall provide the plan the authority to implement and administer DROs. These rules may be incorporated into the plan's DRO manual. The DRO manual shall describe the plan's authority, terms, and requirements for the administration and operation of DROs. The manual or the rules may include the requirement that the parties promptly comply with the plan's procedural and administrative requirements for the processing and administration of the alienation of retirement benefits.
- (10) The retirement board, its officers, and plan staff shall not be liable for actions performed in good faith, including non-payment or payment of benefits pursuant to this subsection if the actions reasonably comply with this article, the DRO manual, rules governing DROs adopted by the board and the order approving the division of the retirement benefit.

- (11) If the member is eligible to receive benefits under divisions 3 and 4 of this article (DROP and DROP II), then the plan-approved DRO may permit only the option for disbursement in lump-sum to the former spouse. The former spouse shall receive the DROP or DROP II lump-sum payment either at the time the member receives the member's initial payment under DROP or DROP II or when the member is first eligible to receive such a payment, whichever occurs first.
- (12) It shall be the responsibility of the member's former spouse to inform the plan of the address of the former spouse for purposes of distribution of benefits. The plan shall attempt, based upon the information then available as provided by the former spouse, to inform the former spouse of the member's retirement, death, and commencement of benefit payments under this division and payments or eligibility for payments under DROP or DROP II.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 350-11, § 13, 7-1-11)

Sec. 18-419. Obligation of city.

- (a) *General.* Nothing in this article is intended to nor shall it be construed to create a debt for any year which is a charge against the city's revenues for any future year. All benefits payable under the plan shall be payable from and only from the trust fund established in section 18-403. The plan is a determination of policy by the city, strictly of local and municipal concern, to enhance and stabilize its employer-employee relationship and will remain the policy until changed by city ordinance or amendment of the city Charter. The city reserves the right to change the operation of or to discontinue further city involvement in the operation of the system at any time and from time to time, subject only to the following limitations:
- (1) No reductions below what may be actuarially provided. No alteration or amendment shall reduce the retirement benefits below those determined to be sufficiently provided for actuarially by the trust fund as it exists at the time of alteration or amendment, except in the case of complete termination of the plan, nor change any right of a member to receive the return of accumulated contributions, if any, upon death or withdrawal from service; and
- (2) No reversion to employer. No alteration or amendment or complete or partial termination of the plan or any part thereof shall permit any part of the trust fund to revert to or be recoverable by the employer or be used or diverted to purposes other than for the exclusive benefit of eligible members or their beneficiaries under the plan. In the event of the discontinuance of city involvement in the plan, or the partial or complete termination of the plan, the proportionate interest of the members, and their beneficiaries, respectively, shall be determined by the plan's actuary and to the extent then funded shall become non-forfeitable. The assets of the trust shall be allocated to members, former members, retired members and their beneficiaries in the following order of preference:
- a. The current balance of the member's accumulated contributions, if any, with interest thereon at a rate set annually by the Retirement Board, with a minimum rate of one (1) percent, not to exceed three (3) percent per annum, compounded each June 30th, as of the date of the termination of the plan. If the

member has already retired, the amount payable under this subsection shall be the balance of the member's accumulated contributions, if any, with interest thereon, as of the member's effective date of retirement, less the total amount already received in retirement benefit payments, if any.

- b. The balance remaining after the allocation described in subsection (2)a., above, shall be allocated for the benefit of each retired member (including the member's beneficiary) in an amount proportionate to, but not in excess of, the actuarially determined present value of the retirement benefit payable to such member at the date of termination of the plan.
 - c. The balance remaining after the allocation described in subsection (2) b., above, shall be allocated to:
 1. Each member who has attained the normal retirement date, but who has not retired; and
 2. Each member who has been approved for a retirement benefit payment but who has not yet received such payment, in an amount proportionate to, but not in excess of, the actuarially determined present value of the retirement benefit payment accrued by such member at the date of termination of the plan, less any amount allocated pursuant to subsection (2) a., above.
 - d. The balance remaining after the allocation described in subsections (2)b., and (2)c above, shall be allocated for the benefit of each vested active and inactive member for whom no allocation has been made under subsection (2)b. and (2)c., above, in an amount proportionate to, but not in excess of, the actuarially determined present value of the retirement benefit payment accrued by such member at the date of termination of the plan, less any amount allocated pursuant to subsection (2)a, above.
 - e. The balance remaining after the allocation described in subsections (2)b., (2)c. or (2)d., above, shall be allocated for the benefit of each member for whom no allocation has been made under subsections (2)b., (2)c. or (2)d., above, in an amount proportionate to, but not in excess of, the actuarially determined present value of the retirement benefit payment accrued by such member at the date of termination of the plan, less any amount allocated pursuant to subsection (2)a., above.
 - f. Any balance remaining after the allocation described in subsections (2) b., (2) c., (2) d. or (2) e., above, shall be allocated for the benefit of all members who have participated in the above allocations in a pro-rata share of their total allocations to the total distribution.
- (3) Timing of distributions upon termination of plan. Any distribution after termination of the plan may be made at any time, so long as the distribution requirements of the Internal Revenue Code are met, and from time to time, in whole or in part, to the extent that no discrimination in value results, in cash, in the form of a retirement benefit payment or a continued retirement benefit payment, or in a lump-sum amount as the retirement board directs. The benefit payments as apportioned upon plan termination shall be provided by the continuation of the trust fund until all assets of the trust fund have been exhausted. In making such distribution, any and all determinations, divisions,

appraisals, apportionments and allotments shall be made by the retirement board acting under the information supplied by the actuary and shall be final and conclusive.

- (4) No reduction upon merger. This plan shall not be merged or consolidated with, nor shall any assets or liabilities be transferred to any other plan, unless the benefits payable to each member if the plan were terminated immediately after such action would be equal to or greater than the benefits to which such member would have been entitled if this plan had been terminated immediately before such action.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-420. Termination of affiliation.

- (a) *Application for disaffiliation.* Any employer, agency of an employer, or contractual entity (collectively hereinafter referred to as “entity”) which is affiliated with the plan may make an application to the board to terminate its affiliation or modify the terms and conditions of its affiliation with the plan. An entity is deemed to be affiliated with the plan if its employees actively participate in the plan. Prior to granting any disaffiliation from or modification of the relationship with the plan, the board shall obtain an actuarial report certifying that the termination of affiliation or change in relationship shall not have an adverse financial impact on the actuarial soundness of the plan. If the actuary determines, in accordance with accepted actuarial principles, that the termination of affiliation or modification of the relationship shall have an adverse financial impact on the actuarial soundness of the plan, the entity shall not be permitted to terminate affiliation or change the relationship unless it agrees by written contract with the plan to pay for the full actuarial costs associated with the disaffiliation or modification of the relationship. These costs include, but are not limited to, that portion of the accrued unfunded liability, if any, of the plan attributable to the disaffiliating entity, and the actuarial normal cost of current and future benefits of members of the plan who are employees of the entity.
- (b) *Vested rights.* The rights of retired members or their beneficiaries and the vested rights of deferred members shall not be impaired or reduced in any manner as a result of the termination of affiliation or modification of the relationship of an entity with the plan.
- (c) *Expenses incurred.* The expenses incurred by the board for the actuarial reports prepared as a result of an application under subsection (a) of this section shall be paid by the entity making such application.
- (d) *Disclosures to applicant.* The board shall provide any information contained in such actuarial reports upon request of the entity making the application for termination of affiliation or modification of the relationship of its affiliation.

(Ord. No. 854-06, § 6, 12-26-06)

Sec. 18-421. Reserved.

DIVISION 3. DEFERRED RETIREMENT OPTION PLAN FOR THE MEMBERS OF THE DENVER EMPLOYEES RETIREMENT PLAN

Sec. 18-422. Generally.

- (a) Effective January 1, 2001, in lieu of immediate termination of employment and receipt of a normal retirement benefit, a member may continue employment for four (4) years and have the member's normal retirement benefit paid into the deferred retirement option plan (DROP) account until the end of such period of the member's participation, at which time the participant may either terminate employment or continue to be employed and resume regular membership with the retirement plan. Subject to the conditions and provisions stated in this article, a member may elect to become a participant in the DROP and defer the commencement and receipt of the member's retirement benefit.
- (b) The board of trustees of the Denver Employees Retirement Plan shall develop and establish the DROP for eligible members of the Denver Employees Retirement plan. The board may develop, adopt and establish rules, regulations and procedures to efficiently facilitate the administration of this DROP.
- (c) The DROP permits active members who have never received a retirement benefit under the plan provisions and eligible for a normal retirement benefit under the plan to continue active employment (but not be an active member of the plan for the DROP period) and participate in the DROP.
- (d) A participant of the DROP shall continue to be an active employee for all intents and purposes but shall not be an active member of the plan for the period in the DROP (and shall not receive any retirement benefits which shall include any and all benefits provided under division 2 of this article). Nevertheless, the participant shall earn no additional service credits or benefits under the plan during the four-year period in the DROP.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-423. Definitions.

- (a) Definitions and terms used in this article are elaborated below:
 - (1) Active employment shall mean when a person is employed part-time or full-time but shall exclude any person employed on a seasonal, contractual, or on-call basis or any person who is retired from the plan and is rehired by the employer. Active employment shall also mean when a person is on an approved paid leave of absence.
 - (2) Beneficiary shall mean the person or persons designated in writing by the DROP participant (if no one is designated, then the estate of the participant).
 - (3) Board shall mean the retirement board, which serves as the board of trustees for the Denver Employees Retirement Plan as described in division 2 of this article.
 - (4) DROP account shall mean the participant's individual deferred retirement option plan account designed under this division and administered by the plan.
 - (5) FMLA shall be the Family and Medical Leave Act of 1993.

- (6) Internal Revenue Code shall mean the Internal Revenue Code of 1986 as amended and the regulations promulgated thereunder.
 - (7) Member shall mean an active member of the Denver Employees Retirement Plan as used in division 2 of this article. It shall exclude a person or employee who has received any retirement benefit under the plan provisions. It shall also exclude any group of employees who may be re-employed and receiving a retirement benefit.
 - (8) Normal Retirement shall mean retirement at the earlier of the age of sixty-five (65) or the first day of any calendar month after which a member has attained his or her fifty-fifth (55th) birthday and where the member's age and credited service, while an active member, are or were equal to the sum of seventy-five (75). The rule of 75 means that age after which the member has attained his or her fifty-fifth (55th) birthday where he or she can retire without a reduction in his/her retirement benefit as would have been required for an early retirement. The rule of 75 is determined by adding the age of the employee while employed with the employer to the years of service as an employee with the employer. If the total equals or exceeds the sum of seventy-five then the requirements for the rule of 75 have been met. The rule of 75 must be attained by the member prior to termination of employment.
 - (9) Participant shall mean a person enrolled in the DROP and having a DROP account.
 - (10) Plan or retirement plan shall mean the Denver Employees Retirement Plan as described in division 2 of this article.
 - (11) Retiree shall mean a participant who terminates the DROP and is eligible for a distribution of retirement benefits under either the DROP or the plan.
 - (12) Retirement benefit or benefits shall mean any benefit payment to retired members, qualified spouses, beneficiaries or dependents provided under the plan according division 2 of this article.
 - (13) USERRA shall mean Uniformed Services Employment and Re-Employment Rights Act of 1994.
- (b) Any other definition or term not described or elaborated above shall be explained or interpreted by the board in its rules, regulations, policies and procedures adopted to administer the DROP. The plan administrators shall maintain discretionary authority to interpret ambiguous terms and make factual determinations regarding the administration of the DROP.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-424. Provisions.

- (a) The duration of participation in the DROP shall be for a maximum of four (4) years. As a condition precedent to participation in the DROP, the participant shall irrevocably elect, in writing on a form prescribed by the board to enter the DROP. The participant shall also acknowledge that no disbursement of any DROP funds can occur absent the retirement, death or termination of employment of the participant. The plan shall provide a copy of such agreement to the employer.

- (b) The member's retirement benefit shall be calculated at the entry of the DROP. The DROP benefit shall be a monthly amount equal to the member's normal retirement benefit (based on the formula used in the calculation of a member's retirement benefit under division 2 of this article). This amount shall be credited monthly to the participant's DROP account.
- (c) The participant's DROP account shall be credited with the member's monthly retirement benefit; Cost of Living Adjustments (COLAs) as authorized by the board (in compliance with the rules under division 2 of this article); and interest at a rate which shall be the plan's actuarial assumption rate for investment return. The employer contribution to the trust established by section 18-403 of the Code, based on the participant's current salary, in accordance with requirements set forth in section 18-408(e) of the Code shall not be credited to the participant's DROP account.
- (d) At the DROP entry all calculations of vacation and sick payoff amounts shall be in compliance with sections 18-124 and 18-135, respectively, of the Code and in accordance with all other applicable ordinances, policies and rules of the employer. At the exit of the DROP and/or the termination of employment the member shall be paid for the vacation and sick leave hours in compliance with sections 18-124 and 18-135, respectively, of the Code. At the end of the DROP term, if the participant continues employment, the provisions regarding the calculations of plan eligibility and credited service shall apply to the additional bridged service.
- (e) If the participant's active employment during the DROP period is interrupted by military service, a disability, FMLA or any other paid or unpaid leave of absences, or if a participant terminates employment, but within sixty (60) days, returns to a covered position, then upon returning to active employment, (provided that the participant has not received any distribution from the DROP account, or received any retirement benefits under the plan), the employee shall immediately be eligible for participation in the DROP for the balance of the four-year period. Other than the above-mentioned types of interruptions of participation, the four-year period shall continue to run in all other cases. The participant must be an active employee in pay status for the DROP account to be credited with all the amounts mentioned in this section. In the case of an interruption due to a period of military service, USERRA and its provisions shall govern the participant's rights, eligibility and credits to the DROP account.
- (f) A participant's election to enter the DROP is irrevocable and may be terminated only upon the death of the participant; termination of employment with the employer, or the end of the four-year DROP period.
- (g) If the participant is on a paid or unpaid leave of absence but maintains an employer-employee relationship, there can be no disbursement from the DROP account. The participant upon returning to active employment shall continue to participate in the DROP. However, if after the leave of absence, the participant terminates employment and applies for a retirement benefit, the participant may terminate the DROP agreement and after sixty (60) days receive a distribution from the DROP account.
- (h) The accumulated amounts of the member's normal retirement benefit calculated at the DROP entry, the plan's actuarial assumption rate for investment return, and authorized cost of living adjustments (COLA) (if and when applicable) shall be credited to, and shall be the amount the member receives from the DROP account.

The participant's normal retirement benefit amount shall cease being credited to the DROP account after the four-year DROP period. However, the plan's actuarial assumption rate for investment return shall be credited to the participant's DROP account until the entire balance is distributed.

- (i) The board is authorized to charge the DROP accounts for administrative costs and charges.
- (j) After terminating employment and exiting the DROP, a participant may be rehired by an employer. If rehired within sixty (60) days, a participant may choose, if the participant has not received a distribution from the DROP or a retirement benefit from the plan, to continue in the DROP for the balance of the four-year period or to continue in the covered service and accrue service credits as a member of the plan.
- (k) A participant may receive a distribution from the DROP only sixty (60) days after termination of employment.
- (l) At the end of the DROP term, a participant may continue employment with the employer and shall renew status as an active member of the plan. The plan provisions, the applicable ordinances and federal law shall apply to the member's bridged benefit.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-425. Distributions.

- (a) A participant in the DROP shall be entitled to elect one (1) of the following distribution methods by executing in writing a DROP-distribution-payment-option selection form as prescribed by the board:
 - (1) Deferral of any payment(s) from the account. If a deferral of payment(s) is selected, the participant may select one (1) of the following distribution methods at any time. Distributions may start no earlier than sixty (60) days following employment termination and must start no later than April 1 following the year in which the participant attains the age of seventy and one-half (70 ½).
 - (2) A lump-sum distribution of the entire account balance.
 - (3) Periodic monthly payments of a designated amount until the balance of the DROP account has been entirely distributed. The monthly payments may be adjusted annually.
 - (4) Periodic monthly payments for a designated period of years. An amount shall be calculated for this periodic payment so that the entire balance in the participant's DROP account will have been distributed by the end of the period selected by the participant. The number of payments may be recalculated annually.
 - (5) Initial minimum required distribution. The amount calculated to be the participant's periodic payment shall be based on the participant's current DROP balance. This minimum distribution is based on the participant's life expectancy (and the life expectancy of the participant's designated beneficiary, if applicable).
 - (6) Combination of a lump sum and periodic payments by designating an initial lump sum payment of a specified amount and a specified monthly amount until the balance of the DROP account has been entirely distributed to the participant. The monthly amount may be adjusted annually.

- (7) The participant may rollover all or certain portions of eligible rollover distributions, as defined in the Internal Revenue Code, from the DROP to an individual retirement account (IRA) that qualifies as an IRA under the Internal Revenue Code, or to any other eligible retirement plan available to receive rollovers under the Internal Revenue Code as set forth in section 18-416 of this article.
- (8) Any other method of distribution that is consistent with the requirements of the Internal Revenue Code and approved by the plan.

(b) Regardless of the form of payment the participant chooses, the minimum distribution amount will be determined and payment made in accordance with section 401(a)(9) of the Internal Revenue Code and the corresponding regulations. If the retiree has not selected a distribution method prior to reaching the age of seventy and one-half (70 ½), the retiree shall be deemed to have elected the lump-sum payment method.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-426. Beneficiary designations.

- (a) The participant shall designate any one (1) person as a beneficiary to receive benefits upon the death of the participant. The participant may designate multiple beneficiaries or a trust as beneficiary only to receive a lump-sum distribution of the DROP account. If the participant designates multiple beneficiaries to receive a lump sum distribution, the member's DROP account shall cease being credited interest in accordance with Section 18-424(h) upon the member's death.
- (b) If the participant dies with a DROP account balance then the designated beneficiary may receive the participant's DROP distribution in accordance with any of the options under this division. If, however, the participant dies during the DROP and has not designated a beneficiary or the beneficiary predeceases the participant, the DROP benefit shall be paid in one (1) lump sum to the participant's estate. Payment shall be made within sixty (60) days after the plan is notified of the participant's death.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 350-11, § 14, 7-1-11)

Sec. 18-427. Assignment, alienation and legal process.

Except as regarding plan approved domestic relations orders as more specifically set forth in section 18-418 of this article, and except for law judicially determined to supersede this section, members and their beneficiaries of the DROP shall be restrained from selling, assigning or otherwise alienating their benefit under the DROP. The benefits from the DROP shall not at any time be subject to the claims of creditors or subject to payment or execution upon judgment for the liabilities or torts of said participants and their beneficiaries. The participant's and their beneficiaries' DROP benefit shall not be liable or subject to attachment, garnishments, execution, qualified domestic relations orders, other domestic relations orders, or other legal process. This provision is hereby found, determined and declared to be a matter strictly of local and municipal concern to the city.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-428. Miscellaneous.

- (a) The board shall not incur any liability individually or on behalf of other individuals for any act or omission, made in good faith in relation to the DROP or funds of the DROP.
- (b) The DROP established by this section is subject to approval by the Internal Revenue Service. The provisions of the Internal Revenue Code and regulations promulgated thereunder shall supersede any DROP provision if there is any inconsistency with the Internal Revenue Code or regulation.
- (c) The plan year is the calendar year.
- (d) The benefits payable from the DROP are subject to the applicable limitations on benefits imposed by the Internal Revenue Code section 415 which is incorporated herein by reference. Deposits to the DROP account are not considered contributions to a defined contribution plan subject to the limits of the Internal Revenue Code section 415(c).
- (e) The DROP described in this section is enacted as a test for a period of three (3) years. Within thirty (30) days of the third anniversary of the effective date of the ordinance that adds this division to provide for the test of DROP, the board shall seek an analysis from its actuary as to the experience of the DROP for the preceding three years and report the results of the analysis to the mayor and city council along with a recommendation to continue the DROP, discontinue the DROP, or modify the DROP.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-429. Entrance to and termination of DROP.

- (a) Entrance. No member shall enter the DROP after April 30, 2003. Members who enter the DROP on or before April 30, 2003 shall be allowed to serve the full four (4) years in the DROP program and receive the full rights and benefits of the DROP program.
- (b) Terms: Participants of the DROP under this division 3 shall not be eligible to enter the new five-year deferred retirement option plan (DROP II) set forth and described in division 4 of this article. Except as modified and amended under this section, the terms and conditions of the deferred retirement option plan as set forth in division 3, article XII, chapter 18, of the Code shall remain and continue in effect. The participation, benefits, rights and privileges of the new entrants and existing participants in the DROP shall be governed in accordance with the terms and provisions set forth in this division. Unless amended further, those terms and conditions are hereby ratified.
- (c) Notice: Immediately following the enactment into law of this section [Ord. No. 3, Series 2002], the Denver Employees Retirement Plan shall provide to all active members of the plan, adequate and reasonable notice that there shall be no new entrants into the DROP from and after April 30, 2003.

**DIVISION 4. AN AMENDED DEFERRED RETIREMENT OPTION PLAN,
DROP II, FOR THE MEMBERS OF THE DENVER EMPLOYEES
RETIREMENT PLAN**

Sec. 18-430. Generally.

- (a) Subject to the conditions and provisions stated in this article, effective May 1, 2003, in lieu of immediate termination of employment and receipt of a normal retirement benefit, a member may elect to become a participant in the new five-year deferred retirement option plan (DROP II). The member may continue employment up to five (5) years and participate in the DROP II and have the member's retirement benefit paid into the DROP II account. As a condition of entry into the DROP II the member shall irrevocably agree to terminate employment with the employer at the end of the participation in DROP II.
- (b) The board of trustees of the Denver Employees Retirement Plan shall develop and establish DROP II for eligible members of the Denver Employees Retirement Plan. The board may develop, adopt, and establish rules, regulations and procedures to efficiently facilitate the administration of DROP II.
- (c) DROP II permits active members who have never received a retirement benefit under the plan provisions and who are eligible for a normal retirement benefit under the plan to continue active employment (but not be an active member of the plan for the DROP II period) and participate in DROP II. A member who has participated in DROP under division 3, article XII, and chapter 18 shall be ineligible to participate in DROP II set forth under this section.
- (d) A participant of DROP II shall continue to be an active employee for all other purposes but shall not be an active member of the plan for the period in DROP II (and shall not directly or constructively receive any retirement benefits, which shall include any and all benefits provided under division 2 of this article). Further, the participant shall earn no additional service credits or benefits under the plan during the member's participation in DROP II.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-430.1. Definitions.

- (a) Definitions and terms used in this division are elaborated below:
 - (1) Active employment shall mean the period when a person is employed part-time or full-time but shall exclude any person employed on a seasonal, contractual, or on-call basis or any person who is retired from the plan and is rehired by the employer. Active employment shall also mean the period when a person is on an approved paid leave of absence.
 - (2) Beneficiary shall mean the person or persons designated in writing by the DROP II participant (if no one is designated, then the estate of the participant).
 - (3) Board shall mean the retirement board, which serves as the board of trustees for the Denver Employees Retirement Plan as described in division 2 of this article.

- (4) DROP II account shall mean the participant's individual new five-year deferred-retirement-option-plan account designed under this division and administered by the plan.
 - (5) FMLA shall mean the Family and Medical Leave Act of 1993.
 - (6) Internal Revenue Code shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.
 - (7) Member shall mean an active member of the Denver Employees Retirement Plan as described in division 2 of this article. It shall exclude a retired member who is receiving any retirement benefit under the plan provisions. It shall also exclude any group of employees who may be re-employed and receiving a retirement benefit.
 - (8) Normal retirement shall mean retirement at the earlier of the age of sixty-five (65) or the first day of any calendar month after which a member has attained his or her fifty-fifth (55th) birthday and where the member's age and credited service, while an active member, are or were equal to the sum of seventy-five (75). The rule of 75 means that age after which the member has attained his or her fifty-fifth (55th) birthday where he or she can retire without a reduction in his/her retirement benefit as would have been required for an early retirement. The rule of 75 is determined by adding the age of the employee while employed with the employer to the years of service as an employee with the employer. If the total equals or exceeds the sum of seventy-five (75) then the requirements for the rule of 75 have been met. The rule of 75 must be attained by the member prior to termination of employment.
 - (9) Participant shall mean a person enrolled in DROP II and having a DROP II account.
 - (10) Plan or retirement plan shall mean the Denver Employees Retirement Plan as described in division 2 of this article.
 - (11) Retiree shall mean a participant who terminates DROP under either division 3 of this article or DROP II and is eligible for a distribution of retirement benefits under the plan, DROP, or DROP II.
 - (12) Retirement benefit or benefits shall mean any benefit payment to retired members, qualified spouses, beneficiaries, or dependents as provided under the plan according to division 2 of this article.
 - (13) USERRA shall mean Uniformed Services Employment and Re-Employment Rights Act of 1994.
- (b) Any other phrase or term not defined or elaborated above shall be explained or interpreted by the board in its rules, regulations, policies and procedures adopted to administer DROP II. The plan administrators shall maintain discretionary authority to interpret ambiguous terms and make factual determinations regarding the administration of DROP II.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-430.2. Provisions.

- (a) The duration of participation in DROP II shall be for a maximum of five (5) years. As a condition precedent to participation in DROP II, the participant shall irrevocably elect in writing on a form prescribed by the board to enter DROP II. The participant shall also acknowledge that no disbursement of any DROP II funds can occur absent the retirement, death, or termination of employment of the participant. The plan shall provide a copy of such election to the employer. As a further condition to participation in DROP II, applicants must agree with the employer in writing to terminate their employment at the end of their participation in DROP II. Applicants shall provide a conformed copy of the agreement to the plan. The agreement shall be irrevocable and may not be amended, modified, or cancelled in the absence of an ordinance superseding this provision.
- (b) The member's retirement benefit shall be calculated at the entry of DROP II. The DROP II benefit shall be a monthly amount equal to the member's normal retirement benefit (based on the formula used in the calculation of a member's retirement benefit under division 2 of this article). This amount shall be credited monthly to the participant's DROP II account.
- (c) The participant's account shall be adjusted for any cost of living adjustments (COLAs) as authorized by the board (in compliance with the rules under division 2 of this article). The interest on the DROP II account shall accrue at the plan's investment earnings rate provided that it shall be not less than three (3) percent per annum and not more than the plan's then current annual, actuarial assumption for the rate of return. Such accruals to the DROP II account shall continue until the entire balance of the DROP II account is distributed.
- (d) At DROP II entry all calculations of vacation and sick leave payoff amounts shall be made in compliance with sections 18-124 and 18-135, respectively, of the Code and in accordance with all other applicable ordinances, policies and rules of the employer. At the participant's exit of DROP II and termination of employment, the member shall be paid for the vacation and sick leave hours accrued during the DROP II period in compliance with sections 18-124 and 18-135, respectively, of the Code.
- (e) If the participant's active employment during DROP II period is interrupted by military service, a disability, leave under FMLA, or any other paid or unpaid leave of absences, or if a participant terminates employment, but within sixty (60) days, returns to a covered position, then upon returning to active employment (provided that the participant has not received any distribution from the DROP II account, or received any retirement benefits under the plan), the employee shall immediately be eligible for participation in the DROP II for the balance of the five-year period. Other than the above-mentioned types of interruptions of participation, the five-year period shall continue to run in all other cases. The participant must be an active employee in pay status for the DROP II account to be credited with the amounts mentioned in this section. In the case of an interruption due to a period of military service, USERRA and its provisions shall govern the participant's rights, eligibility and credits to DROP II account.

- (f) A participant's election to enter DROP II is irrevocable and may be terminated only upon the death of the participant, termination of employment with the employer, or the end of the five-year DROP II period.
- (g) If the participant is on a paid or unpaid leave of absence but maintains an employer-employee relationship, there can be no disbursement from the DROP II account. The participant upon returning to active employment shall continue to participate in DROP II. However, if after the leave of absence, the participant terminates employment and applies for a retirement benefit, the participant may terminate the DROP II agreement and after sixty (60) days receive a distribution from the DROP II account.
- (h) The total amount that constitutes the DROP II account and eligible for distribution shall be the accumulated sum of monthly credits of the member's normal retirement benefit as calculated at DROP II entry; authorized COLAs (if and when applicable); and the interest accrued on such amounts. The amount of the participant's normal retirement benefit shall cease being credited to DROP II account after the five-year DROP II period. However, interest on the account as described in (c) of this section shall continue to accrue to the participant's DROP II account until the entire balance is distributed.
- (i) The board is authorized to charge the DROP II accounts for administrative costs and charges.
- (j) After terminating employment and exiting DROP II, a participant may be rehired by the employer. If rehired within sixty (60) days, a participant may elect, if the participant has not received a distribution from the DROP II account or a retirement benefit from the plan, to continue in DROP II for the balance of the five-year period, or to continue in the covered service and accrue service credits as a member of the plan.
- (k) Distributions from DROP II accounts may commence after the death of the participant or sixty (60) days following termination of employment, whichever occurs first.
- (l) At the end of the DROP II period, the participant must terminate employment with the employer.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-430.3. Distributions.

- (a) A participant in DROP II shall be entitled to select one (1) of the following methods of distribution by executing in writing a DROP II selection form prescribed by the board:
 - (1) Deferral of any payment(s) from the account. If a deferral of payment(s) is selected, the participant may select one (1) of the following distribution methods at any time. Distributions may start no earlier than sixty (60) days following employment termination and must start no later than April 1 following the year in which the participant attains the age of seventy and one half (70 ½).
 - (2) A lump-sum distribution of the entire account balance.

- (3) Monthly payments of a designated amount until the entire balance of the DROP II account have been distributed. The designated monthly payment amount may be adjusted annually.
 - (4) Monthly payments for a designated period of years. An amount shall be calculated for this periodic payment so that the entire balance in the participant's DROP II account will have been distributed by the end of the period selected by the participant. The designated number of payments may be recalculated annually.
 - (5) Initial minimum required distribution. The amount calculated to be the participant's monthly payment shall be based on the participant's current DROP II account balance. This minimum distribution is based on the participant's life expectancy (and the life expectancy of the participant's designated beneficiary, if applicable).
 - (6) Combination of a lump sum and monthly payments by designating an initial lump sum payment of a specified amount and a specified monthly amount until the balance of DROP II account has been entirely distributed to the participant. The specified monthly amount may be adjusted annually.
 - (7) The participant may rollover all or certain portions of eligible rollover distributions, as defined in the Internal Revenue Code, from DROP II to an individual retirement account (IRA) that qualifies as an IRA under the Internal Revenue Code or to any other eligible retirement plan available to receive rollovers under the Internal Revenue Code as set forth in section 18-416 of this article.
 - (8) Any other plan approved method of distribution that is consistent with the requirements of the Internal Revenue Code.
- (b) Regardless of the form of payment the participant chooses, the minimum distribution amount will be determined and payment made in accordance with section 401(a)(9) of the Internal Revenue Code and the corresponding regulations. If the retiree has not selected a distribution method prior to reaching the age of seventy and one half (70 ½), the retiree shall be deemed to have elected the lump-sum payment method.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-430.4. Beneficiary designations.

- (a) The participant shall designate one (1) individual as a beneficiary to receive benefits upon the death of the participant. The participant may designate multiple beneficiaries or a trust as beneficiary only to receive a lump-sum distribution of the entire DROP II account. If the participant designates multiple beneficiaries to receive a lump sum distribution, the member's DROP II account shall cease being credited interest in accordance with Section 18-430.2.(c) upon the member's death.
- (b) If the participant dies with a DROP II account balance then, except as limited in (a) of this section, the designated beneficiary may receive the participant's DROP II distribution in accordance with any of the options under this division. If, however, the participant dies during DROP II and has not designated a beneficiary or the beneficiary predeceases the participant, the DROP II benefit shall be paid in one (1) lump sum to the participant's estate.

(Ord. No. 960-05, § 1, 12-19-05; Ord. No. 350-11, § 15, 7-1-11)

Sec. 18-430.5. Assignment, alienation, and legal process.

Except as regarding plan approved domestic relations orders as more specifically set forth in section 18-418 of this article and except for law judicially determined to supersede this section, members of DROP II and their beneficiaries shall be restrained from selling, assigning, or otherwise alienating their benefit under DROP II. The benefits from DROP II shall not at any time be subject to the claims of creditors or subject to payment or execution upon judgment for the liabilities or torts of said participants and their beneficiaries. The DROP II benefits of participants and their beneficiaries shall not be liable or subject to attachment, garnishment, execution, qualified domestic relations orders, other domestic relations orders, or other legal process. This provision is hereby found, determined and declared to be a matter strictly of local and municipal concern to the city.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-430.6. Miscellaneous.

- (a) Members of the board and the board, itself, shall not incur any liability, individually or on behalf of other individuals, for any act or omission made in good faith in relation to DROP II or funds of DROP II.
- (b) The DROP II established by this section is subject to a determination by the Internal Revenue Service that it is a qualified pension plan or part of such a plan. The provisions of the Internal Revenue Code and regulations promulgated thereunder shall supersede any inconsistent provisions of DROP II.
- (c) The plan year is the calendar year.
- (d) The benefits payable from DROP II accounts are subject to the applicable limitations on benefits imposed by the Internal Revenue Code section 415(b), which is incorporated herein by reference. Deposits to DROP II accounts are not considered contributions to a defined contribution plan subject to the limits of the Internal Revenue Code section 415(c).
- (e) The board may in its sole discretion, based on actuarial factors, recommend at any time to the employer that DROP II be terminated. But no participant or beneficiary of DROP II then currently enrolled shall be divested of any rights under DROP II if DROP II is terminated and this division is repealed.
- (f) Annually, the board shall seek a report from its actuary to ascertain the actuarial soundness of DROP II. Based on this annual report the board may recommend to the city council a termination or modification of DROP II by enactment of ordinance.

(Ord. No. 960-05, § 1, 12-19-05)

Sec. 18-430.7. Termination of DROP II.

- (a) Termination: Effective from and after September 1, 2003, no member shall enter the DROP II. However, those members who are eligible for a normal retirement benefit (under division 2 of this article) on or before August 31, 2003 shall be permitted to enter and participate in the DROP II if application is made before September 1, 2003.
- (b) Terms: Except as modified and amended under this section, the terms and conditions of the DROP II as set forth in division 4, article XII, chapter 18, of the Code shall remain and continue in effect. The participation, benefits, rights and privileges of the

participants in the DROP II shall be governed in accordance with the terms and provisions set forth in this division. Unless amended further, those terms and conditions are hereby ratified.

- (c) Notice: Immediately following the enactment into law of this ordinance [Ord. No. 547, Series 2003], the Denver Employees Retirement Plan shall provide to all active members of the plan, adequate and reasonable notice that there shall be no new entrants into the DROP II from and after September 1, 2003.

(Ord. No. 960-05, § 1, 12-19-05)

Secs. 18-431--18-433. Reserved.

DIVISION 5. RESERVED*

*Editor's note: Ord. No. 960-05, § 3, adopted Dec. 19, 2005, repealed division 5, sections 18-433.1--18-433.4, in its entirety. Former division 5 pertained to Denver's special incentive retirement plan for the members of the Denver employees' retirement plan, and derived from Ord. No. 703-03, § 1, adopted Sept. 15, 2003.