

ORDINANCE/RESOLUTION REQUEST

Please email requests to milehighordinance@denvergov.org and copy stacie.loucks@denvergov.org by **NOON on Monday**.

****All fields must be completed.****
Incomplete request forms will be returned to sender which may cause a delay in processing.

Date of Request: September 30, 2013

Please mark one: Bill Request or Resolution Request

1. Has your agency submitted this request in the last 12 months?

Yes No

If yes, please explain:

2. **Title:** *(Include a concise, one sentence description – please include name of company or contractor and contract control number - that clearly indicates the type of request: grant acceptance, contract execution, amendment, municipal code change, supplemental request, etc.)*

Make numerous, non-substantive, non-controversial amendments to the DERP governing ordinance in order to remove obsolete language, clarify the intent of certain existing language, and bring existing Code language into precise conformance with various long-standing administrative practices of the Plan.

3. **Requesting Agency:** DERP

4. **Contact Person:** *(With actual knowledge of proposed ordinance/resolution.)*

- **Name:** Steven E. Hutt, Executive Director
- **Phone:** 303-839-5419
- **Email:** shutt@derp.org

5. **Contact Person:** *(With actual knowledge of proposed ordinance/resolution who will present the item at Mayor-Council and who will be available for first and second reading, if necessary.)*

- **Name:** Steven E. Hutt, Executive Director
- **Phone:** 303-839-5419
- **Email:** shutt@derp.org

6. **General description of proposed ordinance including contract scope of work if applicable:**

The Denver Employees Retirement Plan has reviewed all its policies, practices, and current legal verbiage and has determined that various sections of the Code should be amended to clarify the intent of the law and bring existing language into precise conformance with various long-standing practices of the plan. None of the proposed amendments affect the calculation of benefits or the cost of contributions to the plan.

See attached Executive Summary describing the several types of proposed changes.

*****Please complete the following fields:*** *(Incomplete fields may result in a delay in processing. If a field is not applicable, please enter N/A for that field.)*

- a. **Contract Control Number:** N/A
- b. **Duration:** N/A
- c. **Location:** N/A
- d. **Affected Council District:** N/A
- e. **Benefits:** Aligns the language in the Code with Plan practices and removes obsolete language.
- f. **Costs:** None.

To be completed by Mayor's Legislative Team:

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7. Is there any controversy surrounding this ordinance? (Groups or individuals who may have concerns about it?) Please explain.

None of these changes will impact any current retiree, beneficiary, current City or DHHA employee or sponsoring employer. These are technical changes which clarify or codify current processes of the Plan.

Executive Summary:

The following technical modifications to the Denver Employees Retirement Plan would result from the enactment of this bill.

1. Amend the definition of “Credited service” to clearly state that authorized leave of absence does not include a disciplinary leave or suspension. Additionally add language to clearly state that any purchase of credited service foregone due to an authorized leave must be made by a member prior to a member’s termination from employment. The cost for any such purchase, if made within twenty-four (24) months following the member’s return to work, will be calculated at the rate of contributions in effect at the time of the leave of absence plus 3% interest, but if made later than twenty-four (24) months following the member’s return to work, will be calculated at the full actuarial cost.

These changes clarify that a member may only purchase credited service for an absence from work that, due to circumstances beyond his or her control such as an illness, furlough days, extended leave for personal reasons, etc., the member did not receive any credited service for the period of the leave. A leave for disciplinary purposes is not an authorized unpaid absence for which the member can opt to make his or her retirement whole by purchasing the foregone credited service. These changes also clarify the period of time within which a member can opt to purchase credited service for the leave, and the cost which the member will have to pay to purchase the credited service foregone due to the leave. The amendment regarding the purchase cost brings the purchase for a leave of absence into conformance with the cost for purchasing other credited service (i.e. repayment of refunded contributions).

2. Add a definition of “Deferred member” to the “Definitions” section of the Code and re-number the definitions which follow.

Currently, there is a definition of “participant or member” and “retired member” in the definitions section of the Code, however, other than a definition of a deferred member appearing in the preamble to Section 18-408 of the Code, there is no separate definition of a deferred member for reference. A “deferred member” is a vested member who separates from employment but does not immediately apply for retirement benefits. This change adds a formal definition that corresponds with the usage of that term in Plan materials and re-numbers the definitions which follow the addition.

3. Amend the definition of “Gross pay, compensation and salary” to specify that lump-sum settlement agreement payments made to a member are excluded from the definition of compensation unless any adverse employment action is rescinded and the lump-sum settlement agreement payment equals the exact compensation the member would have received, but for the adverse employment action, and the lump-sum payment is designated as back-pay wages in the settlement agreement.

The proposed language codifies the procedure which the Plan has been utilizing in processing contributions received following the implementation of a settlement agreement. When an employer negotiates a settlement agreement with an employee in an employment related matter, and the Plan receives contributions based on the lump-sum settlement payment, if the payment equates to the salary or compensation which the member would have received, but for the adverse employment action, and the member is returned to employment with a rescission of or amendment to the adverse employment action, the Plan reinstates the employee as a member and applies the contributions to the member’s account as if no adverse employment action had occurred or if a modified adverse employment action had occurred. However, if the member is not reinstated to employment with the employer, or the lump-sum settlement payment has not been designated in the settlement agreement as back-wages, or the lump-sum settlement payment does not equate to the gross pay the member would have received, but for the adverse employment action or amended adverse employment action, the Plan does not accept any contributions on the lump-sum settlement payment and the member does not receive service credit related to any payment.

4. Add specific language regarding the procedures and cost for members wishing to purchase service credit foregone due to an authorized unpaid leave of absence, or to alleviate the negative impact on a member’s average monthly salary calculation caused by furlough days.

The Plan currently allows members to purchase service credit foregone due to an unpaid leave of absence, or to negate the impact of furlough days by paying to the Plan the amount of employer and employee contributions owed for the furlough day, by treating such absences as breaks in service. However, there are no specific provisions governing the manner in which such a purchase must occur or the cost associated with purchasing the credited service or redeeming the furlough day. The proposed language codifies the procedure which the Plan has been utilizing in processing such purchases, and the calculation of the cost

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associated with the purchase conforms to the calculation method authorized for similar purchases of credited service (i.e., Section 18-408(j)(2) and Section 18-408(j)(3) of the Code).

5. Authorize the Retirement Board to add collection fees to delinquent accounts.

The Retirement Board already has the authority under Section 18-405(b)(3) of the Code to recover benefits or premiums improperly paid to members or their beneficiaries. The proposed amendment will allow the Retirement Board to add a collection fee to the amount owed in an amount determined sufficient to cover the collection costs incurred in pursuing recovery of the money owed. The proposed fees and language is the same language found in Section 53-4 of the Code which allows the City to add such fees for its collection of unpaid debts owed to the City.

6. Remove obsolete language, clarify, and fully explain the intent of various sections of the DRMC, and bring existing Code language into precise conformance with various long-standing administrative practices of the Plan.

Examples of these types of changes are as follows:

a. Section 18-402(15) of the Code (currently Section 18-402(14), prior to the re-numbering listed in item #2 above) contains language specifically omitting payments made to members during the retirement incentive programs, offered by both the City and the Denver Health and Hospital Authority (“DHHA”) in 2009, from being included in the definition of compensation and, thus, in the calculation of a member’s retirement benefit. The proposed amendment removes the specific references to the two sponsoring employers and to any date-specific retirement incentive program, thus broadening the exclusion to include any retirement incentive program offered by a sponsoring employer on any date.

b. Section 18-402(31) of the Code (currently Section 18-402(30), prior to the re-numbering listed in item #2 above) defines the terms vest, vesting, and vested and Section 18-408(j)(1) of the Code discusses the procedures to be used when a vested, retired member returns to work for the employer and begins a new or separate retirement. The proposed amendments clarify that once a member is vested, he/she is considered vested for all future retirement purposes, even if the member is re-hired or returns to work under a different or new benefit formula.

c. Restore explanatory language inadvertently omitted from the DRMC when previous technical amendments were made in 2011. Provisions regarding the calculation of a joint and survivor death benefit, as well as payments to be made (or not to be made) following the death of a member, are included.

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