

BY AUTHORITY

ORDINANCE NO. **4246**

COUNCILLOR'S BILL NO. **12**

SERIES OF 2024

INTRODUCED BY COUNCILLORS

**DeMott, Nurmela**

A BILL

FOR AN ORDINANCE AMENDING TITLE XIV CHAPTER 2, OF THE WESTMINSTER MUNICIPAL CODE CONCERNING THE EMPLOYEE 401(a) DEFINED CONTRIBUTION PLAN

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 14-2-1, W.M.C. is hereby AMENDED to include a new subsection (I) to read as follows:

(I) On May 6, 2024, the City approved changes to: (i) increase the amount for mandatory cashouts upon termination from \$1,000 to \$7,000; (ii) allow Participants to take in-service distributions due to domestic violence incidents; and (iii) clarify Board membership and the selection of a Vice Chairperson.

Section 2. Section 14-2-7(C), W.M.C., is hereby AMENDED to read as follows:

(C) *Distribution of Interests.*

(1) *Insurance.* If there has been an investment in life insurance for the benefit of any Participant whose vested Interest under the Plan becomes distributable for any reason other than death, such Participant may, subject to any limitation set forth elsewhere in the Plan, obtain an absolute assignment of any such life insurance by informing the Board of such election. If said election is not exercised within 30 days after the Participant's termination of employment and the conversion election provided for is not made, the Board shall cause said contract to be surrendered no later than the end of the policy year and shall add the proceeds of such surrender to the vested Interest of said Participant. After December 31, 1996, no new life insurance contracts may be adopted as pension investments under the Plan.

(2) *Election to Defer Benefits.* Except as provided in subsection (3) below, a Participant may elect to defer the commencement of distribution of the Participant's benefit, but in no event shall the commencement of distribution be later than the required distribution commencement date specified in subsection (F) of this section.

(3) *Distribution of Participant's Vested Interest.* Any other provision of this subsection (C) to the contrary notwithstanding, a Participant, in the event of a termination of employment for any reason, shall be entitled to receive payment in one lump sum of the Participant's vested Interest, provided the Participant makes written demand therefor upon the Board. Notwithstanding any provision of the Plan to the contrary, if the amount of a Participant's vested Interest (including any rollover contributions that were made to the Plan pursuant to Section 14-2-4(F), W.M.C.) does not exceed ~~\$1,000.00~~\$7,000.00 at the time of a Participant's termination of employment for any reason, such Participant's vested Interest shall be automatically distributed in a ~~cash~~ lump sum as soon as administratively practicable after the Participant's termination of employment for any reason as follows:

(a) Mandatory Distribution of Vested Interest Valued at \$1,000 or Less. If the Participant's vested Interest has a value of \$1,000 or less, unless the Participant elects otherwise, the Plan Administrator shall distribute the Participant's Interest directly to the Participant.

(b) Mandatory Distribution of Vested Interest Valued in Excess of \$1,000. If a Participant's vested Interest exceeds \$1,000 but not \$7,000, unless the Participant elects otherwise, the Plan Administrator shall distribute the vested Interest in a direct rollover to an individual retirement plan designated by the Board in accordance with Code section 401(a)(31)(B).

For purposes of this subsection (C)(3), if such amount is zero dollars, the Participant will be deemed to have received a distribution of such amount.

Section 3. Section 14-2-7, W.M.C., is hereby AMENDED to include a new subsection (M) to read as follows:

(M) *Distribution Following Instances of Domestic Abuse.* Effective January 1, 2024, upon experiencing a domestic abuse incident, a Participant may elect to withdraw a portion of his or her vested Interest not to exceed the lesser of (1) \$10,000 (as adjusted for increases in the cost of living under Code section 72(t)(2)(K)(vii)), or (2) 50% of the Participant's vested Interest. Prior to receiving such a distribution, a Participant shall certify that either the Participant, the Participant's child or another member of the Participant's household experienced physical, sexual, emotional, or economic abuse.

(1) *Timing and Frequency.* Such distribution must be taken within 12 months of the domestic abuse incident.

(2) *Repayment.* A Participant is permitted, but is not required, to repay the domestic abuse incident distribution(s) to the Plan in full or in part within three years of the date of the distribution in accordance with procedures established by the Plan Administrator. Any repayment made to the Plan shall not exceed the aggregate amount of the Participant's domestic abuse incident distribution(s) and will be treated as an eligible rollover contribution pursuant to Section 14-2-4(F) W.M.C.

(3) *Aggregation.* The total of all distribution(s) following a domestic abuse incident received under this Plan in a taxable year may not exceed \$10,000 (as adjusted for increases in cost of living described under Code section 72(t)(2)(K)(vii)).

Section 4. Sections 14-2-10(A), (C), and (H), W.M.C., is hereby AMENDED to read as follows:

(A) *Appointment of Board.*

(1) *General rule.* The Board shall consist of 5 members: one shall be the current City Finance Director; one shall be appointed by the City Manager to serve at the City Manager's pleasure; and 3 shall be Contributing Participants elected by a majority of the voting full Participants. One of the 3 elected members shall be an exempt employee as defined in the City's Personnel Policies and Rules. In no case shall more than one elected member be from the same department.

The Board at its discretion may appoint nonvoting members who may attend meetings but shall not have a vote on Board actions.

The Trustee shall serve as Chairperson of the Board. The Board shall also elect a Vice Chairperson, which election shall be held every other year. If the Chairperson is unable to serve in their capacity as Chairperson, the Vice Chairperson will have the authority to serve as Chairperson. The Vice Chairperson may be elected from the voting or nonvoting members of the Board.

(2) *Procedures for electing the three members.* The 3 members to be elected shall be elected for 3-year staggered terms, with the term of one such member expiring in December of each year. The procedure to be followed in initially electing such members shall be established by the Trustee. After the first year of the election, procedures shall be established by the Board.

(C) *Organization and Operation of Board.* The Board may adopt such rules and procedures as it deems desirable for the conduct of its affairs, ~~appoint one of its own members chairman,~~ and appoint a secretary or other agents, none of whom need be a member of the Board, but any of whom may be, but need not be, an officer or Employee of the City. It may delegate to any agent such duties and powers, both ministerial and discretionary, as it deems appropriate, excepting only that all matters involving investment of funds, interpretation of the Plan and settlement of disputes shall be determined by the Board. Any determination of the Board may be made by a majority of the Board at a meeting thereof, or without a meeting by a resolution or memorandum signed by all members, and shall be final and conclusive on the City, the

Trustee, all Participants and Beneficiaries claiming any rights under this chapter, and as to all third parties dealing with the Board or with the Trustee. All notices, directions, information, and other communications from the Board to the Trustee shall be in writing.

(H) *Resignation and Removal of Members; Appointment of Successors.*

(5) *Successor Board member.* Upon the death, resignation or removal of any elected Board member, a successor to complete the Board member's term shall be elected within ~~30~~90 days in the manner set forth in subsection (A) of this Section.

Section 4. Section 14-2-11(G)(4), W.M.C., is hereby AMENDED to read as follows:

(G) *Resignation and Removal of Trustee:* The City, by action of the City Manager, may, in its discretion, appoint an additional non-voting Trustee to act as co-trustee with the City Finance Director, which may, but need not, be a bank or trust company organized under the laws of Colorado or the United States authorized by law to administer trusts and maintaining and operating a full-time trust department.

(4) *Corporate co-trustee.* In the event any corporate co-trustee at any time acting hereunder shall be merged, or consolidated with, or shall sell or transfer substantially all of its assets and business to another corporation, whether ~~State~~state or federal, or shall be in any manner reorganized or reincorporated, then the resulting or acquiring corporation shall thereupon be substituted ipso facto for such corporate co-trustee hereunder without the execution of any instrument and without any action upon the part of the City, any Participant or Beneficiary of any deceased Participant, or any other person having or claiming to have an interest in the Trust Fund or under the Plan.

Section 5. This ordinance shall take effect upon its passage after second reading. The full text of this ordinance shall be published within 10 days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 22<sup>nd</sup> day of April, 2024.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 6<sup>th</sup> day of May, 2024.

ATTEST:

  
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City Clerk

*Nancy McNally*  
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Mayor

APPROVED AS TO LEGAL FORM:  
*David Frankel*  
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City Attorney's Office