

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2021

COUNCIL BILL NO. CB21-1424
COMMITTEE OF REFERENCE:
Finance & Governance

A BILL

For an Ordinance modifying Article XII (RETIREMENT) of Ch 18, of the Denver Revised Municipal Code, to add actuarial analysis and funding requirements for the unfunded actuarial liability of the 1963 Retirement Plan.

WHEREAS, the council finds and determines that the Denver Employee’s Retirement Plan (“DERP”) is a pension plan the city created in 1963, pursuant to Article XII, of Chapter 18 of the Denver Revised Municipal Code (“Denver Pension Law”) to provide eligible city employees with income during retirement; and,

WHEREAS, the council finds and determines that the DERP is and has historically been funded by employer contributions from the city and contractual entities participating in the DERP plan until 2003, at which time a portion of the actuarially required funding burden was shared with employees; and,

WHEREAS, the council finds and determines that Denver Health and Hospital Authority (“DHHA”) is a contractual entity (as defined by section 18-402(8)) that participates in the DERP plan to provide retirement benefits to past, current and retired DHHA employees and their beneficiaries who are members in the DERP plan; and,

WHEREAS, the council finds and determines that contractual entities and their employees have historically been required to contribute the same percentage of their employees’ gross salary as the City pursuant to section 18-407; and,

WHEREAS, the council finds and determines that, pursuant to chapter 18, Article 12 of Denver’s revised municipal code, DHHA and the DERP Board have historically contracted directly to allow DHHA to make supplemental contribution payments to the DERP plan to fully and timely fund the **normal cost** of the DHHA pension obligations because the DHHA normal cost is greater than the DHHA contributions required by section 18-407; and,

WHEREAS, the council finds and determines that the DHHA and DERP agreements have not addressed the growing unfunded actuarial liability (“UAL”) related to DHHA’s pension promises because Denver Pension Law did not explicitly require payment of the UAL; and,

1 **WHEREAS**, the council finds and determines that since DHHA closed DERP to new
2 DHHA participants effective January 1, 2001, DHHA's contributions calculated under section
3 18-407 have decreased and will continue to decrease as the payroll of DHHA members in the
4 plan continues to decrease; and,

5 **WHEREAS**, the council finds and determines that contributions must address both the
6 normal cost of pension promises as well as address the growing pension UAL to maintain the
7 actuarial soundness of the pension plan; and,

8 **WHEREAS**, the council finds and determines that a new funding mechanism should
9 be made available that is in addition to the plan's current employer and employee assessed
10 contributions as defined in section 18-407, to maintain the actuarial soundness of the plan;
11 and,

12 **WHEREAS**, the council finds and determines that Denver taxpayer dollars cannot be
13 used to fund any DHHA obligations incurred as a result of offering the DERP plan to its
14 employees; and,

15 **WHEREAS**, the council finds and determines that to ensure DHHA's contributions are
16 sufficient to provide for benefits promised to its past, current and retired employees, the
17 council desires DERP's actuaries to separately determine DHHA's funding obligations from
18 those obligations of the city to city employees.

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

21 **Section 1.** That Section 18-401 is hereby amended by adding the underlined language and
22 deleting the stricken language to read as follows:

23
24 **Sec. 18-401. – Declaration of Policy**

25
26 It is hereby declared to be the policy of the city that all contributions ~~paid by the city~~ under the
27 terms of the plan, as provided for below, and all earnings thereon, are exclusively the property and
28 for the exclusive benefit of those members, former members, retired members or their beneficiaries
29 who may be eligible for payments under terms and conditions of the plan. No part of the corpus or
30 investment return on the corpus of the trust shall be diverted to or used for purposes other than for
31 the payment of benefits to members of the plan or other persons entitled to benefits under the terms
32 of the plan and expenses incidental to the operation of the plan and the protection and enhancement
33 of the trust. The plan, effective January 1, 1963, and this division 2, as restated with amendments
34 and re-enacted as of January 1, 2006, are to further the objective of the employer in employment
35 matters under, inter alia, section 6, article XX, of the state constitution and, therefore, are declared

1 to be matters strictly of local and municipal concern of the city. It is the intent of the city to assure
2 that each contractual entity of the plan be solely responsible for the costs of all pension and health
3 benefits earned by the employees of such contractual entity, and in connection therewith to provide
4 for the adequate and timely funding of such costs by each contractual entity on an ongoing basis.

5
6 **Section 2.** That Paragraph (8) of Section 18-402 of the Denver Revised Municipal Code regarding
7 contractual entities is hereby amended by adding the underlined language and deleting the stricken
8 language to read as follows:
9

10 **Sec. 18-402. – Definitions**

11 (8) *Contractual entity* shall mean any governmental agency or public entity exempt from the
12 payment of federal income taxes by reason of express or implied governmental immunity under the
13 Constitution or laws of the United States of America that joins the retirement plan, with the legislative
14 approval of the city, by contracting with the retirement board upon and after review by and approval
15 from the plan's regularly employed actuary. The contractual entity's contribution rates, may have
16 separate funding requirements for normal cost of pension benefits and for amortization of the portion
17 of the unfunded actuarial liability attributable to that contractual entity's current or former employees
18 ~~retirement.~~ Contribution rates, retirement and health benefits, benefit schedules and refund
19 privileges shall be the same for the contractual entity's employees as for city employees. The
20 effective date for contractual entity employees shall be the date of the contract; however, the
21 contractual entity's employees may have credit for current service between the contractual entity's
22 effective date and January 1, 1963, if paid for with the contributions required for regular membership
23 together with the applicable interest rate by both the employee and the contractual entity.

24
25 **Section 3.** That a new Paragraph (32) shall be added to Section 18-402 as follows:
26

27 **Sec. 18-402. – Definitions**

28 (32) *Unfunded Actuarial Liability* shall mean the excess of the actuarial value of liabilities
29 attributable to employees of the city or any contractual entity over the actuarial value of the assets
30 attributable to the employees of the city or any contractual entity. The Unfunded Actuarial Liability
31 for the plan, the city and each contractual entity shall be calculated separately as of the last day of
32 each plan year by the retirement board's regularly employed actuary.

1 **Section 4.** That Subsection (c) of Section 18-407 of the Denver Revised Municipal Code regarding
2 contributions and payroll deductions is hereby amended by adding the underlined language and
3 deleting the stricken language to read as follows:
4

5 **Sec. 18-407. – Contributions and Payroll Deductions.**

6 (c) *Insufficient employer contributions.* If the employer makes insufficient contributions to the
7 plan, it shall promptly pay the amount of the deficiency necessary to maintain or assist in maintaining
8 ~~to~~ the plan on a sound actuarial basis.
9

10 **Section 5.** That Subsection (e) of Section 18-407 of the Denver Revised Municipal Code regarding
11 employer contributions is hereby amended by adding the underlined language and deleting the
12 stricken language to read as follows:
13

14 **Sec. 18-407. – Contributions and Payroll Deductions.**

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

22 (1) Effective until December 31, 2019, for each active member, including each elected official,
23 the employer shall contribute thirteen (13.0) percent of the member’s gross salary. Effective
24 January 1, 2020, for each active member, including each elected official, the employer shall
25 contribute fifteen and three quarters (15.75) percent of the member’s gross salary. In the case
26 of a contractual entity, the employer shall, as a condition necessary to becoming or remaining
27 a contractual entity, also make any actuarially determined supplemental contributions
28 necessary to fund the ~~current~~ cost of benefits available under the plan payable to past, current
29 and future employees of the contractual entity. Such supplemental contribution shall include
30 the difference in the normal cost of benefits for current employees of the contractual entity
31 and amortization of the Unfunded Actuarial Liability attributable to current or former
32 employees of the contractual entity, as determined by the retirement board’s regularly
33 employed actuary and approved by the retirement board. A contractual entity’s supplemental
34 contribution for any plan year must be made within 180 days of the end of the plan year in

1 which it is due. Further, the employer ~~city~~ may make additional discretionary contributions at
2 any time., ~~upon appropriation of funds for that purpose by City Council.~~

3
4 (2) For accounting, reporting, and record-keeping purposes, a portion of said contributions from
5 each employer shall be contributed so that it can be allocated and apportioned to the health
6 benefits account created by section 18-412 based upon the determination made, from time
7 to time, by the plan's actuary of the amount necessary for the actuarial soundness of the
8 health benefits account, such portion not to exceed, however, two (2) percent of said total
9 gross salary. Expenses relating to the administration and investment of the health benefits
10 account shall be charged thereto with the same limitations imposed thereon as are set forth
11 in section 18-403 regarding the administration of pension benefits.

12
13 **Section 6.** That Subsection (g) of Section 18-407 of the Denver Revised Municipal Code regarding
14 contributions and payroll deductions is hereby amended by adding the underlined language and
15 deleting the stricken language to read as follows:
16

17 **Sec. 18-407. – Contributions and Payroll Deductions.**

18 (g) *Actuarial valuation.* For the purpose of making its annual recommendation of contributions
19 to be made by each employer, the retirement board shall cause to be made, at least every other
20 year, an actuarial valuation or valuations of the plan and trust fund including the health benefits
21 account. When practicable, such valuations shall be based upon appropriate actuarial investigations
22 into mortality, service, salary experience and other data pertaining to the members and retired
23 members of the plan. Such actuarial valuation or valuations shall include separate valuations for
24 each employer, based on methodology approved by the retirement board. The retirement board
25 shall have its actuary or actuaries conduct an actuarial experience investigation of the plan at least
26 every fifth year of the plan's operation. If the actuarial experience investigation determines that the
27 assumptions previously adopted by the retirement board no longer reflect the actual experience of
28 the plan, the retirement board shall adopt, upon the advice of its actuary or actuaries, new
29 assumptions, or modify current assumptions, or retain current assumptions if there is no actuarial
30 impact on the plan, in order to accurately reflect the experience which occurred during the period
31 reflected in actuarial experience investigation and the future experience which is anticipated will
32 occur. The new assumptions shall remain in use until the next actuarial experience investigation.
33 The retirement board shall adopt, from time to time, upon the advice of its actuary or actuaries, and
34 in accordance with applicable federal law or regulation, such mortality and other tables or interest

1 rates as it may deem necessary or appropriate for the proper operation of the plan.

2

3 **Section 7. Effective date.** This bill takes effect January 3, 2022.

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5 COMMITTEE APPROVAL DATE: November 23, 2021

6 MAYOR-COUNCIL DATE: November 30, 2021

7 PASSED BY THE COUNCIL: _____

8 _____ - PRESIDENT

9 APPROVED: _____ - MAYOR _____

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

13 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____ ; _____

14 PREPARED BY: Robert A. McDermott, Assistant City Attorney DATE: December 2, 2021

15 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
16 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 Kristin M. Bronson, Denver City Attorney

21
22 BY: _____, Assistant City Attorney DATE: _____

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