

**CITY COUNCIL  
COMMUNICATION:**

**ITEM \_\_\_\_\_**

**OFFICE OF THE CITY MANAGER  
CITY OF DES MOINES, IOWA**

**98-570**

**SYNOPSIS -**

**AGENDA:**

DECEMBER 21, 1998

The City has sponsored a "section 457" deferred compensation plan since 1975. The law regulating such plans was amended by the passage of THE SMALL BUSINESS JOB PROTECTION ACT OF 1996 (SBJPA).

**SUBJECT:**

SECTION 457 DEFERRED  
COMPENSATION PLAN  
AND COMPLIANCE  
ISSUES

Prior to the law change, the City plan was required by law to hold plan assets as the unrestricted property of the City, subject to the claim of creditors. The new law requires plan assets to be held for the exclusive benefit of plan participants. In order to follow the requirement for plan assets held in companies which have not yet demonstrated compliance with the new law, it is recommended that the Council authorize the establishment of a custodial trust relationship to house these plan assets. In order to expedite what is anticipated to be a temporary measure, it is recommended that such a custodial trust account be established with Norwest Bank, N. A., which currently provides the City's banking services and has been amenable to handling this matter on an expedited basis.

**TYPE:**

**RESOLUTION  
ORDINANCE  
RECEIVE/FILE**

**FISCAL IMPACT -**

**SUBMITTED BY:**

WILLIAM STOWE  
HUMAN RESOURCES  
DIRECTOR

There is no anticipated fiscal impact as the cost of this service is to be paid from plan assets held by the custodial trust.

**RECOMMENDATION -**

**Approve establishment of this custodial trust account effective January 1, 1999.**

## **BACKGROUND -**

The new law enacted in response to the Orange County, California, financial crisis several years ago, requires plan assets to be held for the exclusive benefit of plan participants. Specifically, the legislation now provides that there are three methods by which the new legal requirement can be met:

1. For annuities, having an endorsement added to each annuity contract stating that the assets are for the exclusive benefit of the participant and their beneficiaries;
2. Establishing a trust relationship to hold the assets invested thereunder for the exclusive benefit of the participant and their beneficiaries; or
3. Establishing a custodial trust account with a financial institution to hold the investment assets for the exclusive benefit of the participant and their beneficiaries.

There are approximately 1,350 active participants in the City's deferred compensation plan. Approximately 61 percent of the plan participants invest the deferred compensation through either ICMA Retirement Corporation or Fidelity Management Trust Company. Plan assets, which are in ICMA Retirement Corporation and Fidelity Management Trust Company, have met the legal requirement since 1997. Most of the other companies with whom plan participants have invested deferred compensation funds also meet the new legal requirement.

The City's Finance Department undertook to contact each of the 40 companies in which plan participants invest deferred compensation funds, in order to determine what steps were being taken to satisfy the new legal requirement and also to insure total compliance. At this point, approximately 5 percent of all plan participants have deferred compensation investments with companies with whom the City staff has been unable to verify compliance, despite substantial efforts to do so since October of this year. This amounts to 22 companies with whom 26 active and 63 inactive plan participants have

deferred compensation funds invested. These companies have either indicated they have no intention of complying with required changes or have not yet responded.

In order to follow the requirement for plan assets held in companies which have not yet demonstrated compliance with the new law, it is recommended that the Council authorize the establishment of a custodial trust relationship to house these plan assets. To expedite what is anticipated to be a temporary measure, it is recommended that such a custodial trust account be established with Norwest Bank, N. A., which currently provides the City's banking services and has been amenable to handling this matter on an expedited basis.

The cost of this service will be assessed to the plan participants whose assets are held under this arrangement. Norwest has not yet been able to determine an estimated cost for this required service.