

1 **BY AUTHORITY**

2
3 ORDINANCE NO. _____
4 SERIES OF 2018

COUNCIL BILL NO. CB18-1248
COMMITTEE OF REFERENCE:
Finance & Governance

6 **A BILL**

7 **For an ordinance amending the 1963 Retirement Plan with regard to**
8 **establishment and management of trust fund, retirement board,**
9 **contributions; payroll deductions, retirement categories, retirement**
10 **benefits, joint and survivor benefits, monthly payment of benefits,**
11 **denial of benefits; hearing procedures, and anti-alienation provision.**
12

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

18 **WHEREAS**, the actuary for the Plan recently conducted an experience study
19 where the actual experience of the Plan, over the last five (5) years, was compared to the
20 Plan's assumptions, and, based on this study, recommended that the Plan adopt new
21 mortality tables. This was due to the impact of the increased life expectancy of Plan
22 members on the actuarial value of Plan liabilities; and,

23 **WHEREAS**, once the new mortality tables were adopted by the Retirement Board,
24 the total computed actuarially required contribution rate for the Plan increased by one
25 percentage point; and,

26 **WHEREAS**, the Plan's actuary has further determined that receiving this increased
27 contribution is actuarially necessary to improve the funded status of the Pension and
28 Retiree Medical Plans, and to strengthen their actuarial soundness; and,

29 **WHEREAS**, the Retirement Board duly considered the reports and
30 recommendations of its actuary, finding, that to strengthen and maintain the actuarial

1 soundness of the Plan, the new mortality tables needed to be adopted, thus were
2 adopted, and the Retirement Board determined that an increase in the contribution rate
3 is both desirable and necessary; and,

4 **WHEREAS**, Section 18-407(a) of the Revised Municipal Code of the City and
5 County of Denver states that the employer intends to continue the plan and to contribute
6 regularly to the trust each payroll period for each member such amounts as are necessary
7 to maintain or assist in maintaining the Plan on a sound actuarial basis as prescribed by
8 applicable law and, particularly, the Internal Revenue Code for defined benefit pension
9 plans qualified under Section 401(a) thereof, and that employees shall contribute
10 regularly to the trust each payroll period in such amounts as are necessary, in the
11 judgment of the city, to assist in maintaining the Plan on a sound actuarial basis; and,

12 **WHEREAS**, it is in the judgment of the City that, in order to maintain the Plan on
13 a sound actuarial basis, the sponsoring employers shall each have their contributions to
14 the Plan increased by one-half of one percentage point (0.50), and their respective
15 employees shall each have their contributions to the Plan increased by one-half of one
16 percentage point (0.50) for an overall increase in contributions to the Plan of one
17 percentage point; and,

18 **WHEREAS**, in order to ensure that benefits are paid in the month in which they
19 are owed, as well as to ensure that when the first of the month falls on a weekend or a
20 holiday, benefits are not paid early thus ensuring that no more than twelve (12) benefit
21 payments are paid in a calendar year, and, due to the increased efficiencies with
22 electronic banking transmissions, it has been determined that the Ordinance should be
23 amended to specify that payment date for retirement benefits will occur on the first
24 business day of the month; and,

25 **WHEREAS**, while in the process of administering the Plan, it has been
26 determined that the clarification of various procedures or legal requirements applicable to
27 the Plan, as well as the removal of obsolete language, has become necessary to assist

1 the Plan in explaining the benefits available to members and their beneficiary, as well as
2 to ensure uniformity in the application of terms within the Ordinance.

3
4 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY**
5 **OF DENVER:**
6

7 **Section 1.** That Section 18-403(d) (sometimes known and cited as Section 403,
8 Subsection (d), Chapter 18) of the Revised Municipal Code, relating to the establishment
9 and management of the trust fund be amended by adding the language underlined as
10 follows:

11
12 **Sec. 18-403. Establishment and management of trust fund.**
13

14 (d) *Use of trustees, custodians and investment managers.* Trustees acting under trust
15 agreements, or custodians acting under custodial agreements, or both trustees and
16 custodians, may be selected by the retirement board or its designee.

17
18 **Section 2.** That Sections 18-405(c)(2), 18-405(d)(2)a., 18-405(d)(2)b., and 18-405(h)
19 (sometimes known and cited as Section 405, Subsections (c)(2), (d)(2)a., (d)(2)b., and
20 (h), Chapter 18) of the Revised Municipal Code, relating to the retirement board be
21 amended by deleting the language stricken and adding the language underlined as
22 follows:

23
24 **Sec. 18-405. Retirement board.**
25

26 (c) *Meetings and notices.*
27

28 (2) An annual meeting shall be held immediately following ~~the~~ a regular meeting
29 during a month designated and publicized in advance by the months of May or
30 June at the discretion of the board. ~~The annual report of the retirement board~~
31 ~~to the membership shall be made available to all members.~~

32
33 (d) *Advisory committee.*
34

35 (2)
36 a. Elections. Each year, one (1) of the three (3) elected members shall be
37 elected ~~for be elected~~ for a three-year term to the advisory committee in
38 accordance with the election procedures authorized by the retirement board.
39 This elected member shall be announced at a regular board meeting following
40 the election, and assume office ~~at the annual meeting on the July 1st~~
41 immediately following the election.

1 b. The member appointed by the career service board ~~shall take office~~
2 ~~following the enactment of this section and shall serve until the annual meeting~~
3 ~~in 2014. Thereafter, any appointment by the career service board shall be made~~
4 ~~in conjunction with the annual meeting~~ designated prior to, and assume office
5 effective on, July 1st in the year in which a term expires. Any vacancy in the
6 appointed advisory committee position shall be promptly filled by the career
7 service board for the unexpired portion of the term.

8
9 (h) *Reports.*

10
11 (3) An annual report of the retirement board to the membership shall be made
12 available to all members.

13
14 **Section 3.** That Sections 18-407(e)(1) and 18-407(f)(1) (sometimes known and cited
15 as Section 407, Subsections (e)(1) and (f)(1), Chapter 18) of the Revised Municipal Code,
16 relating to contributions; payroll deductions, be amended by deleting the language
17 stricken and adding the language underlined as follows:

18
19 **Sec. 18-407. Contributions; payroll deductions.**

20
21 (e) *Employer contributions.* From and after the date a person first becomes an active
22 member, and until the actual retirement date or prior termination of employment, the
23 manager of finance and each contractual entity shall transfer into the trust fund each
24 payroll period from such sources as shall, in the case of the city, be designated by
25 ordinance, the amounts listed in this section which have been determined, on an actuarial
26 basis, to be sufficient to provide for the benefits of eligible members.

27
28 (1) For each active member, including each elected official, the employer shall
29 contribute ~~twelve and one-half~~ thirteen (12.513.0) percent of the member's gross
30 salary. In the case of a contractual entity, the employer shall, as a condition
31 necessary to becoming or remaining a contractual entity, also make any actuarially
32 determined supplemental contributions necessary to fund the current cost of
33 benefits available under the plan payable to current and future employees of the
34 contractual entity.

35
36 (f) *Employee contributions.* Each active member shall contribute to the trust fund, by
37 means of payroll deductions which shall be withheld by the manager of finance or
38 contractual entity and transferred each payroll period directly to the trust, the following
39 amounts:
40

1 (1) For each active member, including each elected official, the employee shall
2 contribute eight and one-half (8.05) percent of his or her gross salary to the trust
3 fund.
4

5 **Section 4.** That Sections 18-408(a) and 18-408(b), (sometimes known and cited as
6 Section 408, Subsections (a) and (b), Chapter 18) of the Revised Municipal Code, relating
7 to retirement categories be amended by deleting the language stricken and adding the
8 language underlined as follows:
9

10 **Sec. 18-408. Retirement categories.**
11

12 In order for a member to receive any retirement benefits, the member must first have
13 completely separated from service or terminated employment with the employer and must
14 have successfully completed and submitted a retirement application and all required
15 documents to the plan. For members who are retiring directly from active service, in order
16 to receive retirement benefits ~~from~~ payable as of the first business day of the calendar
17 month following the member's termination of employment with the employer, the member
18 shall, not later than thirty (30) days from the date of separation from service or termination
19 of employment, successfully complete and submit a retirement application and all
20 required documents and information to the plan. A member who does not complete and
21 submit the required application and documents to the plan within thirty (30) days of
22 separation from service or termination of employment shall be considered to be a deferred
23 member and any subsequent retirement shall be a deferred retirement. Except for
24 payments for members retiring directly from active service where, within thirty (30) days
25 from the date of termination, the member has successfully completed and submitted a
26 retirement application to the plan, or for a disability retirement where the benefit may be
27 partially paid retroactively to the member's date of termination, all other retirement
28 benefits are to be paid prospectively and will be paid only after successful completion of
29 all of the retirement application requirements.
30

31 Eligible members who shall resign, become disabled, die while in the service of the
32 employer, be discharged, or have their employment terminated for any other reason, shall
33 be entitled to retire according to the following categories of retirement:
34

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

1 benefit, and this benefit shall become nonforfeitable on the member's normal retirement
2 date under the rule-of-75 or the member's sixty-fifth (65th) birthday, whichever is earlier.
3

4 Members first employed on or after July 1, 2011, who are vested shall be eligible
5 for a normal retirement payable on the first business day of the calendar month following
6 termination of employment and upon the earlier of the member's sixty-fifth (65th) birthday,
7 or payable on the first business day of any calendar month after which a member has
8 attained his or her sixtieth (60th) birthday and where the member's age and credited
9 service while an active member are or were equal to or greater than the sum of eighty-
10 five (85) (the "rule-of-85"). A member shall become fully vested in the member's accrued
11 benefit, and this benefit shall become nonforfeitable upon the member becoming eligible
12 for normal retirement as defined herein.
13

14 A member who meets the requirements for a normal retirement can retire without
15 a reduction in the member's retirement benefit as is required for an early retirement.
16

17 (b) *Early retirement.* Members employed before July 1, 2011, shall be eligible for an
18 early retirement payable on the first business day of any month following termination of
19 employment with the employer, after the member reaches the age of fifty-five (55), but
20 before the member reaches eligibility for a normal retirement, provided that member must
21 have completed five (5) years of credited service at the date of such early retirement.
22

23 For members first employed on or after July 1, 2011, a member shall be eligible
24 for an early retirement payable on the first business day of any month following
25 termination of employment with the employer, after the member reaches the age of sixty
26 (60), but before the member reaches eligibility for a normal retirement, provided that such
27 member must have completed five (5) years of credited service at the date of such early
28 retirement.
29

30 **Section 5.** That Sections 18-409(b), 18-409(g), and 18-409(i) (sometimes known and
31 cited as Section 409, Subsections (b), (g) and (i), Chapter 18) of the Revised Municipal
32 Code, relating to retirement benefits be amended by deleting the language stricken and
33 adding the language underlined as follows:
34

35 **Sec. 18-409. Retirement benefits.**
36

37 (b) *Early retirement.* Upon early retirement each member shall receive a reduced
38 retirement benefit which shall be the percentage shown in the following table of that
39 portion of the retirement benefit to which the member would otherwise be entitled at the
40 normal retirement date as is based on years and fractional years of credited service prior
41 to the date of actual retirement.
42

1 Members employed before July 1, 2011, after vesting, shall be entitled to an early
 2 retirement ~~beginning~~ payable on the first business day of the month following the month
 3 the member reaches age fifty-five (55) and after the member submits and completes all
 4 plan requirements and forms for being awarded an early retirement. The reduction for
 5 members employed before July 1, 2011, is three (3%) percent for each year that the
 6 member is under age 65 in accordance with the following table:
 7

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

8
 9 Members first employed on or after July 1, 2011, after vesting, shall be entitled to an early
 10 retirement ~~beginning~~ payable on the first business day of the month following the month
 11 the member reaches age sixty (60) and after the member submits and completes all plan
 12 requirements and forms for being awarded an early retirement. The reduction for
 13 members first employed on or after July 1, 2011, is six (6%) percent for each year
 14 that the member is under age 65 in accordance with the following table.
 15

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

16

1 (g) *Distribution of present value of benefits.* If, upon retirement, the present value of
2 the lifetime benefit available to the member under this Plan is less than the value set forth
3 in the Internal Revenue Code (currently codified in section 411(a)(11) of the Internal
4 Revenue Code), the member may request, in writing, an immediate distribution of the
5 present value of the benefit. The distribution may be made directly to the member or ~~made~~
6 may be made in accordance with the rollover provisions found in section 18-416 of this
7 division.
8

9 (i) *Social Security make-up.* For all members who were employed before July 1, 2011
10 and who retire on or after January 1, 1996, other than those retiring under a disability
11 form of retirement pursuant to subsections 18-409(c) and 18-409(d) of this Code, a Social
12 Security make-up benefit shall be paid monthly beginning at the later of the member's
13 retirement or on the first business day of the next calendar month immediately following
14 the month of the member's sixty-second birthday, as follows:
15

16 The member's estimated primary Social Security benefit multiplied by a factor
17 determined, thus:
18

19 The years of credited service of the member during which the member contributed
20 towards Social Security income replacement benefits (up to a maximum of thirty-five (35)
21 years) divided by thirty-five (35) and multiplied by the applicable percentage, as shown in
22 the following table:
23

Year of Birth	Applicable Percentage
Before 1938	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%

1 As used in this subsection (i), “estimated primary social security benefit” shall mean the
2 estimated monthly amount payable to the member under Title II of the Social Security Act
3 at the later of the member’s reaching the age of sixty-two (62) or the member’s actual
4 retirement date if retiring after age sixty-two (62). The determination of the amount of a
5 member’s primary Social Security benefit shall be made based on available information,
6 and, for prior years for which that information is unavailable, the plan may assume that
7 the member’s wages had increased each calendar year at the same rate as the average
8 of the total wages (the “national average wage index,”) defined in section 209(k)(1) of the
9 Social Security Act for such calendar years as specified in section 215(b)(3)(A)(ii) of the
10 Act for such calendar years. If a member is receiving a Social Security benefit at the time
11 the member becomes eligible for the Social Security make-up benefit, the initial
12 entitlement amount of that Social Security benefit shall be used to calculate the member’s
13 Social Security make-up benefit, even if that Social Security benefit is based on a Social
14 Security benefit or earnings of a person other than the member (e.g. widow/widower’s
15 benefit, spousal benefit, etc.).
16

17 Subsection 18-409(i), *Social Security make-up*, shall be inapplicable, and there shall be
18 no Social Security make-up, for those members first employed on or after July 1, 2011.
19

20 **Section 6.** That Section 18-410(c) (sometimes known and cited as Section 410,
21 Subsection (c), Chapter 18) of the Revised Municipal Code, relating to joint and survivor
22 benefits be amended by adding the language underlined as follows:
23

24 **Sec. 18-410. Joint and survivor benefits.**
25

26 (c) *Designation of beneficiary.* Notwithstanding other provisions of the Code, and
27 except as otherwise provided in Section 18-411 of the Code, a member can designate
28 any person to receive, upon the member’s death, the benefits set forth herein. A member
29 may designate only one person as a beneficiary. An active or deferred member may

1 designate a contingent beneficiary who shall become the primary designated beneficiary
2 if the primary designated beneficiary predeceases the active or deferred member, and
3 the active or deferred member does not submit a new beneficiary designation form to the
4 plan prior to the active or deferred member's death. If a member designates more than
5 one person as either a beneficiary or a contingent beneficiary, the beneficiary designation
6 shall fail and shall be treated as if the member has no beneficiary on file with the plan. If
7 a member is married, the spouse must be designated as the beneficiary, unless the
8 spouse waives, in writing, his/her right to these benefits. A member must name an
9 individual and may not designate a fictional or artificial person as a beneficiary. In order
10 for a beneficiary designation, or change in beneficiary designation, to be effective, the
11 Plan must receive, in its offices, a completed and notarized beneficiary designation form
12 prior to a member's death. A member's employer is not authorized to receive the form
13 instead of the Plan. Section 18-418 of the Code prohibits a member from transferring or
14 assigning benefits, thus the member cannot designate a trust as his/her beneficiary.
15 Retired members may not designate a contingent beneficiary.

16
17 **Section 7.** That Sections 18-413(a), 18-413(b)(1), and 18-413(b)(2) (sometimes
18 known and cited as Section 413, Subsections (a), (b)(1) and (b)(2), Chapter 18) of the
19 Revised Municipal Code, relating to the monthly payment of benefits be amended by
20 deleting the language stricken and adding the language underlined as follows:

21
22 **Sec. 18-413. Monthly payment of benefits.**

23
24 (a) *Duration.* Monthly retirement benefit payments to the retired member shall become
25 payable on the first business day of the month following the member's effective retirement
26 date and shall ~~continue monthly to be paid~~ on the first business day of the month
27 thereafter until the last monthly payment prior to death. If retirement benefit payments
28 become payable to a member's spouse or named beneficiary, such payments to the
29 spouse or named beneficiary shall be made in monthly installments commencing, except
30 as otherwise set forth in this article, on the first business day of the month following the
31 month in which the retired member died and shall continue until the last monthly payment
32 prior to the death of such spouse or named beneficiary or prior to such other authorized
33 termination of benefit payments as are called for in this division. Benefits authorized and
34 issued but unpaid to and unclaimed by members, spouses or beneficiaries after three (3)
35 years from the date of issuance shall escheat to the trust.

36
37 (b) *Delivery.*

- 38 (1) For members who retire before January 1, 2011, the payments shall, at the
39 request of the retired member, spouse or named beneficiary, either:
40 a. Be placed in the mail of the United States Postal Service ~~before~~ on the first
41 business day of each month directed to either the last-known address of the
42 payee shown on the records of the retirement plan or the address last

1 designated in writing by the retired member, spouse or named beneficiary to
2 which the payment is to be sent on record with the retirement plan, or
3 b. Be deposited directly in an intermediary bank selected by the retirement
4 board so as to be available to the payee on the first business day of the month
5 in the account of the payee at the payee's designated depository financial
6 institution, and notice of such deposit shall be placed promptly in the mail of the
7 United States Postal Service directed to the last-known address of the payee
8 shown on the records of the retirement plan, or delivered in any other manner
9 offered by the plan.

- 10 (2) For members who retire on or after January 1, 2011, or for beneficiaries who
11 become eligible for a monthly retirement benefit on or after January 1, 2011,
12 the payments shall be deposited directly in an intermediary bank selected by
13 the retirement board so as to be available to the payee on the first business
14 day of the month in the account of the payee at the payee's designated
15 depository financial institution, and notice of such deposit shall be placed
16 promptly in the mail of the United States Postal Service directed to the last-
17 known address of the payee shown on the records of the retirement plan, or
18 delivered in any other manner offered by the Plan.
19

20 **Section 8.** That Section 18-417(b)(4) (sometimes known and cited as Section 417,
21 Subsection (b)(4), Chapter 18) of the Revised Municipal Code, relating to the denial of
22 benefits; hearing procedures, be amended by deleting the language stricken and adding
23 the language underlined as follows:
24

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

26
27 (b) *Appeal of executive director's decision.*
28

29 (4) Record of proceedings. The proceedings before the retirement board or hearing
30 officer shall be ~~kept by a certified shorthand reporter with the cost thereof being~~
31 ~~paid by the plan~~ recorded. If the decision of the retirement board or the hearing
32 officer is to deny the petition, the plan shall provide without cost one (1) copy of
33 the record made during the hearing to the petitioner, upon written request. The
34 plan shall provide any additional copies requested by the petitioner at the rate of
35 one dollar (\$1.00) paid in advance for each page of the transcript of proceedings
36 and exhibits received or offered into evidence. All witnesses shall testify under oath
37 administered by the ~~reporter~~ Chairperson of the retirement board or the hearing
38 officer, and each witness under subpoena shall be paid by the subpoenaing party,
39 in advance, for attendance the fees and mileage provided for a witness in a court
40 of record in Colorado.
41

42 **Section 9.** That Sections 18-418(b)(4)b.1. and 18-418(b)(5)b. (sometimes known and

1 cited as Section 418, Subsections (b)(4)b.1. and (b)(5)b., Chapter 18) of the Revised
2 Municipal Code, relating to the anti-alienation provision be amended by adding the
3 language underlined as follows:

4
5 **Sec. 18-418. Anti-alienation provision.**
6

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

10
11 (4) If the member dies prior to retirement the following terms shall govern
12 regarding the DRO:

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

20
21 1. The DRO payment to the former spouse shall commence the first
22 business day of the month following the date when the member would have
23 (but for death) reached age and other requirements for a normal retirement
24 benefit under the terms of the plan.
25

26 (5) If the member dies after retirement the following terms shall govern
27 regarding the DRO:

28
29 b. If so agreed, the continued payments to the former spouse shall begin no
30 later than the first business day of the month following thirty (30) days from the
31 date of the member's death and shall continue to be paid until the death of the
32 former spouse.
33
34
35

36 [SIGNATURE PAGE FOLLOWS]
37
38
39

1 COMMITTEE APPROVAL DATE: October 30, 2018
2 MAYOR-COUNCIL DATE: November 6, 2018
3 PASSED BY THE COUNCIL _____ November 19, 2018

4 _____ -PRESIDENT

5 APPROVED: _____ -MAYOR Nov 20, 2018

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

10
11 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ ; _____

12
13 PREPARED BY: Victoria A. Hale, GENERAL COUNSEL,
14 DENVER EMPLOYEES RETIREMENT PLAN,
15 October 18, 2018

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

21
22 Kristin M. Bronson, City Attorney

23 BY: _____, Assistant City Attorney DATE: Nov 7, 2018