

1 **BY AUTHORITY**

2 ORDINANCE NO.
3 SERIES OF 2013

COUNCIL BILL NO. CB13-0687
COMMITTEE OF REFERENCE:
Government & Finance Committee

4
5 **A BILL**

6 **For an ordinance amending the 1963 Retirement Plan with regard to definitions**
7 **(credited service, deferred member, gross pay, compensation and salary, vest,**
8 **vesting or vested and re-numbering of Section 18-402); additional powers of**
9 **the retirement board; eligibility; retirement categories; retirement benefits; joint**
10 **and survivor benefits; death benefits; purchase of service credits; and the anti-**
11 **alienation provision.**
12

13 **WHEREAS**, under Section 18-405(g) of the Code, the Retirement Board is responsible for
14 making recommendations to the City for amendments to the Plan when in the judgment of the
15 Board such changes are necessary; provided that such recommendations are accompanied by a
16 report of the Plan's actuary setting forth the effect of such amendments; and,

17 **WHEREAS**, while in the process of administering the Plan, it has been determined that the
18 addition of, clarification of, or further detailed explanation of various definitions, procedures or legal
19 requirements applicable to the Plan has become necessary to assist the Plan in explaining the
20 benefits available to members and their beneficiary(ies) as well as to assist in explaining the
21 processes a member or their beneficiary(ies) must comply with in order to obtain various retirement
22 benefits; and,

23 **WHEREAS**, to ensure the continuity between the legal requirements of the Plan and the
24 internal procedures used in administering the Plan it has been determined that minor technical
25 amendments need to be made to the Ordinance governing the Plan.
26

27 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
28 **DENVER:**

29
30 **Section 1.** That Section 18-402(9)d, 18-402(10), 18-402(15) and Section 18-402(31)
31 (sometimes known and cited as Section 402, Subsections (9), (10), (15) and (31), Chapter 18) of
32 the Revised Municipal Code, relating to definitions of "Credited service", "Deferred member",
33 "Gross pay, compensation and salary", and "Vest, vesting or vested" as well as the re-numbering
34 of the subsections following the definition of "Deferred member" be amended by deleting the
35 language stricken and by adding the language underlined as follows:

1 **Sec. 18-402. Definitions.**

2 Terms used in this article or in the plan not defined generally in the Code shall have those
3 meanings set forth specifically in definitions found in various sections of this division or in the
4 administrative rules and regulations duly adopted by the board. As used in this division, the
5 following words and phrases (and their declensional, inflected and conjugated forms) shall have
6 the meanings in this section ascribed to them, unless it appears from the context that such word or
7 term shall have been used in another sense:

8 (9) *Credited service* shall mean the number of years and months of service for which
9 contributions on behalf of the member were received by the plan based on the member's
10 compensation, and the number of years and month of permissive service credit (subject to the
11 terms provided in this division) obtained by the member prior to the retirement date and credited to
12 such member by the retirement board. The use of permissive service in the calculation of credited
13 service shall only be for the calculation of benefits and shall not entitle a member to the receipt of a
14 particular benefit, nor shall it entitle a member to vest in a particular benefit.

15 a. Years and months of "military service duty," which shall have the meaning given the
16 term "uniformed service" in the federal Uniformed Service Employment and Reemployment Rights
17 Act of 1994, as amended from time to time, (the "Act") for re-employment rights purposes, shall be
18 counted as credited service and benefits shall be accorded in compliance with and as limited by
19 the Internal Revenue Code, provided that the member meets the qualifications and requirements
20 of the Act.

21 b. A member may change the class of employment without causing a break in credited
22 service so long as the member maintains eligibility.

23 c. In determining credited service, the plan shall count current service for fractional
24 years on the basis of one-twelfth of one (1) year for each full calendar month of service.

25 d. Subject to eligibility requirements, credited service shall include the aggregate of
26 periods of current service commencing with an employee's first day of employment or
27 reemployment and ending on the date a break in service begins, or the date an employee
28 terminates employment with the employer. Service credit for properly authorized leave of absence
29 without pay can be obtained upon payment by the member into the trust fund of an amount equal
30 to the employee contribution, if any, and the employer contribution, ~~including interest compounded~~
31 ~~annually at the rates of three (3) percent~~ for the complete period of the leave of absence. Partial
32 paybacks for a leave of absence shall not be allowed. Unpaid disciplinary leave or an unpaid
33 disciplinary suspension are not authorized leaves of absence and a member is prohibited from
34 purchasing or receiving credited service for any period of unpaid disciplinary leave or suspension.
35 Any payment for an authorized leave of absence must be completed prior to the member's
36 termination from employment. No payment shall be allowed to be made to the Plan for a purchase
37 of service credit following a member's termination of employment. If payment is made for an
38 authorized leave of absence within twenty-four (24) months following a member's return to work
39 the cost shall be calculated based upon the required contributions plus interest to the date of
40 repayment at the rate of three (3) percent per annum. The cost for a member wishing to receive

1 credited service for an authorized leave of absence who does not repay the required contributions,
2 with interest, within twenty-four (24) months following the employee's return to work, shall be
3 calculated at the full actuarial cost for such service in accordance with Section 18-415(c)(2). The
4 hours of service credited shall be those which would normally have been credited but for such
5 absence, or, in any case in which the plan is unable to determine such hours normally credited,
6 eight (8) hours of service per day of absence.

7 (10) *Deferred member* shall mean a member who does not complete and submit the required
8 retirement application and all required documents to the plan within thirty (30) days of separation
9 from service or termination of employment.

10 (4011) *Effective date* shall mean January 1, 1963, the date when the retirement plan shall be first
11 put into effect.

12 (4112) *Elected official* shall mean any person occupying the following positions: councilmember,
13 mayor, auditor, district attorney or clerk and recorder.

14 (4213) *Employee* shall mean any employee of the city who regularly works for the city at least
15 twenty (20) hours per week, but shall not mean or include those reemployed pursuant to
16 subsection 18-408(j)(7) of this article, or persons holding on-call positions ("on-call position" shall
17 mean and include those positions which have no established work schedule and for which no
18 employee benefits are available). The term "regularly works" shall mean and apply to a person who
19 works at least twenty (20) hours per week for a total of twelve (12) or more weeks in a rolling
20 twelve-month period. "Employee" shall also mean and include (excepting personnel holding on-call
21 positions) any appointed official of the city, any elected official of the city, any employee
22 designated by the mayor to be exempt from career service as an administrative position, and any
23 employee of:

- 24 (a) The city council;
- 25 (b) The auditor;
- 26 (c) The retirement board (or the plan);
- 27 (d) The library commission;
- 28 (e) The civil service commission;
- 29 (f) The board of adjustment-zoning;
- 30 (g) The clerk and recorder;
- 31 (h) The county court (except the judges of the county court);
- 32 (i) The Office of Human Resources;
- 33 (j) The district attorney;
- 34 (k) The undersheriff;
- 35 (l) Any other person employed by the city who is eligible for employee benefits defined

36 in Part 1, Article IX of the Charter (2003 codification) (but excepting employees who are members
37 of the classified service as defined in Parts 4, 5 and 6 of said Article IX); and

38 (m) In the case of contractual entities, any person who qualifies for participation in the
39 plan and is an employee of an employer.

40 (4314) *Employer* shall mean the city or any contractual entity.

1 (4415) *Gross pay, compensation and salary* shall mean that amount of remuneration, including
2 wages, salaries, other amounts received for personal services actually rendered in the course of
3 employment with the employer, and other amounts actually included or that could be included in
4 gross income of and due to an employee, including employees on disability leave as provided for
5 in division 4 of article V of this chapter 18, or otherwise, from the employer in the full amount as
6 calculated before any reductions or deductions are made there from for any purpose, including
7 reductions or deductions by reason of sections 125, 132(f)(4) or 457 of the Internal Revenue Code,
8 but not including distributions made from a plan of the employer designed to be eligible under
9 section 457. The calendar year shall be the limitation year (determination period) for purposes of
10 section 415 of the Internal Revenue Code.

11

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

21

22 Employer provided fringe benefits receiving special tax benefits, such as premiums for group term
23 life insurance (to the extent excludible from gross income), shall be excluded from the definition of
24 compensation. Gross pay, compensation and salary shall not include any lump-sum amount paid
25 to a member under a settlement agreement entered into between the employer and the member,
26 unless the adverse employment action which led to the settlement agreement is rescinded in its
27 entirety and the member is reinstated to employment with the employer back to the effective date
28 of the adverse employment action and the lump-sum settlement amount equals the exact gross
29 pay, compensation and salary the member would have received for personal services actually
30 rendered in the course of employment with the employer, but for the adverse employment action
31 being taken, and the lump-sum payment is classified as back-pay wages in the settlement
32 agreement. ~~Payments made to employees pursuant to article XV, Chapter 18, and the Denver~~
33 ~~Health and Hospital Authority 2009 Incentive Retirement Program~~ retirement incentive program,
34 shall be excluded from the definition of compensation and shall not be used in calculating an
35 employee's retirement benefit.

36 (4516) *Internal Revenue Code* shall mean the Internal Revenue Code of 1986, as the same may
37 be amended from time to time, and regulations and policies duly adopted or promulgated
38 thereunder from time to time.

1 (~~4617~~) *Investment manager* shall mean any person who is a registered investment advisor under
2 the Investment Advisors Act of 1940 who has the power to manage, acquire, or dispose of plan
3 assets and acknowledges in writing the manager's fiduciary responsibility to the plan.

4 (~~4718~~) *Investment manual* shall mean the document which contains the current and long-term
5 goals and objectives for the trust fund and the policies and procedures to be used by the
6 retirement board, the trustees, investment managers, custodians, or any of them, in the
7 management and safekeeping of the trust fund.

8 (~~4819~~) *Joint and survivor annuity or joint and survivor benefit* means an annuity for the life of the
9 participant with a continued annuity for either the life of the spouse, if the participant is married at
10 the time of retirement, or for a named beneficiary, and, subject to the minimum distribution
11 incidental benefit requirements of the Internal Revenue Code, which is the actuarial equivalent of a
12 single straight life annuity for the life of the participant. Under this option the member's benefit is
13 reduced to provide for the lifetime monthly benefit of either the spouse or a named beneficiary
14 following the death of the member.

15 (~~4920~~) *Normal retirement*. Normal retirement for members originally employed before July 1, 2011,
16 shall mean retirement at the earlier of the age of sixty-five (65) or the first day of any calendar
17 month after which a member has attained his or her fifty-fifth (55th) birthday and where the
18 member's age and credited service, while an active member, are or were equal to the sum of
19 seventy-five (75). The "rule-of-75" is determined by adding the age of the employee while
20 employed with the employer to the years of credited service as an employee with the employer. If
21 the total equals or exceeds the sum of seventy-five (75) then the requirements of the rule-of-75
22 have been met. The rule-of-75 must be attained by the member, while employed as an active
23 member, prior to termination of employment. If the employee terminates employment, after earning
24 the required service credit to be granted rule-of-75 unreduced benefits, but prior to reaching the
25 age of fifty-five (55), the member may not apply for or receive retirement benefits under the rule
26 until reaching age fifty-five (55).

27
28 For members first employed on or after July 1, 2011, "normal retirement" shall mean, for members
29 who have vested, the earlier of the age of sixty-five (65), or the first day of any calendar month
30 after which a member has attained his or her sixtieth birthday and where the member's age and
31 credited service, while an active member, are or were equal to the sum of eighty-five (85). The
32 "rule-of-85" is determined by adding the age of the employee while employed with the employer to
33 the years of credited service as an employee with the employer. If the total equals or exceeds the
34 sum of eighty-five (85) then the requirements for the rule-of-85 have been met. The rule-of-85 must
35 be attained by the member while employed as an active member, prior to termination of
36 employment. If the employee terminates employment, after earning the required service credit to
37 be granted rule-of-85 unreduced benefits, but prior to reaching the age of sixty (60), the member
38 may not apply for or receive retirement benefits under the rule until reaching age sixty (60).

39 (~~2021~~) *Participant or member* shall mean any employee or official of an employer after the effective
40 date, who qualifies for participation in the plan and who has not for any reason become ineligible to

1 participate further in the plan. The term "participant" or "member" shall also include "active
2 member," "deferred member" and "retired member."
3 ~~(2122)~~ *Permissive service credit or purchase of service credit* shall have the meaning given to it in
4 section 415(n) of the Internal Revenue Code, and shall not mean the credited service granted a
5 member under the Uniformed Services Employment and Reemployment Rights Act of 1994, as
6 amended and as provided by federal law, or credited service for purposes of qualifying for a benefit
7 available under the plan.
8 ~~(2223)~~ *Plan* shall mean the employees' retirement plan as presently set forth in this division or as
9 the same may hereafter be amended. The name of the plan shall be "Denver Employees
10 Retirement Plan." The term "plan" may also be used to refer to the administration of the plan and
11 those who administer the plan.
12 ~~(2324)~~ *Pre-retirement survivor annuity* shall mean an annuity form of payment for the life of the
13 surviving spouse of a participant who dies prior to the member's retirement date.
14 ~~(2425)~~ *Regular member* shall mean an employee who is eligible to be covered by the retirement
15 plan and who is making all contributions required by the plan to be made by a regular member.
16 ~~(2526)~~ *Retired member* shall mean a former employee whose membership service has terminated
17 by reason of retirement or disability and who is receiving or is entitled to receive benefits under this
18 plan.
19 ~~(2627)~~ *Retirement benefits* shall mean any annuity payment to retired members, their spouses,
20 beneficiaries or dependents provided for under the plan.
21 ~~(2728)~~ *Service* shall mean service rendered for compensation as an employee.
22 ~~(2829)~~ *Single straight life annuity or maximum benefit* shall mean an annuity for the lifetime of the
23 member only which has not been reduced to provide a lifetime monthly benefit to a spouse or a
24 beneficiary which becomes payable upon the death of the member. A member who is married at
25 the time of his or her retirement shall not be allowed to take a single straight life annuity without the
26 written permission of the member's spouse.
27 ~~(2930)~~ *Trust or trust fund* shall mean the fund established by this division and having its inception
28 by authority of Ordinance No. 388, series of 1962, and shall have the meanings and be governed
29 by the authority as set forth in section 18-403, for the purpose of providing pension benefits and
30 benefits incident thereto, and, except for reporting and record-keeping purposes, the term shall
31 also include, for custodial, investment and fiduciary purposes, the health benefits account.
32 ~~(3031)~~ *Vest, vesting or vested* shall mean a member meeting or having met a stated requirement
33 for a privilege or right as stated in the plan. Unless otherwise specifically indicated in this article, a
34 member appointed before January 1, 1987, shall be vested after ten (10) years of credited service,
35 a member appointed on or after January 1, 1987, but before July 1, 2011, shall be vested after five
36 (5) years of credited service or upon reaching the age of sixty-five (65), whichever is earlier. A
37 member first appointed on or after July 1, 2011, regardless of their age upon appointment, shall be
38 vested after five (5) years of credited service. A vested member, who terminates employment and
39 is subsequently re-employed or re-hired by the employer, even if subject to a different benefit
40 formula than the one applied or to be applied to the initial employment and credited service of the
41 member, does not have to re-vest in the plan. Upon meeting the eligibility and years of credited

1 service requirements for a benefit, a member shall be vested in the benefit accruing under the
2 terms of this article.

3
4 **Section 2.** That Section 18-405(b)(3) (sometimes known and cited as Section 405, Subsection
5 (b)(3), Chapter 18) of the Revised Municipal Code, relating to the authority of the Plan to recover
6 benefits or premiums improperly paid to benefit recipients or their beneficiaries be amended by
7 adding the language underlined as follows:

8
9 **Sec. 18-405. Retirement Board.**

10
11 (b) *Additional powers.* In addition to the general authority granted to the retirement board to
12 carry out and administer the plan and the trust assets, and in no way in limitation of such authority,
13 the board shall have the following powers:

14 (3) The authority to recover from benefit recipients, through legal process or benefit
15 offset, any benefits or premiums improperly paid to them or on behalf of them to which they or their
16 beneficiaries are not entitled, and to assess interest on such money at the general statutory rate.
17 When a benefit offset is not available as a means to collect, the Plan may employ any collection
18 method available, including assigning such accounts to private counsel or private collection
19 agencies. If a legal suit is brought, then reasonable collection costs, attorney's fees, and legal
20 expenses shall be added to the amount due. In the case of dishonored bank drafts and other
21 negotiable instruments, in addition to the fee provided for below, the Plan may pursue all remedies
22 provided for in the Colorado Revised Statutes. Whenever any account or debt due the Plan
23 becomes delinquent and is referred for collection, the following collection fees will be added to the
24 original debt amount:

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

25
26 The benefit recipient or their beneficiary(ies) shall be liable for repayment of the total of the amount
27 outstanding plus the collection fee. The Plan may, at its option, waive the collection fee for good
28 cause shown.

29
30 **Section 3.** That Section 18-406(d) and Section 18-406(e) (sometimes known and cited as
31 Section 406, Subsections (d) and (e), Chapter 18) of the Revised Municipal Code, relating to
32 Leave of Absence and Furlough Days, respectively be added by adding the language underlined
33 as follows:

34
35
36

1 **Sec. 18-406. Eligibility.**

2 (d) Leave of Absence. Service credit for properly authorized leave of absence without pay can
3 be obtained upon payment by the member into the trust fund of an amount equal to the employee
4 contribution, if any, and the employer contribution for the complete period of the leave of absence.
5 Partial paybacks for a leave of absence shall not be allowed. Unpaid disciplinary leave or an
6 unpaid disciplinary suspension are not authorized leaves of absence and a member is prohibited
7 from purchasing or receiving credited service for any period of unpaid disciplinary leave or
8 suspension. No payment shall be allowed to be made to the Plan for a purchase of service credit
9 following a member's termination of employment. If payment for an authorized leave of absence is
10 made within twenty-four (24) months following a member's return to work, the cost shall be
11 calculated based upon the required contributions plus interest to the date of repayment at the rate
12 of three (3) percent per annum. The cost for a member wishing to receive credited service for an
13 authorized leave of absence who does not repay the required contributions, with interest, within
14 twenty-four (24) months following the employee's return to work, shall be calculated at the full
15 actuarial cost for such service in accordance with Section 18-415(c)(2). The election to purchase
16 service credit for a properly authorized leave of absence shall be irrevocable and no refund shall
17 be made to a member for any amount paid to the Plan to purchase service credit. The hours of
18 service credited shall be those which would normally have been credited but for such absence, or,
19 in any case in which the plan is unable to determine such hours normally credited, eight (8) hours
20 of service per day of absence.

21
22 (e) Furlough Days. If a member's average monthly salary is impacted by days designated by
23 the employer as "furlough days," the negative impact on an employee's retirement benefit may be
24 alleviated upon payment by the member into the trust fund of an amount equal to the employee
25 contribution, if any, and the employer contribution on foregone gross pay which resulted from the
26 furlough day. A member with multiple furlough days may choose which furlough days or how many
27 furlough days to redeem, however, less than a full-day or partial redemptions for less than a full-
28 day shall not be allowed. No payment shall be allowed to be made to the Plan for a redemption of
29 a furlough day following a member's termination of employment. The cost for a member wishing to
30 negate the impact on their average monthly salary of a furlough day shall be based upon the
31 required contributions in effect at the time of the furlough day plus interest to the time of payment
32 at the rate of three (3) percent per annum, compounded each June 30th. Interest shall not be
33 applied to the required payment if the redemption occurs between the furlough day and the June
34 30th immediately following such furlough day. The election to pay the required contributions to
35 redeem a furlough day shall be irrevocable and no refund shall be made to a member for any
36 amount paid to the Plan to redeem a furlough day.

37
38 **Section 4.** That Sections 18-408(j)(1), 18-408(j)(2) and 18-408(j)(3) (sometimes known and
39 cited as Section 408, Subsections (j)(1), (j)(2) and (j)(3) Chapter 18) of the Revised Municipal
40 Code, relating to re-employment by the employer be amended by deleting the language stricken
41 and by adding the language underlined as follows:
42

1 **Sec. 18-408. Retirement categories.**

2 (j) *Re-employment by the employer.* Unless a member meets the requirements set forth below
3 in paragraph (7) of this subsection 18-408(j), the following shall apply:
4

5 (1) Retirement and death benefits, if any, shall be immediately suspended upon the effective
6 date of the member's re-employment with the employer and shall be resumed only upon the
7 subsequent termination of the member from employment. A member, who receives a
8 retirement benefit from the plan who later returns to work in a position subject to this article,
9 shall receive a new separate retirement benefit calculated solely upon the credited service
10 earned and the benefit formula in place following the member's re-employment with the
11 employer. A member re-employed pursuant to this section on or after July 1, 2011, shall
12 receive retirement benefits and death benefits, for any credited service earned subsequent
13 to the re-employment, calculated pursuant to the post July 1, 2011 employment sections. A
14 member who has received a retirement benefit from the plan shall not have his/her previous
15 credited service included with or added to service credit earned following a member's re-
16 employment in order to calculate a single retirement benefit or to increase a previously
17 received retirement benefit. A member's previously calculated and received retirement
18 benefit shall not change in form or amount following a member's re-employment, and shall
19 be reinstated as it originally was calculated upon a member's subsequent retirement and
20 added to any newly earned and calculated retirement benefit. A member with multiple re-
21 employment periods following receipt of retirement benefits may have two (2) or more
22 separately calculated benefit payments. Two (2) or more separately calculated retirement
23 benefits combined into one benefit payment shall be known as and referred to as a "bridged
24 benefit." Upon a subsequent retirement following a member's re-employment, a member
25 shall accept a death benefit which shall be reduced by the death benefit payments the
26 member received during the previous period or periods of retirement. A member re-
27 employed pursuant to this section shall be considered vested as of the date of their re-
28 employment and the member shall not be required to obtain a specified amount of new or
29 subsequent credited service prior to being eligible for a "bridged benefit."

30 (2) If an employee hired after January 1, 1979, has not received retirement or death benefits,
31 and returns to employment with the employer, he or she is entitled to restore credit for the
32 years and months of service for which employee contributions were refunded if the amount,
33 including interest to the date of repayment at the rate of three (3) percent per annum, is
34 repaid to the trust within twenty-four (24) months of the employee's re-employment date. A
35 re-employed employee who does not repay the refunded contributions, with interest, within
36 twenty-four (24) months of the employee's re-employment date, may still, upon repayment
37 made to the plan prior to retirement termination from employment, receive credit for the
38 years and months of service for which his or her contributions were refunded, however, the
39 repayment will be calculated at the full actuarial cost for such service in accordance with
40 Section 18-415(c)(2). No repayment shall be allowed to be made to the Plan for a purchase
41 of refunded contributions following a member's termination of employment.

42 (3) If a member, hired before January 1, 1979, receives a refund pursuant to section 18-
43 409(e)(2) and later resumes covered service under the plan, the member is entitled to
44 restore credit for the years and months of service for which employee contributions were
45 refunded if the amount, including interest to the date of repayment at the rate of three (3)
46 percent per annum, is repaid to the trust within twenty-four (24) months of the employee's

1 re-employment date. A re-employed employee who does not repay the refunded
2 contributions, with interest, within twenty-four (24) months of the employee's re-employment
3 date, may still, upon repayment made to the plan prior to ~~retirement~~termination from
4 employment, receive credit for the years and months of service for which his or her
5 contributions were refunded, however, the repayment will be calculated at the full actuarial
6 cost for such service in accordance with Section 18-415(c)(2). No payment shall be allowed
7 to be made to the Plan for a purchase of refunded contributions following a member's
8 termination of employment.
9

10 **Section 5.** That Section 18-410(b) (sometimes known and cited as Section 410, Subsection (b),
11 Chapter 18) of the Revised Municipal Code, relating to explanation of annuities and right to change
12 elections amended by deleting the language stricken as follows:
13

14 **Sec. 18-410. Joint and survivor benefits.**

15 (b) *Explanation of annuities and right to change elections.* The plan shall provide a written
16 explanation of annuities and other options, and the effect of them and the participant's right to
17 revoke them within the time periods set by and in accordance with regulations or policies of the
18 Internal Revenue Service. Subject to overriding regulations or policies of the Internal Revenue
19 Service, a participant may revoke an election not to take a joint and survivor annuity or choose
20 again to take a joint and survivor annuity at any time ~~and any number of times within the 90-day~~
21 ~~period~~ ending on the date benefit payments commence.
22

23 **Section 6.** That Sections 18-411(c), 18-411(d) and 18-411(g) (sometimes known and cited as
24 Section 411, Subsections (c), (d) and (g), Chapter 18) of the Revised Municipal Code, relating to
25 death benefits be amended by adding the language underlined as follows:
26

27 **Sec. 18-411. Death benefits.**

28 (c) *Death of an active member incurred in the performance of service duty.* Upon death
29 incurred as a result of the performance of service duty, the active member's surviving spouse, if
30 any, shall be entitled to receive the retirement benefit to which the member would have been
31 entitled based on the higher of fifteen (15) years' credited service or actual credited service plus
32 five (5) years but in either case not to exceed the credited service the member would have earned
33 to age sixty-five (65). The active member shall be deemed to have retired on the first day of the
34 month following the month in which death occurs. If it is determined that, notwithstanding the
35 above-listed calculation where additional service is credited to the member, the surviving spouse
36 would have received a larger benefit under the 100% joint and survivor annuity option (with no
37 additional service being credited to the member), then the surviving spouse shall receive the larger
38 100% joint and survivor benefit. The retirement benefits to the surviving spouse shall terminate
39 upon the surviving spouse's death. The surviving spouse, if designated as beneficiary, may elect to
40 receive in lieu hereof the benefits provided in subsection (a) of this section. Election and receipt of
41 the benefit provided in subsection (a) shall be final and conclusive, and the surviving spouse shall
42 have no right to later claim the benefit provided herein.
43
44
45

1 (d) *Death of an active member not incurred in the performance of service duty.* Upon death not
2 resulting from service duty, the active member's surviving spouse, if any, shall be entitled to
3 receive seventy-five (75) percent of the benefit calculated in accordance with subsection (c) of this
4 section. The active member shall be deemed to have retired on the first day of the month following
5 the month in which death occurs. The retirement benefit payments to the surviving spouse shall
6 cease upon the surviving spouse's death. The surviving spouse, if designated as beneficiary, may
7 elect to receive in lieu hereof the benefit provided in subsection (a) of this section. Election and
8 receipt of the benefit provided in subsection (a) shall be final and conclusive, and the surviving
9 spouse shall have no right to later claim the benefit provided herein. If it is determined that,
10 notwithstanding the above-listed calculation where additional service is credited to the member,
11 the surviving spouse would have received a larger benefit under the 100% joint and survivor
12 annuity option (with no additional service being credited to the member), then the surviving spouse
13 shall receive the larger 100% joint and survivor benefit.
14

15 (g) *Death of a deferred member.* If a deferred member, employed before July 1, 2011, having
16 such credited service as required in this article dies before applying for retirement benefits as
17 provided for in section 409(e), there shall be paid to the surviving spouse, if living at the time the
18 member reached or would have reached age fifty-five (55) (the earliest date the member would
19 have been eligible to receive benefits under this division), a survivor annuity calculated in
20 accordance with this section 18-411 for the life of the surviving spouse. If a deferred member, first
21 employed on or after July 1, 2011, having such credited service as required in this article dies
22 before applying for retirement benefits as provided for in section 409(e), there shall be paid to the
23 surviving spouse, if living at the time the member reached or would have reached age sixty (60)
24 (the earliest date the member would have been eligible to receive benefits under this division), a
25 survivor annuity calculated in accordance with this section 18-411 for the life of the surviving
26 spouse.
27

28 If a member under this section dies without a surviving spouse, but has children under the age of
29 twenty-one (21) at the time of death, then any benefit which would have been payable to the
30 member under this section shall be paid beginning the month following the member's death to the
31 guardian or other legal representative for the children under age twenty-one (21) at the date of the
32 member's death. For members first employed before July 1, 2011, the survivor's benefit for
33 children under the age of twenty-one (21) shall be equal to the sum which the member would have
34 received if the member had attained the age of fifty-five (55). For members first employed on or
35 after July 1, 2011, the survivor's benefit for children under the age of twenty-one (21) shall be
36 equal to the sum which the member would have received if the member had attained the age of
37 sixty (60). Monthly benefits shall continue, unabated, per stirpes, for those children under age
38 twenty-one (21) until the end of the month in which the youngest child becomes age twenty-one
39 (21), at which time all benefits shall cease.
40

41 If a member under this section dies without a surviving spouse and without children under the age
42 of twenty-one (21), but who during the course of covered employment had a committed partner as
43 that term is defined in Section 28-200 (sometimes known and cited as Section 200, Chapter 28) of
44 the Revised Municipal Code, or had a spousal equivalent as that term is defined in Section 18-171
45 (sometimes known and cited as Section 171, Chapter 18) of the Revised Municipal Code, and
46 submits a copy of the certified certificate of committed partnership or the affidavit of spousal

1 equivalency previously filed with the employee benefits section of the Career Service Authority to
2 the Plan and named the committed partner or spousal equivalent as the member's named
3 beneficiary, and had not terminated the committed partnership or spousal equivalency and
4 continued to be in the relationship with the committed partner or spousal equivalent at the time of
5 the member's death, then there shall be paid to the committed partner or spousal equivalent, if, for
6 members employed before July 1, 2011, the individual is living at the time the member reached or
7 would have reached age fifty-five (55), or if, for members first employed on or after July 1, 2011,
8 the individual is living at the time the member would have reached age sixty (60) (the earliest date
9 the member would have been eligible to receive benefits under this division), a survivor annuity
10 calculated in accordance with this section 18-411 for the life of the committed partner. For
11 members employed prior to January 1, 1979, if there is no surviving spouse or children under the
12 age of twenty-one (21), there shall be paid to the beneficiary designated by the member, if the
13 beneficiary is living, otherwise to the member's estate, the amount of accumulated contributions
14 paid by the member to the plan prior to January 1, 1979, if any, as of the applicable date of death.
15

16 If a deferred member under this section dies without a surviving spouse, without children under the
17 age of twenty-one (21) and without a committed partner or spousal equivalent, there shall be no
18 benefit paid from the Plan to anyone.
19

20 **Section 7.** That Section 18-415(c)(1) (sometimes known and cited as Section 415, Subsection
21 (c)(1), Chapter 18) of the Revised Municipal Code, relating to the purchase of service credit be
22 amended by deleting the language stricken and adding the language underlined as follows:
23

24 **Sec. 18-415. Purchase of service credits.**

25 (c) *Requirements.*

26 (1) Payment options.

27

28 a. An active member may purchase permissive service credits in accordance with the
29 requirements and limitations imposed by the Internal Revenue Code. The board may set
30 forth, in the requirements for eligibility, methods for computing actuarial equivalents, and
31 other terms and conditions governing the purchase of permissive service credit.

32 b. With the exception of direct rollover trustee-to-trustee transfers permitted under the
33 Internal Revenue Code, as applied to governmental plans, an active member may, prior
34 to retirement, make only after-tax direct contributions to purchase service credit.

35 c. Subject to the limitations imposed by the Internal Revenue Code, such payments may be
36 made only for full months of service in full payment for each month of permissive service
37 credit purchased, provided, that additional months of service credit may be purchased
38 thereafter, up to the limit imposed by subsection (b) of this section.

39 d. An active member may use all or part of an eligible rollover distribution from another
40 qualified plan (or other plan so permitted under the Internal Revenue Code) to pay for all
41 or part of the amount needed to purchase the permissive-service credit, subject to the
42 limitations imposed under section 415(n) of the Internal Revenue Code.

43 e. The election to purchase prior permissive-service credit shall be irrevocable and no
44 refund shall be made to a member for any amount paid to the Plan to purchase service
45 credit.

- 1 f. No member shall receive service credit for any service for which payment has not been
2 completed pursuant to this provision before the effective date of the member's
3 ~~retirement~~ termination from employment. No payment shall be allowed to be made to the
4 Plan for a purchase of service credit following a member's termination from employment.
5

6 **Section 8.** That Section 18-418(b)(4)(b) (sometimes known and cited as Section 418,
7 Subsection (b)(4)(b), Chapter 18) of the Revised Municipal Code, relating to domestic relations
8 orders be amended by adding the language underlined as follows:
9

10 **Sec. 18-418. Anti-alienation provision.**

11 (b) *Domestic relations orders* (DRO). The plan shall permit the division of a member's
12 retirement benefit through a DRO which meets all the requirements set forth in this subsection.
13

14 (4) If the member dies prior to retirement the following terms shall govern regarding the DRO:
15

- 16 b. If the member dies either before or on or after reaching the age of fifty-five (55) for
17 members first employed before July 1, 2011, or before or on or after reaching the age of
18 sixty (60) for members first employed on or after July 1, 2011, and the member has a
19 current spouse, or children under age 21, or has a named beneficiary on file with the
20 plan, the member's former spouse may receive monthly payments of the benefit agreed
21 in the DRO calculated as follows:

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

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

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

31 4. If, at the time the member would have reached age and other
32 requirements for a normal retirement benefit, no retirement benefit payments are
33 being made by the plan, and no benefit payment will be made by the plan in the future,
34 no payment will be made to the former spouse, as there is and will be no benefit to
35 divide.
36
37
38
39
40
41
42
43

1 COMMITTEE APPROVAL DATE: October 16, 2013

2 MAYOR-COUNCIL DATE: October 22, 2013

3

4 PASSED BY THE COUNCIL _____ 2013

5 _____ -PRESIDENT

6 APPROVED: _____ -MAYOR _____ 2013

7 ATTEST: _____ -CLERK AND RECORDER,
8 EX-OFFICIO CLERK OF THE
9 CITY AND COUNTY OF DENVER

10

11 NOTICE PUBLISHED IN THE DAILY JOURNAL _____, 2013; _____ 2013

12

13 PREPARED BY: Victoria A. Hale, General Counsel, DERP DATE: September 17, 2013

14

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

19

20 David Broadwell, City Attorney

21

22 BY: _____, City Attorney DATE: _____, 2013

23