

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2010

COUNCIL BILL NO. CB10-0557  
COMMITTEE OF REFERENCE:  
Safety

**A BILL**

**for an Ordinance amending the City and County of Denver Old Hire Fire Pension Plan by removing the requirement that members select a DROP distribution method within 30 days of retirement.**

**BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1. That Section 581 of Chapter 18 of the Revised Municipal Code be amended by adding the underlined language and deleting the stricken language reading and to read as follows:**

**Sec. 18-581. Deferred Retirement Option Plan (DROP).**

(a) *Definitions.* As used in this division:

The term "member" shall mean an active employee in the classified service of the city's fire department, as defined in C.R.S., section 31-30.5-102(4), who was hired before April 8, 1978, and who has not elected to become covered under the provisions of the statewide plan pursuant to C.R.S., section 31-31-701(2).

The term "board" shall mean the board of trustees created by C.R.S., section 31-30.5-202(3)(a).

(b) *Eligibility.* The enter the deferred retirement option plan, a member must have completed at least twenty-five (25) years of active service, must have attained at least the age of fifty (50) years, and must be eligible to retire pursuant to C.R.S., section 31-30.5-604.

(c) *Member's decision to enter DROP; members decision regarding length of participation in the DROP.* The decision to enter the deferred retirement option plan shall be each member's decision and responsibility. The decision regarding how long the member will participate in the DROP shall also be each member's decision and responsibility, provided no member shall be in the DROP more than five years and no member may participate in the DROP more than once. However, members who filed an agreement prior to the extension of the plan to five (5) years and who have not yet separated from employment shall be allowed to file an agreement amending their date of termination to no later than the fifth anniversary of their participation in DROP.

1 (d) *Agreement with board.* To enter the DROP, a member must execute an  
2 irrevocable agreement with the board. The agreement shall require the member to  
3 terminate employment no later than the date declared by the member. The date shall be  
4 no later than the fifth anniversary of participation in DROP. The agreement shall also  
5 acknowledge that no disbursement of DROP funds shall occur absent the separation or  
6 death of the member.

7 (e) *Members who enter DROP are retired; pension payments.* The members who  
8 enter the DROP shall continue to be active members of the Denver fire department for  
9 the duration of the period specified in their agreements with the board. Upon  
10 commencement of participation in the DROP, the retirement benefit, the rank escalator  
11 benefit, and the employee contribution shall be paid into the deferred retirement option  
12 plan account on behalf of the employee. In no case shall the employer contribution be  
13 used to fund the DROP. As is the case with the employee contributions made to the  
14 plan before a member participates in DROP, the employee contribution to the DROP  
15 account shall be deposited by the employer in lieu of contributions by employees in  
16 accordance with Internal Revenue Code section 414(h)(2).

17 (f) *Interruptions in service while in DROP.* For interruptions in service while in DROP  
18 that occur on or after August 26, 1998, if a member's service with the department is  
19 interrupted for any reason, the date of his or her termination of employment shall remain  
20 the date set forth in his or her agreement. For interruptions in service while in DROP that  
21 occur before August 26, 1998, if the member's participation in the DROP is interrupted  
22 by military service or job-related disability, upon reestablishment of membership,  
23 provided the member has not received any distribution from his DROP account, the  
24 member shall be immediately eligible for resumption of participation for the balance of  
25 the period specified in the irrevocable agreement. Other than the above-described types  
26 of interruptions, the period specified in the irrevocable agreement shall continue to run in  
27 all other cases for interruptions in service while in DROP that occur before August 26,  
28 1998.

29 (g) *Employee status while in DROP.* Upon commencement of participation in DROP,  
30 the member shall continue to be considered to be an employee eligible to receive  
31 promotions, subject to department and civil service rules and regulations; the member  
32 shall receive all benefits and seniority just as any other active employee.

33 (h) *Retirement benefit established at time of entry into DROP.* DROP participants  
34 shall have full voting rights on the retirement system. DROP participants shall earn no

1 additional service credit or additional benefits, and the rank escalator benefit shall be  
2 established and calculated by utilizing the rank and grade held by a member at the time  
3 of the member's commencement of participation in DROP.

4 (i) *Investment of DROP funds.* The DROP assets shall be held in trust for investment  
5 purposes as part of the member's self-directed investments fund. The FPPA shall be  
6 authorized to charge each account a reasonable fee approved by the FPPA for the  
7 administration of DROP. The FPPA is authorized to adopt rules and regulations  
8 governing DROP, so long as they are not in conflict with this division or the Charter. The  
9 FPPA shall not charge the city for any costs in connection with the DROP.

10 (j) *No charges on DROP account.* The deferred retirement option plan account shall  
11 not be subject to any fees or charges of any kind for any purpose, except as provided in  
12 subsection 18-581(i).

13 (k) *Termination of participation in DROP.*

14 (1) A member of the DROP who terminates employment or reaches the limit for  
15 participation as established by the irrevocable agreement with the board shall become a  
16 retiree. For a member who becomes a retiree more than 30 days before July 5, 2000  
17 (the effective date of the expanded distribution options in subsections 18-581(k)(1)(a)  
18 through 18-581(k)(1)(f) below) the retiree shall receive, at the retiree's option, (1) a lump  
19 sum payment from the retiree's individual DROP account balance equal to its balance  
20 plus any accrued earnings or losses or (2) equal monthly installment payments from the  
21 retiree's individual DROP account balance over a period of no more than ten years. At  
22 the end of the ten-year period, a final disbursement of remaining funds in the account  
23 shall be made. ~~If no selection is made by the retiree within thirty (30) days of retirement,~~  
24 ~~the lump sum payment method of subsection 18-581(k)(3) shall be utilized.~~ Beginning  
25 on July 5, 2000, an active or inactive member, including a retiree, shall be entitled to  
26 elect, within thirty (30) days prior to retirement or anytime during retirement ~~within thirty~~  
27 ~~(30) days after retirement,~~ one of the following distribution methods by executing, in  
28 writing, a DROP distribution payment option selection form as prescribed by the board  
29 and the FPPA.

30 a. Deferral of any payment(s) from the account until a specified date. If a deferral of  
31 payment(s) is selected, the member shall elect one of the following distribution methods.  
32 However, all distributions must start no later than April 1st of the year in which the  
33 member attains the age of seventy and one-half (70 1/2);

34 b. A lump sum distribution of the entire account balance;

1 c. Periodic monthly payments for a designated amount until the balance of the DROP  
2 account has been entirely distributed;

3 d. Periodic monthly payments for a designated period of years. FPPA will calculate  
4 the dollar amount of the member's periodic payment, so that the entire balance in the  
5 member's DROP account will have been distributed to the member by the end of the  
6 period selected by the member. This amount will be recalculated annually during April;

7 e. Initial minimum required distribution. FPPA will calculate the dollar amount of the  
8 member's periodic payment based on the member's current DROP account balance,  
9 and in accordance with subsection 18-581(k)(2), termination of participation in DROP  
10 section; or

11 f. Combination of a lump sum and periodic payments by designating an initial lump  
12 sum payment of a specified amount and a balance to be paid in a specified number of  
13 monthly payments of a specified dollar amount until the balance of the DROP account  
14 has been entirely distributed to the member.

15 (2) Regardless of the form of payment the member chooses, the minimum distribution  
16 amount will be determined and made in accordance with Internal Revenue Code section  
17 401(a)(9) and the regulations thereunder. The minimum distribution is recalculated by  
18 FPPA annually on the bases of the life expectancy of the member and the member's  
19 designated beneficiary, if applicable.

20 ~~(3) If the member does not select a distribution method within thirty (30) days of~~  
21 ~~retirement, the member shall be deemed to have elected the lump sum payment~~  
22 ~~method.~~

23 (4) (3) If the member dies before July 5, 2000, the member dies during the period of  
24 the member's participation in the DROP, and the member's designated beneficiary is the  
25 member's surviving spouse to whom the member was legally married at the time of the  
26 member's death, then the member's designated beneficiary shall receive at the  
27 beneficiary's option, a lump sum payment from the member's individual DROP account  
28 balance plus any accrued earnings or losses, or equal monthly installment payments from  
29 the member's individual DROP account balance for a period of no more than ten (10)  
30 years. At the end of the ten-year period, a final disbursement of remaining funds in the  
31 account shall be made. If the member dies on or after July 5, 2000, the member dies  
32 during the period of the member's participation in the DROP, and the member's  
33 designated beneficiary is the member's surviving spouse to whom the member was  
34 legally married at the time of the member's death, then the member's designated

1 beneficiary shall be entitled to select one of the distribution methods set forth in  
2 subsection (k)(1) of this section 18-581, subject to the provisions of this termination of  
3 participation in DROP section. If no selection is made by the beneficiary within thirty (30)  
4 days of the member's death, the lump sum payment method shall be utilized. Payment  
5 of DROP account proceeds shall be in addition to normal survivor benefits payable to  
6 survivors of retirees.

7 ~~(5)~~ (4) If a member or surviving spouse chooses and was qualified to choose a  
8 distribution method involving periodic payments under subsections (k)(1)c., (k)(1)d. or  
9 (k)(1)f., he or she may make a change in payment once a year during April; provided,  
10 that the benefit recipient shall contact the FPPA and the board in writing no later than  
11 March 1st of the year in which he or she wishes to make the change.

12 ~~(6)~~ (5) If the member dies during the period of participation and the member's named  
13 beneficiary is someone other than the member's surviving spouse to whom the member  
14 was legally married at the time of the member's death, then the named beneficiary shall  
15 receive a lump sum payment equal to the member's individual DROP account balance,  
16 including accrued earnings or losses. Payment of DROP account proceeds shall be in  
17 addition to normal survivor benefits payable to survivors of retirees.

18 ~~(7)~~ (6) If the member dies during the period of participation and the named beneficiary  
19 has not survived the member, the member's estate shall receive a lump sum payment  
20 equal to the member's individual DROP account balance plus accrued earnings or  
21 losses. Payment of DROP account proceeds shall be in addition to normal survivor  
22 benefits payable to survivors of retirees.

23 ~~(8)~~ (7) Except for assignments for child support purposes and writs of garnishment  
24 that are the result of a judgment taken for arrearages for child support or for child  
25 support debt, and except for court-approved marital agreements complying with state  
26 law under section 14-10-113(6), C.R.S., no portion of the account, before or after its  
27 order shall be held, seized, taken subjected to, detained, or levied on by virtue of any  
28 attachment, execution, injunction, writ, interlocutory or other order or decree, or process  
29 or proceeding whatsoever issued out of or by any court of this state for the payment or  
30 satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment  
31 against the city, member, or the beneficiary of the fund.

32 (l) *Compliance with IRS requirements.* The board shall take all necessary steps to  
33 insure that the DROP is administered in full compliance with all applicable IRS rules and  
34 regulations, and in compliance with all determinations issued specifically to the old-hire

1 fire fighter's DROP plan.  
2 (m) *Required Internal Revenue Service provisions:*  
3 (1) The plan year is the calendar year.  
4 (2) The benefits payable from this plan are subject to the applicable limitations on  
5 benefits imposed by the Internal Revenue Code section 415(b), which are incorporated  
6 herein by reference. Deposits to the DROP account are not considered contributions to  
7 a defined contribution plan subject to the limits of Internal Revenue Code section 415(c).

8 COMMITTEE APPROVAL: (by consent) July 8, 2010

9 MAYOR-COUNCIL DATE: (by consent) July 13, 2010

10 PASSED BY THE COUNCIL: \_\_\_\_\_, 2010

11 \_\_\_\_\_ - PRESIDENT

12 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2010

13 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
14 EX-OFFICIO CLERK OF THE  
15 CITY AND COUNTY OF DENVER

16 NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2010; \_\_\_\_\_, 2010

17 PREPARED BY: Max Taylor, ASSISTANT CITY ATTORNEY July 22, 2010

18 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the  
19 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
20 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to  
21 §3.2.6 of the Charter.

22 David R. Fine, City Attorney

23 By: \_\_\_\_\_, Assistant City Attorney      DATE: \_\_\_\_\_, 2010