

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2010

COUNCIL BILL NO. _____
COMMITTEE OF REFERENCE:
Safety

A BILL

for an Ordinance amending the City and County of Denver Old Hire Fire Pension Plan which will remove the requirement for members to select a distribution method within 30 days of retirement.

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

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.* To 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; member's 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.

(d) *Agreement with board.* To enter the DROP, a member must execute an irrevocable agreement with the board. The agreement shall require the member to terminate employment no later than the date declared by the member. The date shall be

1 no later than the fifth anniversary of participation in DROP. The agreement shall also
2 acknowledge that no disbursement of DROP funds shall occur absent the separation or
3 death of the member.

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

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

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

30 (h) *Retirement benefit established at time of entry into DROP.* DROP participants
31 shall have full voting rights on the retirement system. DROP participants shall earn no
32 additional service credit or additional benefits, and the rank escalator benefit shall be
33 established and calculated by utilizing the rank and grade held by a member at the time
34 of the member's commencement of participation in DROP.

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

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

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

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

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

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

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

33 d. Periodic monthly payments for a designated period of years. FPPA will calculate
34 the dollar amount of the member's periodic payment, so that the entire balance in the

1 member's DROP account will have been distributed to the member by the end of the
2 period selected by the member. This amount will be recalculated annually during April;
3 e. Initial minimum required distribution. FPPA will calculate the dollar amount of the
4 member's periodic payment based on the member's current DROP account balance,
5 and in accordance with subsection 18-581(k)(2), termination of participation in DROP
6 section; or

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

11 (2) Regardless of the form of payment the member chooses, the minimum distribution
12 amount will be determined and made in accordance with Internal Revenue Code section
13 401(a)(9) and the regulations thereunder. The minimum distribution is recalculated by
14 FPPA annually on the bases of the life expectancy of the member and the member's
15 designated beneficiary, if applicable.

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

19 (4) (3) If the member dies before July 5, 2000, the member dies during the period of
20 the member's participation in the DROP, and the member's designated beneficiary is the
21 member's surviving spouse to whom the member was legally married at the time of the
22 member's death, then the member's designated beneficiary shall receive at the
23 beneficiary's option, a lump sum payment from the member's individual DROP account
24 balance plus any accrued earnings or loses, or equal monthly installment payments from
25 the member's individual DROP account balance for a period of no more than ten (10)
26 years. At the end of the ten-year period, a final disbursement of remaining funds in the
27 account shall be made. If the member dies on or after July 5, 2000, the member dies
28 during the period of the member's participation in the DROP, and the member's
29 designated beneficiary is the member's surviving spouse to whom the member was
30 legally married at the time of the member's death, then the member's designated
31 beneficiary shall be entitled to select one of the distribution methods set forth in
32 subsection (k)(1) of this section 18-581, subject to the provisions of this termination of
33 participation in DROP section. If no selection is made by the beneficiary within thirty (30)
34 days of the member's death, the lump sum payment method shall be utilized. Payment

1 of DROP account proceeds shall be in addition to normal survivor benefits payable to
2 survivors of retirees.

3 ~~(5)~~ (4) If a member or surviving spouse chooses and was qualified to choose a
4 distribution method involving periodic payments under subsections (k)(1)c., (k)(1)d. or
5 (k)(1)f., he or she may make a change in payment once a year during April; provided,
6 that the benefit recipient shall contact the FPPA and the board in writing no later than
7 March 1st of the year in which he or she wishes to make the change.

8 ~~(6)~~ (5) If the member dies during the period of participation and the member's named
9 beneficiary is someone other than the member's surviving spouse to whom the member
10 was legally married at the time of the member's death, then the named beneficiary shall
11 receive a lump sum payment equal to the member's individual DROP account balance,
12 including accrued earnings or losses. Payment of DROP account proceeds shall be in
13 addition to normal survivor benefits payable to survivors of retirees.

14 ~~(7)~~ (6) If the member dies during the period of participation and the named beneficiary
15 has not survived the member, the member's estate shall receive a lump sum payment
16 equal to the member's individual DROP account balance plus accrued earnings or
17 losses. Payment of DROP account proceeds shall be in addition to normal survivor
18 benefits payable to survivors of retirees.

19 ~~(8)~~ (7) Except for assignments for child support purposes and writs of garnishment
20 that are the result of a judgment taken for arrearages for child support or for child
21 support debt, and except for court-approved marital agreements complying with state
22 law under section 14-10-113(6), C.R.S., no portion of the account, before or after its
23 order shall be held, seized, taken subjected to, detained, or levied on by virtue of any
24 attachment, execution, injunction, writ, interlocutory or other order or decree, or process
25 or proceeding whatsoever issued out of or by any court of this state for the payment or
26 satisfaction, in whole or in part, of any debt, damage, claim, demand, or judgment
27 against the city, member, or the beneficiary of the fund.

28 (l) *Compliance with IRS requirements.* The board shall take all necessary steps to
29 insure that the DROP is administered in full compliance with all applicable IRS rules and
30 regulations, and in compliance with all determinations issued specifically to the old-hire
31 fire fighter's DROP plan.

32 (m) *Required Internal Revenue Service provisions:*

33 (1) The plan year is the calendar year.

34 (2) The benefits payable from this plan are subject to the applicable limitations on

1 benefits imposed by the Internal Revenue Code section 415(b), which are incorporated
2 herein by reference. Deposits to the DROP account are not considered contributions to
3 a defined contribution plan subject to the limits of Internal Revenue Code section 415(c).

4
5
6 COMMITTEE APPROVAL: _____, 2010.

7 MAYOR-COUNCIL DATE: _____, 2010.

8 PASSED BY THE COUNCIL _____ 2010

9 _____ - PRESIDENT

10 APPROVED: _____ - MAYOR _____ 2010

11 ATTEST: _____ - CLERK AND RECORDER,
12 EX-OFFICIO CLERK OF THE
13 CITY AND COUNTY OF DENVER

14 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2010

15 PREPARED BY: _____, ASSISTANT CITY ATTORNEY _____ 2010

16 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
17 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
18 ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to §3.2.6 of
19 the Charter.

20
21 City Attorney

22 By: _____, _____ City Attorney - _____, 2010