

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 110220

Amending Chapter 2, Code of Ordinances, by enacting a new Section 2, Article IX, Division 10, New Money Purchase Pension Plan.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by enacting a new Section 2, Article IX, Division 10, New Money Purchase Pension Plan, that reads as follows:

ARTICLE IX

DIVISION 10

Sec. 2-1396.1. Purpose.

The purpose of the Program established by this Division 10 is to make available to eligible employees who elect to participate in this Section 401(a) qualified plan in lieu of participation in the Division 2 plan. The program shall become effective after the passage of Ordinance No. 100607.

Sec. 2-1396.2. Definitions.

The following words and phrases as used in this division shall have the following meanings, unless a different meaning is plainly required by the context:

Board means the Board of Trustees of the Trust as provided for in Section 2-1365 of the City's Code of Ordinances.

Code means the Internal Revenue Code of 1986, as amended, and includes any regulations promulgated thereunder.

Compensation means the basic monthly wage or salary paid an employee excluding bonuses, overtime, expense allowance and other extraordinary compensation. Compensation shall include amounts contributed to any plan maintained by the employer pursuant to a salary reduction agreement where the member could have elected to receive such amount as base compensation. Annual compensation means compensation defined in Code Section 415(c)(3) and Section 1.415-2(d) of the Treasury Regulations.

Employee means any person who performs services for the City whom compensation is paid on a regular basis.

Investment Options means any funding vehicle which the Board permits under the terms of the Program.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 110220

Participant means an eligible Employee who has elected to enroll in the Program and who retains the rights to benefits under the Program.

Plan means a plan described in Code Section 401(a) of the Internal Revenue Code adopted by the Board on behalf of the City for the benefit of Employees.

Program means this Kansas City Employees' Money Purchase Pension Plan as set forth herein and as may be amended from time to time. The term "Program" also encompasses the term "Plan."

Termination means resignation or discharge of Employee from service of the employer.

Trust means the Kansas City Employees' Money Purchase Pension Plan Trust established pursuant to the Program.

Sec. 2-1396.3. Adoption of Plans.

(a) *Authorization to Adopt Plans.* The Board, on behalf of the City and pursuant to the Program is authorized to adopt, continue, cancel or allow to lapse a Plan or Plans, including Plans that the City has contracted for as of the date of the current amendments to Sections 2-1361 through 2-1365, subject to the following restrictions:

- (1) The City shall not be responsible for any loss due to the investment or failure of the investment of funds and assets held pursuant to the Program, nor shall the City be required to replace any loss whatsoever which may result from such investments, or failure to make investments.
- (2) All contributions pursuant to this Program, together with interest, accumulations and increments thereon, shall be contributed to and held under the Trust for the exclusive benefit of the Participants until such time as such funds or assets are distributed to Participants and beneficiaries in accordance with the provisions of a Plan.

Sec. 2-1396.4. Assignment of rights.

Neither the Participant, nor his beneficiary, nor any other designee, shall have any right to transfer, sell, assign, pledge transfer, encumber, mortgage or otherwise convey the right to receive any payments under the Program, which payments and rights thereto are expressly declared to be nonassignable and nontransferable. In the event of any attempted assignment or transfer, the City shall have no further liability under the Program. Payments shall not be subject to attachment, garnishment or execution, or be transferable by operation of law in the event of bankruptcy or insolvency, except to the extent otherwise provided by law. Notwithstanding any of the foregoing benefits shall be paid in accordance with any applicable requirements of any state domestic relations

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 110220

order; provided that such state domestic relations orders comply with written procedures adopted by the Board of Trustees.

Sec. 2-1396.5. Miscellaneous.

(a) *Limitation of Rights; Employment Relationship.* Neither the establishment of this Program nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits under the Plan, shall be construed as giving a Participant or any other person legal or equitable rights against the City. In no event shall the terms of employment or independent contractor relationship of any Employee be modified or any way be affected by the Program.

(b) *Representations.* The City does not represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequences will result from participation in this Program.

(c) *Severability.* If a court of competent jurisdiction holds any provision of this Program to be invalid or unenforceable, the remaining provisions of the Plan shall continue to be fully effective.

(d) *Amendment and Termination.* The City may amend the provisions of this Program at any time; provided, however, that no amendment, including current amendments to these Ordinances, shall affect the rights of Participants or their Beneficiaries to the receipt of payment of Benefits, to the extent of any Compensation deferred at the time of the amendment, as adjusted for investment experience under this Program prior to and subsequent to the amendment. The City may terminate or discontinue the Program at anytime without liability for such termination or discontinuance.

Sec. 2-1396.6. Administration.

The Program established by this division shall be administered by the deferred compensation board provided for by Division 7 of this article and shall be subject to and governed by the provisions of Section 2-1364 and 2-1365 as though reenacted in this division. Payments of contributions shall be made to the Board of the Program who shall administer and pay benefits provided in this division.

Sec. 2-1396.7. Membership.

(a) *Generally.* Only those full-time, permanent Employees in the classified and unclassified services that were former MAST employees and became employees of the City on April 25, 2010, and who have made an irrevocable election to participate in this Plan in lieu of participation in the City's Employees' Retirement System. Members may also be referred to as Participants.

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 110220

(b) *Effective date.* Membership shall begin on the first day of employment. It shall cease upon termination of employment or death.

Sec. 2-1396.8. Creditable service.

(a) *Computation of total amount.* Total creditable service of a Participant in the Plan shall be the sum of membership service from date of employment to last day of employment on pay status and prior service as computed under this section.

(b) *Membership service.* Membership service shall be the years and days of employment while a member of this Plan.

(1) Solely for the purpose of determining whether a Participant has incurred a break in service, any leave of absence granted by an employer, up to 12 weeks, that qualifies under the Family and Medical Leave Act (FMLA) shall not be counted as a break in service for purposes of determining vesting.

(c) *Military leave and reemployment after military service.*

(1) To the extent by the Uniformed Services Employment and Reemployment Rights Act of 1994, a member shall be entitled to creditable service considering each month of military service as a month of employment with the City.

(2) A distribution of the Participant's account shall be offered to a Participant on military leave.

Sec. 2-1396.9. Conditions for retirement.

Required distributions. Distribution of a Participant's interest in the Program shall commence not later than April 1 of the calendar year following the later of the calendar year in which the Participant attains age 70 1/2 or the calendar year in which the Participant retires under the Program.

Sec. 2-1396.10. Termination benefits.

Generally. Upon termination of employment, a Participant in the Plan shall be paid his account in the Plan in a form of distribution permitted under the Plan.

Sec. 2-1396.11. Death benefits.

Death before retirement. If death of a Participant occurs before termination of employment, the entire amount of the Participant's account in the Plan shall be distributed to the beneficiary. If married at the time of death, the spouse shall be beneficiary unless the spouse consents to the designation of an alternative beneficiary.

Sec. 2-1396.12. Employer contributions.

(a) *Amount.* The City shall contribute twelve percent of compensation.

(b) *Method.* City contributions shall be promptly remitted to the Board. However, forfeitures may be utilized by the City to offset contribution requirements under the Plan.

(c) *Vesting.* Employer contributions made to the accounts of participants shall always be immediately and fully vested.

(d) *Trust.* The assets of the Plan shall be held in Trust by the Board. The Trust is intended to be tax exempt under Code Section 501(a).

Approved as to form and legality:

Lana K. Torczon
Assistant City Attorney