

1 **BY AUTHORITY**

2 ORDINANCE NO.
3 SERIES OF 2015

COUNCIL BILL NO. CB15-0591
COMMITTEE OF REFERENCE:
Governance and Charter Review

6 **A BILL**

7 **For an ordinance amending the 1963 Retirement Plan with regard to definitions,**
8 **establishment and management of trust fund, retirement board, retirement**
9 **categories, retirement benefits, joint and survivor benefits, and monthly**
10 **payment of benefits.**
11

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

17 **WHEREAS**, subsequent to consideration of information provided by the Plan's investment
18 consultant, the Board believes it is prudent to lower the interest rate used for the actuarial
19 assumption of investment return; and,

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

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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(18) (sometimes known and cited as Section 402, Subsection
31 (18), Chapter 18) of the Revised Municipal Code, relating to definitions be amended by deleting
32 the language stricken and adding the language underlined as follows:

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Sec. 18-402. Definitions.

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

Section 2. That Section 18-403(d)(2)a. (sometimes known and cited as Section 403, Subsection(d)(2)a., Chapter 18) of the Revised Municipal Code, relating to the establishment and management of trust fund be amended by deleting the language stricken and adding the language underlined as follows:

Sec. 18-403. Establishment and management of trust fund.

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

(2) The duties of the trustees, investment managers or custodians shall include the following:

a. They shall invest and reinvest their share of the corpus and income of the trust fund subject to the requirements of the investment ~~manual~~ policy covering trust fund investments as set forth in the trust or custodial agreement.

Section 3. That Section 18-405(g) (sometimes known and cited as Section 405, Subsection (g), Chapter 18) of the Revised Municipal Code, relating to the retirement board be amended by deleting the language stricken and adding the language underlined as follows:

Sec. 18-405. Retirement board.

(g) *Rules and regulations; adoption and amendment of the plan.* The board shall adopt an investment ~~manual~~ policy setting forth policies for investment of the trust and general standards for investment managers to follow. The board may also adopt its own rules of conduct and procedure, and by-laws governing its operations. As the need arises, because of changes in the applicable governing law, including this division and the Internal Revenue Code, or as deemed necessary by the board, the board may modify, from time to time, the investment ~~manual~~ policy and the rules and by-laws governing its conduct and the operations of the plan. The board shall be responsible for the resolution or settlement of claims or disputes, for the formation and adoption of rules and regulations pertinent to the operations of the retirement plan and for recommendations to the city council for amendments to the plan when, in the judgment of the retirement board, such changes are necessary or desirable. No recommendations for an amendment to the plan which may

1 affect the cost of or contributions to the plan shall be made to the mayor and city council
2 unless accompanied by a report from the plan's actuary clearly setting forth the effect of
3 such amendment on future contributions by the city and by the employees.
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5 **Section 4.** That Section 18-408(j)(7) and Section 18-408(j)(8) (sometimes known and cited as
6 Section 408, Subsections (j)(7) and (j)(8), Chapter 18) of the Revised Municipal Code, relating to
7 retirement categories be amended by deleting the language stricken and adding the language
8 underlined as follows:
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10 **Sec. 18-408. Retirement categories.**

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12 (j) *Re-employment by the employer.* Unless a member meets the requirements set forth below
13 in paragraph (7) of this subsection 18-408(j), the following shall apply:
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15 (7) A retired member who meets all of the following requirements will not be considered
16 to be re-employed by the employer and, therefore, subject to paragraph (1) of this
17 subsection:
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19 a. the member has been separated from service and has not received any
20 remuneration from the city or any other covered employer for a minimum of thirty (30)
21 days, including any settlement and payment of accrued vacation and accrued sick
22 leave in accordance with section 18-134 of the Revised Municipal Code, ~~excluding~~
23 ~~any SIP payments made under Section 18-604;~~ and

24 b. the member does not work more than 1,000 hours in any calendar year after
25 the initial date of reemployment by the employer following the member's retirement.
26 For purposes of this Section, re-employment shall mean employment in any capacity,
27 where a member receives remuneration of any kind from the City, other than as a
28 self-employed independent contractor (as that term is defined by the Internal
29 Revenue Service and the Department of Labor).
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31 (8) Any member who works more than 1,000 hours in a calendar year, for his/her
32 previous employer, shall not meet the requirements of paragraph (7) listed above, and
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34 a. shall instead be considered to be reemployed by the employer and subject to
35 the provisions of paragraph (1) of this subsection 18-408(j) as of the first hour worked
36 in excess of the 1000 hours; and,

37 b. shall have the applicable retirement benefit and death benefit immediately
38 ~~terminated~~suspended; and

39 c. shall not be eligible to receive a subsequent or continuation of the retirement
40 and death benefits until the first day of the calendar year following the previous
41 ~~termination~~suspension of benefits, after which the member may not work for more
42 than 1,000 hours during the calendar year without being again subject to paragraph
43 (1) above and having retirement and death benefits suspended as set forth in this
44 subsection 18-408(j).

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Section 5. That Section 18-409(h)(1) and Section 18-409(i) (sometimes known and cited as Section 409, Subsections (h)(1) and (i), Chapter 18) of the Revised Municipal Code, relating to retirement benefits be amended by deleting the language stricken and adding the language underlined as follows:

Sec. 18-409. Retirement benefits.

(h) *Actuarial and other matters.*

(1) Actuarial assumption and interest rates: Effective October 1, 2015, theThe interest rate used for the actuarial assumption of investment return shall be eight (8) seven and three quarters (7.75%) percent. For purposes of computing the actuarially equivalent present value of benefits, the interest rate shall be the applicable interest rate either prescribed or permitted under section 417(e)(3) of the Internal Revenue Code.

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

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

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

Year of Birth	Applicable Percentage
<i>Before 1938 0.00%</i>	
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%	1
1960	15.00%	2
After 1960	15.00%	3

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

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

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

Sec. 18-410. Joint and survivor benefits.

(c) *Designation of ~~beneficiary~~beneficiaries that are fictional entities*. Notwithstanding other provisions of the Code, and except as otherwise provided in Section 18-411 of the Code, a member can designate any person to receive, upon the member’s death, the benefits set forth herein. A member may designate only one person as a beneficiary. If a member designates more than one person, the beneficiary designation shall fail and shall be treated as if the member has no beneficiary on file with the plan. If a member is married, the spouse must be designated as the beneficiary, unless the spouse waives, in writing, his/her right to these benefits. A member a participant must name an individual and may not designate a fictional or artificial person as a beneficiary. Section 18-418 of the Code prohibits a member from transferring or assigning benefits, thus the member cannot designate a trust as his/her beneficiary.

Section 7. That Section 18-413(d) (sometimes known and cited as Section 413, Subsection (d), Chapter 18) of the Revised Municipal Code, relating to monthly payment of benefits be amended by deleting the language stricken and adding the language underlined as follows:

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Sec. 18-413. Monthly payment of benefits.

(d) *Recovery of overpayments.* Pursuant to the procedures set forth in Section 18-405(b)(3) ~~the~~The plan is ~~authorized to~~ shall obtain repayment of any overpayments from any future benefits to be paid to the member, the spouse of a member, or the named beneficiary of a member, or, upon the death of a member, spouse or beneficiary, where no further payments are to be made, from the estate of the member, of the member's spouse or of the member's named beneficiary. The recovery of overpayments includes amounts paid to a member prior to the member's re-employment or re-instatement as set forth in section 18-408(j).

COMMITTEE APPROVAL DATE: August 25, 2015

MAYOR-COUNCIL DATE: September 1, 2015

PASSED BY THE COUNCIL: _____, 2015

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2015

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

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2015; _____, 2015

PREPARED BY: Victoria A. Hale, GENERAL COUNSEL,
DENVER EMPLOYEES RETIREMENT PLAN,
Date: May 15, 2015

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

D. Scott Martinez, Denver City Attorney

BY: _____, Assistant City Attorney DATE: _____, 2015