ARTICLE XIII. - EMPLOYEES' VOLUNTARY DEFERRED COMPENSATION PLAN[10]

Footnotes:
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Sec. 18-434. - Introduction and purpose.
(a) The plan to be made available by the city to employees and officers of the city is a system for voluntary deferral of the receipt of compensation affording tax deferral in order to enhance the participant's security during retirement years. The purpose of the plan is to attract and hold in governmental service qualified individuals by permitting them to enter into arrangements with the committee acting on behalf of the city which will provide them benefits as specified in the plan.

(b) Nothing contained in the plan shall be deemed to constitute an employment agreement between the participant and the city, and nothing contained herein or in the plan shall be deemed to give a participant any right to be retained in the employment of the city. The plan is intended to comply with section 457 of the Internal Revenue Code of 1986, as amended, as an eligible deferred compensation plan.

(Ord. No. 908-97, § 1, 12-15-97)

Sec. 18-435. - Definition.
The word "plan," when used in this article or in the plan, itself, shall mean the deferred compensation plan adopted by the committee.

(Ord. No. 908-97, § 1, 12-15-97)

Sec. 18-436. - Administration.
(a) The plan shall be administered by the committee and the committee shall represent the city in all matters concerning the plan. The committee shall consist of nine (9) voting members, two (2) of whom shall be plan retirees; and one (1) of whom shall have working knowledge or experience with retirement plans. All appointed committee members shall be participants of the plan. Six (6) of the committee members shall be appointed by the mayor, and serve at the mayor's pleasure. Two (2) of the committee members shall be appointed by and serve at the pleasure of city council, one (1) of whom shall be a plan retiree. The initial city council appointees shall be appointed to the following terms: one (1) shall be appointed to a three-year term, and one (1) shall be appointed to a four-year term. The manager of finance or the manager's designee, shall be the ninth member. The city attorney or the city attorney's designee, shall serve as an ex-officio nonvoting member, but shall not be eligible to serve, nor serve, as a trustee. The city attorney shall advise the committee of any changes in applicable law affecting the status of the plan under section 457 of the Internal Revenue Code and regulations promulgated thereunder.

(1) The committee members first appointed after the effective date of this section shall be appointed as follows so as to create staggered terms: Two (2) members shall be appointed to serve for two (2) years, three (3) members shall be appointed to serve for three (3) years, and three (3) members shall be appointed to serve for four (4) years. After these initial appointment terms have been served, each committee member shall be appointed thereafter for a four-year term. Committee members shall be eligible for reappointment.

(2) The committee shall meet more than once per calendar quarter. At its first meeting each year, the committee shall elect a chair and vice-chair. The chair and/or vice-chair shall report at least annually to the city council regarding the status of the plan.

(b) The committee shall have full power and authority to prepare an annual budget, adopt and, from time to
time, amend the plan, to establish procedures for rules and regulations, and to adopt and implement rules and regulations for the administration of the plan, provided such rules and regulations are not inconsistent with the provisions of this article, section 2.5.3(D) of the Denver Charter, or section 457 of the Internal Revenue Code, and to interpret, alter, amend, or revoke any rules and regulations so adopted. The committee may engage professional services as deemed necessary by the committee in its sole discretion to administer the plan.

(c) Excepting administrative expenses of the committee assessed to the participants, which shall not exceed one (1) percent of annual deferrals, all funds and earnings thereon shall be held by the city in a trust, custodial account, or qualifying insurance contract, for the exclusive benefit of the participants and their beneficiaries and allocated in accordance with deferrals to the participant's account until such accumulated funds with earnings and losses thereon are to be distributed in accordance with the provisions of the plan and the agreement made by the participant under the plan. The name of any trust created hereunder shall be the "City and County of Denver Deferred Compensation Trust," and assets of the plan may be held in that name for the exclusive benefit of participants and their beneficiaries.

(d) Trustees acting under trust agreements, or custodians acting under custodial agreements, or insurers administering qualifying insurance (group annuity) contracts, or any combination of them, may be engaged by the committee. Such trustees, custodians, or insurers may be removed by the committee at any time, and others may be selected by the committee. Such entities so engaged shall be institutions properly authorized under national or state laws to conduct a trust, custodial, or insurance business, and their expenses shall be paid out of the plan assets subject to the prior approval of the committee. The committee is hereby authorized to execute the appropriate trust, custodial, or group annuity insuring agreements not inconsistent with the provisions of the plan and the provisions of section 457 of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder, with those entities properly selected as set forth above. Any change in the form of management of the fund assets from that described in the plan shall require the prior written approval of the committee.

(e) The committee must adopt and approve a plan which meets the requirements of this article, section 457 of the Internal Revenue Code, and regulations promulgated thereunder or relating thereto. The current plan adopted under Ordinance No. 594, Series of 1980, as amended, shall remain in effect unless or until further amended by the committee as provided herein.

(f) Every action taken by the committee shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The committee shall be deemed to have exercised reasonable care, diligence, and prudence and to have acted impartially as to all persons interested unless the contrary be proved by affirmative evidence. The committee and the members thereof and the city shall not be liable for losses due to the failure of investments, whether directed by the participant or not, or for depreciation of assets in the plan, or loss of earnings or gains reinvested, or losses resulting from the failure of participants to direct the investment of assets held by the city in trust under the plan, nor shall the city or any person or the committee be required to replace any loss which may result from investments or failures to invest or direct the investment of any such moneys or assets.

(g) In order to ensure that payroll deductions are properly recorded in compliance with all applicable laws and regulations and to ensure that organizations, trustees, custodians, insurance companies, or any of them, engaged by the committee are required to conform to reasonable monitoring and reporting requirements, all matters relating to the power and duty of the manager of finance to make necessary payroll deductions shall be subject to audit by the city auditor.

(Ord. No. 908-97, § 1, 12-15-97; Ord. No. 1025-02, § 10, 12-16-02; Ord. No. 775-07, § 28, 12-26-07; Ord. No. 466-12, § 1, 9-17-12; Ord. No. 428-13, § 9-9-13)

Sec. 18-437. - Participation in the plan.
Elected officials and all permanent and temporary officers and employees of the city, including, but not limited to, those employed within the career service and the classified service of the police and fire departments and those appointed and employed by the mayor; the auditor; the city council; the civil service commission; the clerk and recorder; the district attorney; the library; the county court; and the board of adjustment-zoning, who execute an agreement with the committee assenting to the provisions of the plan may participate in the plan. Retirees with a cumulative plan account balance in excess of five thousand dollars ($5,000.00) shall also be considered participants of the plan for purposes of section 18-436.

(Ord. No. 908-97, § 1, 12-15-97; Ord. No. 264-07, § 20, 6-11-07; Ord. No. 466-12, § 2, 9-17-12)

Sec. 18-438. - Investments.

Notwithstanding anything which appears in this article or the plan, neither the city nor the committee shall be required to make investments or purchase assets with plan funds, but in the event the city or the committee shall purchase such investments or assets, it shall not be required to exercise any option, or right with respect to such investment or assets or, if it wishes to exercise any option, election, or right under such investments or assets, it shall not be required to exercise any option, election, or right in any particular manner.

(Ord. No. 908-97, § 1, 12-15-97)

Sec. 18-439. - Amendment or termination of plan.

(a) The city may at any time terminate the plan. Upon such termination, the participant's full compensation on a nondeferred basis will be thereupon restored.

(b) The committee may amend the provisions of the plan, provided, however, no amendment shall affect the rights of participants or their beneficiaries to the receipt of benefits available as a result of compensation deferred before the time of the amendment, and further provided that prior to making any amendments to the plan, the committee shall notify city council in writing of the proposed amendments.

(Ord. No. 908-97, § 1, 12-15-97)

Sec. 18-440. - Relationship to other plans.

The amount of compensation deferred will be included in determining benefits or rights under the city's retirement and group insurance plans. Payments under the deferred compensation plan will supplement retirement, death, and other benefits payable under the retirement plan.

(Ord. No. 908-97, § 1, 12-15-97)

Sec. 18-441. - Nonassignability clause.

Neither the participant nor the participant's beneficiary shall anticipate, assign or pledge any payments or benefits available under the plan (which payments and rights thereto are expressly declared to be nonassignable and nontransferable) and in the event of any attempted anticipation, assignment or pledge, or any other partial or complete transfer, the city and the committee shall have no further liability to the participant hereunder or under the plan; nor shall any unpaid benefits or payments be subject to debts, damages for tort liability, attachments, garnishment or execution, or be transferable by operation of law in event of bankruptcy, insolvency, or assignment for the benefit of creditors, except to the extent otherwise required by law preemptive of this article. However, notwithstanding the foregoing restrictions, domestic relations orders that are applicable to eligible plans under section 414(p)(11) of the Internal Revenue Code will be allowed, but only to the extent that the domestic orders and agreements are drafted and approved in accordance with, and otherwise comply with C.R.S., section 14-10-113, with the plan, and with the procedures promulgated by the committee from time to time.
(Ord. No. 908-97, § 1, 12-15-97; Ord. No. 1135, § 1, 12-26-01)

Sec. 18-442. - Special accounts.

Custodial accounts or group annuity contracts that are used in place of a trust must meet the requirements of section 401(f) of the Internal Revenue Code of 1986, as amended, must contain a specific provision that the instrument is written for the exclusive benefit of participants in a section 457 deferred compensation plan, and must state that the person holding the assets of such a contract or account shall be treated as the trustee thereof.

(Ord. No. 908-97, § 1, 12-15-97)

Sec. 18-443. - Manager of finance.

The city manager of finance is directed and empowered to make necessary payroll deductions and the manager of finance and all other city officers and employees are directed and empowered to take whatever other action may be necessary to facilitate the accomplishment of the purposes of the deferred compensation plan. The audit committee shall cause to be made once each year a complete audit of the fund and shall furnish to the mayor, the city council, and the committee a written report showing the result of such audit.

(Ord. No. 775-07, § 29, 12-26-07)


Secs. 18-444—18-548. - Reserved.