

ORDINANCE NO. 14,555

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, by amending Subdivision III, Deferred Compensation Plan Sections 2-451 through 2-457 of Chapter 2, Administration thereof, relating to the city's deferred compensation plan.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, is hereby amended by amending Subdivision III, Deferred Compensation Plan Sections 2-451 through 2-457 of Chapter 2, Administration thereof, relating to the city's deferred compensation plan, as follows:

**Sec. 2-451. Creation.**

- a) A deferred compensation plan is available for eligible city employees in accordance with the provisions of this subdivision and detailed specifications approved by city council roll call number 5379, dated November 24, 1975 and filed with the city clerk, as such plan may be amended from time to time.
- b) A money purchase plan as authorized by roll call number 01-1147 dated June 4, 2001 and filed with the city clerk is also available for eligible city employees as such plan may be amended from time to time.

**Sec. 2-452. Purpose.**

The purpose of the deferred compensation plan and the money purchase plan is to make available to eligible city employees and city officers an opportunity to invest compensation whereby receipt and taxation of a portion of an employee's or officer's salary may be deferred.

**Sec. 2-453. Eligibility.**

- a) Deferred compensation plan: All permanent full-time and permanent part-time employees, permanent full-time and permanent part-time probationary employees and any other employees made eligible pursuant to collective bargaining agreements shall be eligible for participation provided that they enter into an agreement to defer compensation not yet earned pursuant to these code sections and consistent with section 457 of the Internal Revenue Code and applicable amendments including the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).
- b) Money purchase plan: All supervisory, management and professional permanent full-time employees and city officers shall be eligible for participation provided that they enter into an agreement to defer compensation not yet earned pursuant to these code sections and consistent with section 401(a) of the Internal Revenue Code as it may be amended from time to time.

**Sec. 2-454. Income Deferral Agreements.**

The city manager, or his or her designee, is hereby authorized to enter into agreements with city employees and city officers who may qualify for participation in a deferred compensation and/or a money purchase plan, whereby the participant may designate a portion of his or her future earnings to be deducted by the city through payroll deduction and placed in an eligible plan pursuant to current laws and regulations pursuant to section 457 or 401(a) of the Internal Revenue Code. Such agreements may include, but shall not be limited to, specifications that:

- (1) City contributions to a plan may be made as the city council may direct from time to time by resolution or by collective bargaining agreement.
- (2) The city may amend the provisions of the applicable plan at any time, provided, however, that no amendment shall affect the rights of participants or their beneficiaries to the receipt of payment of benefits.
- (3) The city shall not be responsible for any loss due to the investment or failure of investment of funds and assets in a plan, nor shall the city be responsible or required to replace any loss whatsoever which may result from said investments.
- (4) All funds and assets, together with interest, accumulations, and increments thereon, in the employee's applicable plan account shall be held in trust for the exclusive benefit of the participants and their designated beneficiaries or as otherwise

consistent with the requirements of the Internal Revenue Code.

- (5) An agreement to defer compensation not yet earned must have been entered into by the participant before the beginning of the calendar month in which deferral of compensation is to occur.
- (6) As to investments governed by section 457 of the Internal Revenue Code, early withdrawal by a current employee or an alternate payee pursuant to a domestic relations order is limited to an unforeseeable severe financial hardship involving either:
  - a. A present or imminent financial crisis imposed by a sudden unexpected illness or accident of the participant, participant's spouse, or a dependent of the participant; or
  - b. An unanticipated substantial loss of property due to casualty loss or catastrophic circumstances brought about by events wholly beyond the control of the participant.
- (7) An emergency distribution governed by section 457 of the Internal Revenue Code shall be limited to the amount necessary to meet the emergency. No emergency distribution shall be made to the extent the hardship is or may be relieved by:
  - a. Reimbursement or compensation through insurance proceeds or otherwise;
  - b. Liquidation of the participant's assets, to the extent liquidation of such assets would not itself cause severe financial hardship; or
  - c. Cessation of deferrals under the plan.
  - d. Loans permitted under the plans.
- (8) Domestic Relation Orders may be accepted as to investments governed by section 457 of the Internal Revenue Code and shall be deemed to have the effect of a Qualified Domestic Relations Order and subject to the distribution rules established by section 457 of the Internal Revenue Code as amended by EGTRRA.
- (9) Loans may be available from investments governed by sections 457 or 401(a) of the Internal Revenue Code subject to the terms of the individual plan documents and consistent with the applicable sections of the Internal Revenue Code and its regulations and so long as the investment provider administers the loan agreement and the terms of its repayment in accordance with the city's plan document.
- (10) Employee participant contributions for deferral pursuant to a deferred compensation plan or a money purchase plan

may only be placed in investment products which meet all applicable legal requirements of the Internal Revenue Code.

**Sec. 2-455. Administration of plan.**

The deferred compensation plan and money purchase plan shall be administered by the city manager, or his or her designee, who shall oversee and administer the plans and the accompanying agreements entered into pursuant to this subdivision, in a manner reasonably calculated to accomplish the overall objectives of the plan. The city may refuse to accept the services of an investment provider if it refuses or is unable to comply with the following:

- (1) Confirmation statements, quarterly reports, prospectus information, advertisements or any other communications shall be mailed to the home address of the participant.
- (2) Applications for emergency withdrawals, transfers of funds, or rollovers for participants currently employed by the city shall be submitted for approval to the city prior to such early distribution.
- (3) All distributions to participants no longer employed by the city, or beneficiaries in the event of the death of the participant, shall be payable to the participant or beneficiary as applicable with distribution to the participant as designated by the participant so long as not the city.
- (4) IRS notices and forms including "1099" forms shall be provided directly to the participant using the participant's social security number and home address.

**Sec. 2-456. Accounts.**

All records, including financial records of the deferrals and city contributions, shall be maintained in accordance with generally accepted accounting principles.

**Sec. 2-457. Nonassignability.**

Neither the participant nor his or her beneficiary nor any other designee shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments under the deferred compensation plan or money purchase plan, which payments and rights thereto are expressly declared to be nonassignable and nontransferable. For any attempted assignment or transfer, the city shall have no further liability under the plan, nor shall any payments be subject to attachment,

garnishment or execution, or be transferable by operation of law if bankruptcy or insolvency occurs, except to the extent otherwise provided by law.

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Carol J. Moser, Assistant City Attorney

T.M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No. 06-793), passed by the City Council of said City at a meeting held April 24, 2006 signed by the Mayor on April 24, 2006 and published as provided by law in the Business Record on May 8, 2006 Authorized by Publication Order No.5114.

Diane Rauh, City Clerk