

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB20-0564

SERIES OF 2020

COMMITTEE OF REFERENCE:

Finance & Governance

A BILL

For an ordinance repealing Chapter 18, Article XX of the Revised Municipal Code, thereby removing the expired 2009 Special Incentive Program requirements and reenacting requirements for the 2020 Special Incentive Program of the City and County of Denver.

WHEREAS, the Career Service Board has determined it to be the prevailing practice in the Denver metropolitan area for employers facing budget constraints severe enough to force a reduction in payroll, a situation the City and County of Denver now finds itself in fiscal and calendar year 2020, to offer special incentives to their employees for the purposes of reducing payroll expenses, and

WHEREAS, such special incentive plans are, therefore, on occasion provided in the Denver metropolitan area in addition to the normal compensation and benefits customarily and currently paid.

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

Section 1. That Chapter 18, Article XX of the Revised Municipal Code entitled SPECIAL INCENTIVE PROGRAM is hereby repealed and reenacted as follows:

ARTICLE XX - SPECIAL INCENTIVE PROGRAM

Sec. 18-800. - Purpose of the special incentive program.

The purposes of the special incentive program (SIP) are:

- (a) To reduce expenditures for personnel employed by the city;
- (b) To provide financial incentives from revenues available either for appropriation from the general fund or for expenditure from the various funds and accounts described in the fiscal code of the city in order to encourage employees eligible for a normal retirement benefit to separate from employment and to avoid or minimize forced layoffs that would otherwise be required;
- (c) To enable and encourage agency and department heads to achieve vacancy savings and control the level of expenditures for personnel while maintaining the proper level of performance of duties; and

1 (d) To afford those employees who are eligible for normal retirement and willing to separate from
2 service some financial assistance.

3 **Sec. 18-801. - Definitions.**

4 The following definitions are used in this Article.

5 (a) Administrator means the Manager of Finance of the city or such other officer or appointee
6 designated by the Manager.

7 (b) Employee means an active member of the Denver Employees Retirement Plan as defined in
8 subsection 18-402(2) or subsection 18-402(13) of the Code who is either a full-time employee in the
9 career service of the city as set forth in Denver Charter section 9.1.1 or a full-time employee of the
10 city whose salary or wage is paid directly or indirectly from the general funds of the city, excluding
11 any employees of a contractual entity as defined in subsection 18-402(8).

12 (c) SIP-Eligible Employee means an employee who irrevocably agrees to separate from service
13 and who is eligible for normal retirement, as currently defined in section 18-402(20).

14 (d) City means the City and County of Denver, a municipal corporation created by and operating
15 by virtue of Article XX of the Constitution of the State of Colorado.

16 (e) SIP means the special incentive program, the name by which this article XX of chapter 18 of
17 the Code may be known and cited.

18 (f) Normal retirement shall have the same meaning as currently defined in subsection 18-402(20).

19 (g) Participant shall mean a SIP-eligible employee who has met the requirements set forth in
20 section 18-803.

21 (h) Separate from service means voluntary termination from employment but shall not include any
22 person terminated for violation of career service rules.

23 (i) Pension plan shall mean the Denver Employees Retirement Plan created under article XII of
24 chapter 18.

25 (j) Final check shall mean the check issued after the employee's final payroll check that includes
26 any payment due for unused paid time off (PTO) or paid sick and vacation leave in accordance with
27 DRMC section 18-127(b) and section 18-134, respectively.

28 **Sec. 18-802. - Administration.**

29 (a) Duties of the administrator. SIP shall be administered by the administrator in accordance with
30 its terms and purposes. The administrator shall determine a SIP-eligible employee's eligibility for

1 participation in the SIP and shall distribute the incentive payments described in subsection 18-804(b)
2 due to or to be paid on behalf of SIP participants.

3 (b) Finality of Decisions. The decisions made and the actions taken by the administrator in the
4 administration of SIP shall be final.

5 (c) Expenses. The administrator shall not invade the corpus of the trust created by section 18-403
6 in order to administer SIP.

7 **Sec. 18-803. - Eligibility.**

8 In order to participate, an employee must:

9 (a) Qualify as a SIP-eligible employee;

10 (b) Apply in writing on a form provided by the administrator in accordance with the terms of the
11 SIP no later than July 10, 2020;

12 (c) Be an employee of the city on the date of application;

13 (d) Voluntarily separate from service on or before August 31, 2020; and

14 (e) Sign an agreement setting forth the terms and conditions for participation in the SIP.

15 **Sec. 18-804. - Payment.**

16 (a) Source. The amount to be paid under SIP shall be from funds appropriated or allocated to the
17 agency or department of the city in which the employee last served at the time of separation from
18 service. Amounts paid to Denver Employees Retirement Plan employees shall be paid in accordance
19 with subsection 18-403(e).

20 (b) Incentive payment. Each SIP participant shall receive an incentive payment comprised of the
21 following:

22 (1) the sum of Five Thousand Dollars (\$5,000) to be paid in two equal installments. The first
23 installment shall be included in the employee's final check, and the second installment shall be paid
24 no later than January 22, 2021;

25 (2) an amount equal to the participant's current weekly salary on the date of separation multiplied
26 by the number of years of service on the date of separation, but not to exceed a maximum of Forty
27 Thousand Dollars (\$40,000). One-third (1/3) of this amount shall be included in the employee's final
28 check, and two-thirds (2/3) of this amount shall be paid no later than January 22, 2021. For the
29 purposes of this paragraph, "years of service" shall not include any service purchased under the
30 terms of the pension plan.

1 a. For employees paid hourly, the current weekly salary shall be calculated as follows:
2 the employee's regular annual salary on the date of separation divided by fifty-two (52) weeks.

3 (c) *Incentive Payments Excluded from Calculation of Retirement Benefit*. Incentive payments
4 shall be excluded from the definition of compensation used in calculating an employee's retirement
5 benefit under the pension plan.

6 (d) *Receipt of Payment*. Payments due under SIP are not intended to be actually or constructively
7 received as defined under the Internal Revenue Code prior to the date of payment. The participant
8 does not have ability or authority to draw upon or control the receipt of the payment.

9 (e) *Limits on Participation*. The SIP will be limited to forty percent (40%) of all eligible employees
10 by fund, including 40% by appropriation accounts within the general fund, on a first come, first served
11 basis. The city reserves the right to limit the total number of participants in the SIP in order to
12 preserve the viability of a department's basic programs and the integrity of its financial resources.

13 (f) *Contingencies*. In the event of the participant's death prior to the payment of all incentive
14 payments being paid, the remainder of such incentive payments shall be deemed the property of the
15 city and shall not be paid to any beneficiary of the participant.

16 **Sec. 18-805. - Amendment and appropriation.**

17 The city agrees to pay the incentive payments available under SIP from its funds as the same
18 are available for annual appropriation or other budget allocation from year-to-year, subject only to
19 appropriations required for preexisting obligations created by law or contract, including those set
20 forth in the Charter and ordinances of the city. Although the city reserves the right to amend SIP for
21 whatever reasons it may deem appropriate, incentive payments shall not be reduced by any such
22 amendment; neither shall the rights of the participants to the receipt of incentive payments be
23 diminished to the extent that annual appropriations have been made for the payment of incentive
24 payments.

25 **Sec. 18-806. - Termination.**

26 The city's SIP incentive obligations shall terminate under the following circumstances:

27 (a) The final payment is paid to the participant; or

28 (b) The death of the participant.

1 **Sec. 18-807. - No employment rights created.**

2 Nothing contained in the SIP shall be construed as a contract of employment or as a right to
3 continue employment with the city, or as a limitation of the city to dismiss, demote, or discipline any
4 of its employees in accordance with applicable personnel rules.

5 **Sec. 18-808. - Assignment of incentive payments.**

6 Participants receiving incentive payments from the SIP shall be restrained from selling,
7 assigning, or otherwise alienating their incentive payments. The incentive payments from the SIP
8 shall not at any time be subject to the claims of creditors or subject to payment or execution upon
9 judgment for the liabilities or torts of said participants. The SIP incentive payments shall not be liable
10 for or subject to attachment, garnishment, execution, qualified domestic relations order, other
11 domestic relations orders, or other legal process. This provision is hereby found, determined and
12 declared to be a matter strictly of local and municipal concern to the city.

13 **Sec. 18-809. - Participation by the employees of the Denver Employees Retirement**
14 **Plan.**

15 Employees of the Denver Employees Retirement Plan shall be eligible to participate in the
16 SIP if they meet eligibility requirements, including receipt of and restrictions on the benefit, however,
17 the pension plan shall be the administrator for its employees and the pension plan shall be solely
18 responsible for the funding and administration of SIP benefits for pension plan employees who are
19 eligible and opt to participate in the SIP. The term "pension plan" or "the pension plan" shall be
20 substituted for the term "city" or "the city" wherever that term is used above to describe the entity
21 responsible for obligations created by the SIP.

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23 **REMAINDER OF PAGE INTENTIONALLY BLANK**

1 COMMITTEE APPROVAL DATE: June 17, 2020
2 MAYOR-COUNCIL DATE: June 23, 2020
3 PASSED BY THE COUNCIL: _____
4 _____ - PRESIDENT
5 APPROVED: _____ - MAYOR _____
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____;
10 PREPARED BY: Robert A. McDermott, Assistant City Attorney DATE: June 25, 2020
11 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
12 the City Attorney. We find no irregularity as to form and have no legal objection to the proposed
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
14 3.2.6 of the Charter.
15
16 Kristin M. Bronson, Denver City Attorney
17
18 BY: _____, Assistant City Attorney DATE: _____