

COUNCIL BILL NO. 08-052  
ORDINANCE NO. 4149

AN ORDINANCE APPROVING A FIRST AMENDMENT TO THE CITY OF ARVADA  
RETIREMENT PLAN REGARDING DISTRIBUTIONS, CONTRIBUTIONS AND  
FORFEITURES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARVADA, COLORADO:

Section 1. All references in the following sections shall apply to the City of Arvada Retirement Plan document unless otherwise stated.

Section 2. ARTICLE I., NAME AND DEFINITIONS, §1.02, Definitions, paragraph (f), Normal Compensation, is hereby amended to read as follows:

”(f) Compensation: The total amount paid to a Participant by the Employer for personal services rendered during each Plan Year including regular salary or pay; any pay for administrative, sabbatical, annual, sick, vacation, or personal leave; longevity pay; pay for compensatory time or holidays; payments by the City from grants; contributions to this Plan by the City pursuant to Code § 414(h); performance or merit payments, if approved by City; and retroactive salary payments pursuant to court orders, arbitration awards, or litigation and grievance settlements.

"Compensation" does not include commissions, compensation for unused sick leave converted at any time to cash payments, severance pay, housing allowances, uniform allowances, automobile usage, insurance premiums, dependent care assistance, reimbursement for expenses incurred, tuition or any other fringe benefits, regardless of federal taxation, bonuses for services not actually rendered, including but not limited to early retirement inducements, cash awards, honorariums and damages, except for retroactive salary payments paid pursuant to court orders or arbitration awards or litigation and grievance settlements, or payments beyond the date of a member's death.

Only compensation paid while an Employee is a Participant shall be taken into account for purposes of Sections 3.04 and 3.05.

For Plan Years beginning after December 31, 2001, the amount of Compensation used to determine the retirement benefit of a Participant must not exceed \$200,000 as adjusted in accordance with Code § 401(a)(17). The Compensation limitation in effect for any Plan Year (or for any twelve-month Compensation period) is the limitation in effect at the beginning of that Plan Year (or other twelve-month period). For a Plan Year (or other compensation measuring period) of less than twelve months, the Compensation limitation is a prorated dollar amount, determined by multiplying the Compensation limitation by a fraction, the

numerator of which is the number of months in the short period and the denominator of which is twelve.

Notwithstanding any other provision of the Plan, effective January 1, 1996, the amount of Compensation used to determine the retirement benefit of a Participant must not exceed the following limits.

(1) For individuals who first became Participants before January 1, 1996, the limit is the amount of Compensation permitted to be taken into account under Code § 401(a)(17) as that Section existed on January 1, 1993.

(2) For individuals who first became Participants on or after January 1, 1996, the limit is the amount of Compensation permitted to be taken into account under Code § 401(a)(17) as that Section existed on January 1, 1996.

Notwithstanding any other provision of the Plan, effective for Plan Years beginning after December 31, 1997, an Employee's Compensation shall include any elective deferral (as defined under Code § 402(g)(3)) and any amount that is contributed or deferred by the Employer at the election of the Employee and which, by reason of Code §§ 125, 134(f)(4), 402(e)(3), 402(h) or 457, is not includible in the gross income of the Employee."

Section 3. ARTICLE I., NAME AND DEFINITIONS, §1.02, Definitions, paragraph (dd), Trust, is hereby amended, effective January 1, 2009, to read as follows:

"(dd) Trust: The defined contribution plan trust established between the Employer and the Trustees pursuant to the City of Arvada Retirement Plan Trust Agreement, effective January 1, 2009."

Section 4. ARTICLE I., NAME AND DEFINITIONS, §1.02, Definitions, paragraph (ee), Trust Fund, is hereby amended to read as follows:

"(ee) Trust Fund: All cash, securities and other property arising from contributions under the Plan received by the Trustees, all increments thereto, and receipts from any other source whatsoever."

Section 5. ARTICLE I., NAME AND DEFINITIONS, §1.02, Definitions, paragraph (ff), Trustees, is hereby amended, effective January 1, 2009, to read as follows:

"(ff) Trustees: The trustees of the Trust, specifically the City Retirement Board, or any successor trustees, as provided under the City of Arvada Retirement Plan Trust Agreement, effective January 1, 2009."

Section 6. ARTICLE III., CONTRIBUTIONS, ACCOUNTS AND VALUATIONS, §3.06, General Limitations on Annual Additions, is hereby amended to incorporate the Final Treasury Regulations under Code § 415, to read as follows:

"3.06 General Limitations on Annual Additions

(i) In no event shall the total Annual Additions for any Participant for any Plan Year exceed the lesser of (i)\$40,000 as adjusted for increases in the cost-of-living under Code § 415(d), or (ii) one hundred percent (100%) of such Participant's Compensation for the Limitation Year, as such term is defined in Section 1.02(x) hereof. If there is a short Limitation Year because of a change in Limitation Year, the Plan shall multiply the \$40,000 limitation (as adjusted) by a fraction, the numerator of which is the number of months in the short Limitation Year and denominator of which is twelve.

Notwithstanding the foregoing, the otherwise permissible Annual Additions for any Participant under this Plan may be further reduced to the extent necessary to prevent exceeding the limits set forth in Code § 415. The compensation limit in this subsection shall not apply to any contribution for medical benefits after separation from service (within the meaning of § 401(h) or § 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

(ii) The term "Annual Additions" shall mean with reference to this Plan and any other defined contribution plan maintained by the Employer and qualified under § 401(a) of the Code, the sum of (i) Employer contributions; (ii) forfeitures, if any; and (iii) Mandatory Participant Contributions. "Annual Additions" shall not include (i) restorative payments made to restore losses to the Plan resulting from actions by a fiduciary for which there is a reasonable risk of liability for breach of fiduciary duty under applicable state law, where Participants who are similarly situated are treated similarly with respect to the payments; (ii) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (iii) rollover contributions as described in Code §§ 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16); or (iv) repayments of loans made to a Participant from the Plan.

(iii) The Term "Compensation" shall mean Compensation as defined in Section 1.02(f), with the modifications set forth in this subsection.

The following amounts shall be included in "Compensation" for the purposes of applying the limitations of this Section 3.06, for Plan Years beginning on or after January 1, 2008:

1. wages and other regular pay, including overtime or shift differentials, commissions, bonuses, or other similar payments, received by a Participant within the later of 2 ½ months after the Participant's severance from employment or the end of the Limitation Year in which the Participant's severance from employment occurs, but only to the extent such wages and other regular pay represents payment for services performed prior to severance from employment and would have been paid to the Participant if he or she continued employment with the City; and

2. vacation and sick leave payments received by a Participant within the later of 2 ½ months after the Participant's severance from employment

or the end of the Limitation Year in which the Participant's severance from employment occurs, but only to the extent such vacation and sick leave payments are for unused bona fide sick, vacation or other leave and the Participant would have been able to use the leave if he or she continued employment with the City.

3. compensation received pursuant to a nonqualified deferred compensation plan, but only if the payment would have been paid at the same time if the Participant had continued in employment with the City and only to the extent the payment is included in the Participant's gross income.

In addition, for the purposes of applying the limitations of this Section 3.06, "Compensation" for Plan Years beginning on or after January 1, 2008 shall not include:

1. payments to a Participant who does not currently perform services for the City by reason of qualified military service;

compensation paid to a Participant who is permanently and totally disabled; or

3. any amounts earned by a Participant but not paid during the Limitation Year solely because of the timing of pay periods and pay dates.

(v) Reduction of Annual Additions.

If the total Annual Addition for any Participant for a Limitation Year would otherwise exceed the maximum Annual Addition permitted under this Section, the excess amount will be disposed of as follows:

1. If the Participant is covered by the Plan at the end of the Limitation Year, the excess amount in the Participant's Employer Contribution Account will be used to reduce the Employer's contributions for such Participant in the next Limitation Year, and each succeeding Limitation Year, if necessary.

2. If, after the application of subsection 1., an excess amount still exists, the remaining amount of the excess Annual Addition shall be deducted from the Mandatory Participant Contribution which otherwise would be allocated to such Participant for such Limitation Year, and shall be refunded to the Participant.

3. If, after the application of subsection 2., an excess amount still exists, and the Participant is not covered by the Plan at the end of the Limitation Year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future Employer Contributions for all remaining Participants in the next Limitation Year, and each succeeding Limitation Year, if necessary."

Section 7. ARTICLE IV., DISTRIBUTABLE BENEFIT, §4.06, Payment of Benefits, paragraph (e), Rollover of Lump Sum Distribution to Eligible Retirement Plan, is hereby amended to reference the availability of a direct rollover option for a Beneficiary with respect to his or her distributable interest in the Plan, to read as follows:

“e. Rollover of Lump Sum Distribution to Eligible Retirement Plan: A Participant or Beneficiary who receives a benefit eligible for distribution in a direct rollover, pursuant to § 402(c) of the Code, may elect a direct rollover of such distribution to an Eligible Retirement Plan, subject to the applicable requirements of Code § 402(c).”

Section 8. ARTICLE IV., DISTRIBUTABLE BENEFIT, §4.11, Application of Forfeitures, paragraphs (b) and (c), is hereby amended to read as follows:

“(b) If the value of all of the forfeitures incurred under Section 4.05 held by the Plan exceeds \$100,000 as of the last day of any Plan Year, then the amount of forfeitures in excess of \$100,000 shall be allocated to Participants pro rata based upon each Participant’s months of continuous service with the City during which the Participant participated in City benefit plans. The determination of the Participants eligible for excess forfeiture allocations, and their respective months of continuous service, shall be made as of the last day of the Plan Year in which the excess forfeitures arose. In determining the total months of service of a Participant, a month in which the Participant completed at least one day of service shall be credited as a full month. Continuous service, for the purposes of this paragraph and paragraph (c), below, shall mean a period of service in which the Participant does not incur a Break in Service.

(c) Any forfeitures which shall occur prior to the termination of the Plan but which have not been applied to pay administrative expenses of the Plan, shall be distributed to those Participants who were Employees on the effective date of the termination of this Plan pro rata based upon each Participant’s months of continuous service with the City during which the Participant participated in City benefit plans.”

Section 9. ARTICLE V., THE PLAN ADMINISTRATOR, is hereby amended, effective January 1, 2009, to reference and coordinate with provisions of the City of Arvada Retirement Plan Trust, to read as follows:

## “ARTICLE V

### THE PLAN ADMINISTRATOR

#### 5.01 Board to Act as Plan Administrator.

The Plan Administrator shall be the City Retirement Plan Board (“Board”), as set forth in the City of Arvada Retirement Plan Trust Agreement, effective January 1, 2009.

5.02 Rights and Duties.

The Plan Administrator shall exercise all of its discretions in a uniform, non-discriminatory manner and shall have all necessary power to accomplish its purpose, including but not limited to the power:

- (a) To determine all questions relating to the eligibility of Employees to participate in the Plan.
- (b) To determine all questions relating to Years of Service.
- (c) To compute the amount of benefits payable to Participants and their Beneficiaries.
- (d) To maintain all of the necessary records for the administration of this Plan.
- (e) To authorize all disbursements by the Trustees from the Trust.
- (f) To make and publish such rules for the administration of this Plan as are not inconsistent with the terms hereof.
- (g) To establish a funding policy for the Trust Fund.”

Section 10. The City of Arvada Retirement Plan, as amended, is hereby restated, ratified and approved.

Section 11. This ordinance shall be effective five days after publication, following final passage.

INTRODUCED, READ, AND ORDERED PUBLISHED THIS 1st of December, 2008

PASSED, ADOPTED AND APPROVED this 15th day of December, 2008.

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Robert G. Frie, Mayor

ATTEST:

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City Clerk

APPROVED AS TO FORM

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Christopher K. Daly, City Attorney

Publication Dates: December 4, 2008  
December 18, 2008