# NOTICE OF COUNCIL MEETING

STUDY SESSION
TELECONFERENCE (Open to the Public)
November 1, 2021
6:30 p.m.

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## TELECONFERENCE/ELECTRONIC PARTICIPATION PROCEDURES

***Members of the Aurora City Council will participate in the November 1, 2021 Study Session by teleconference due to concerns surrounding the COVID-19 (coronavirus) outbreak. To keep the members of our community, employees and leaders safe, there will be no public presence at the meeting. Members of the public and media will be able to participate remotely through the options listed below:***

### View or listen live to the Study Session

Live streamed at www.auroraTV.org
Cable Channels 8 and 880 in Aurora
Call: 855.695.3475

## Translation/Accessibility

The City will provide closed captioning services on Cable Channels 8 and 880. If you need any other accommodation, please contact the Office of the City Clerk at (303) 739-7094. If you are in need of an interpreter, please contact the Office of International and Immigrant Affairs at 303-739-7521 by Monday, November 1, 2021 at 9:00 a.m. (Si necesita un intérprete, comuníquese con la oficina de asuntos internacionales e inmigrantes en 303-739-7521 por el viernes anterior a la reunión del lunes.)

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For other information regarding public meetings, please contact the Office of the City Clerk at (303) 739-7094 or by email at CityClerk@auroragov.org or visit www.auroragov.org

AGENDA

Study Session of the
Aurora City Council

Monday, November 1, 2021
6:30 p.m.
VIRTUAL MEETING
City of Aurora, Colorado
15151 E Alameda Parkway

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**3.d. Repeal of Stable License (Ordinance)** 115

Trevor Vaughn, Manager of Tax and Licensing / Hanosky Hernandez Perez, Assistant City Attorney

Estimated Time: 10 mins.

**3.e. Alcohol Beverage Festival Permit (Ordinance)** 127

Trevor Vaughn, Manager of Tax and Licensing / Tim Joyce, Assistant City Attorney

Estimated Time: 10 mins.

**3.f. Short Term Rental Regulations** 141

Trevor Vaughn, Manager of Tax and Licensing / Hanosky Hernandez Perez, Assistant City Attorney

Estimated Time: 10 mins.

**3.g. Tax Administration Clarifications** 151

Trevor Vaughn, Manager of Tax and Licensing / Hanosky Hernandez Perez, Assistant City Attorney

Estimated Time: 10 mins.

## 4. ITEMS FROM THE CITY MANAGER

**4.a. Resolution Authorizing Police Defined Benefit Plan Option** 164

Terri Velasquez, Finance Director / Hans Hernandez Perez, Assistant City Attorney

Outside Speaker: Cindy Birley, Esq. Partner, Davis Graham & Stubbs LLP

Estimated Time: 20 mins.

**4.b. Executive Recruitment Kick off and Intake – Court Administrator** 323

Geoff DeMoss, Talent Acquisition Manager / Rachel Allen, Client Group Manager City Attorney Civil Division

Outside Speaker: Scott Reilly, President, Affion Public

Sponsors: City Manager Twombly and Mayor Coffman

Estimated time: 30 mins.

## 5. ITEMS FROM THE CITY COUNCIL



Sponsor: Mike Coffman, Mayor

Outside Speaker: Debbie Stafford

Estimated time: 30 mins.



Staff Source, Rachel Allen, Client Group Manager/Peter Schulte, Public Safety Client Group Manager

## 6. CALL-UPS OF COUNCIL POLICY COMMITTEE ITEMS

## 7. MISCELLANEOUS ITEMS



Philip Nachbar, Development Project Manager / Christine McKinney, Client Services Manager

Outside Speaker: Kerri Drum, Craig Bond, Aaron Vega, Krista Robinson

Estimated time: 30 mins

## 8. ITEMS REMOVED FROM THE AGENDA, IF ANY

## 9. POLICY COMMITTEE MINUTES

# CITY OF AURORA
## Council Agenda Commentary

| |
|---|
| **Item Title:** 2021 International Building Code Adoption by Ordinance |
| **Item Initiator:** Jose Rodriguez, Building Plan Review Manager, Public Works Dept., Building Division |
| **Staff Source/Legal Source:** Jose Rodriguez, Building Plan Review Manager, Public Works Dept., Building Division/ Michelle Gardner, Sr. Assistant Attorney |
| **Outside Speaker:** N/A |
| **Council Goal:** 2012: 1.0--Assure a safe community for people |

**COUNCIL MEETING DATES:**

**Study Session:** N/A

**Regular Meeting:** N/A

**ACTIONS(S) PROPOSED** ***(Check all appropriate actions)***

☐ Approve Item as proposed at Study Session

☐ Information Only

☒ Approve Item and Move Forward to Regular Meeting

☐ Approve Item as proposed at Regular Meeting

☐ Approve Item with Waiver of Reconsideration
Why is a waiver needed?Click or tap here to enter text.

**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** Planning & Economic Development

**Policy Committee Date:** 8/11/2021

**Action Taken/Follow-up:** ***(Check all that apply)***

☒ Recommends Approval

☐ Does Not Recommend Approval

☐ Forwarded Without Recommendation

☐ Recommendation Report Attached

☒ Minutes Attached

☐ Minutes Not Available

**HISTORY** ***(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)***

The City currently has adopted the 2015 Building Code. The adoption of the new 2021 Building Code was presented to the PED committee, where it received support to move forward to Study Session. This was also presented to Joint Task Force Committee on July 8,2021 and the Building Code and Contractor's Appeals and Standards Board Meeting on July 13, 2021 where it received support from both groups.

**ITEM SUMMARY** ***(Brief description of item, discussion, key points, recommendations, etc.)***

The Building Division believes that adoption of the 2021 International Codes will allow the City of Aurora to stay current with the new national codes that have been developed to provide uniformity among different jurisdictions across the country. Architects, engineers and other design professionals are familiar with the current edition of these codes and adoption of the 2021 editions will allow for an efficient interaction with the city of Aurora.

**QUESTIONS FOR COUNCIL**

Does Council support adoption of the 2021 International Codes as presented by City staff?

**LEGAL COMMENTS**

The council shall have all legislative powers of the city and all other powers of a home rule city not specifically limited by the Constitution of the State of Colorado and not specifically limited or conferred upon others by this Charter. It shall have the power to enact and provide for the enforcement of all ordinances necessary to protect life, health and property.

City Charter Sec. 3-9 (Money)

**PUBLIC FINANCIAL IMPACT**

☐ YES ☒ NO

**If yes, explain:**

**PRIVATE FISCAL IMPACT**

☒ Not Applicable ☐ Significant ☐ Nominal

**If Significant or Nominal, explain:**

Planning and Economic Development

# MINUTES

| | |
|---|---|
| **Date:** | **August 11, 2021** |
| **Time:** | **8:30 am** |
| **Members Present:** | Councilmember Marsha Berzins, Chair: Councilmember Dave Gruber, Vice Chair: Councilmember Angela Lawson |
| **Others Present:** | Alecia Peabody, Andrea Amonick, Andrea Barnes, Blake Fulenwider, Brad Pierce, Brandon Cammarata, Bruce Dalton, Cathy DeWolf, Chad Argentar, Chance Horiuchi-On Havana Street, Cindy Colip, Daniel Brotzman, Daniel Krzyzanowski, Daniel Money, David Schoonmaker, Debbie Bickmire, Elena Vasconez, Gayle Jetchick, Haley Busch Johansen, Heather Lamboy, Huiliang Liu, Jacob Cox, Jason Batchelor, Jose Rodriguez, Karen Hancock, Kelly Bish, Kevin Smith, Kevin Hougen, Mac Callison, Marcia McGilley, Marisa Noble, Melissa Rogers, Melvin Bush, Michelle Gardner, Mindy Parnes, Margie Sobey, Rachel Gruber - Denver Airport, Rachid Rabbaa, Robert Oliva, Sarah Wile, Scott Berg, Thomas Blevins, Tod Kuntzelman, Todd Hager, Tom Worker-Braddock, Trevor Vaughn, Victor Rachael, Yuriy Gorlov |

## 1. Call to Order

## 2. Approval of Minutes

### 2.a July 14, 2021 DRAFT Minutes - Council Member Berzins

July 14, 2021 minutes were approved.

## 3. General Business

### 3.a Resolution in support of renaming portions of Harvest and Powhaton Roads to Aerotropolis Parkway

Karen Hancock, Principal Planner/Michelle Gardner, Senior Assistant City Attorney (Sponsored by Council Member Gruber)

Councilmember Gruber requested the custom street name of Aerotropolis Parkway to replace portions of the Harvest Road and Powhaton Road alignments as shown in Exhibit A. Previous city-led custom street names include replacing

Ursula Street with Aurora Court on the Fitzsimons-Anschutz campus and the extension of 6th Avenue renamed in honor of Mayor Stephen D. Hogan. Planning has guidelines for adjusting street names to assure public safety response service levels are maintained and postal delivery is uninterrupted.

City of Aurora code specifies that addressing of the city is under the purview of the Planning Director (Section 126-272). Section 126-273 of city code specifies that the city will be addressed in accordance with the Denver Metropolitan Grid. Attached is a draft resolution expressing support from City Council for the alignment shown in Exhibit A to be renamed Aerotropolis Parkway. "Aerotropolis Parkway" meets Planning guidelines for custom street names. Renaming this alignment to Aerotropolis Parkway supports place branding an element of economic development for Northeast Aurora as described in Aurora Places. The street renaming to Aerotropolis Parkway was presented to the Aerotropolis Regional Transportation Authority (ARTA) was supported bythe Board of Directors. The purpose of this resolution is to name the future road from the Harvest interchange to be built on I-70 North through Aurora that will intersect with Jackson Gap. The funding for the road is from Aerotropolis, whichconsists of Adams County Commissioners, Aurora City Council members, and the Metropolitan District for Aurora Highlands. Aerotropolis Parkway will allow people to travel through Eastern Aurora and intersect with I-70 and all areas East.As this road's planning is finalized, it's essential to have a name that will last. CMGruber asked if the new road being put into place by the Aerotropolis Regional Transportation Authority will be named Aerotropolis Parkway?

- CM Lawson asked if an Intergovernmental Agreement (IGA) is required to make this type of change? CM Gruber responded that the city must name roads based on the defined grid for the entire metro area. This section of the road in the resolution is entirely within the City of Aurora. He asked for staff to address the question. Karen Hancock responded that there are rules within the code for naming streets, and custom street renaming is within the purview of this group. If needed, they can coordinate across jurisdictions with the property owners and report back.
- CM Berzins, CM Lawson, and CM Gruber approve forwarding the resolution to Study Session for review by Council.
- CM Gruber requested staff to set up a meeting as soon as possible with the landowners adjacent to the proposed Aerotropolis Parkway alignment, including representatives from Denver International Airport (DEN), to discuss the proposal. He would like this committee to host the results. Council Members do not need to attend the meeting. CM Berzins asked the staff if that is doable? Andrea Amonick responded that they would try to get that set up within the next three weeks. CM Lawson requested that

the discussions on the roads include the transportation grid. CM Gruber responded that he agrees then continued that the ARTA does not override what the city has done with the North East Aurora Transportation Study (NEATS). The NEATS identifies the location for mass transit in the Northeast sector of Aurora. That study is the basis for the work.

Council Members Berzins, Lawson, and Gruber approve forwarding the resolution to Study Session for review by Council.

**Carried**

**3.b 2021 International Building Code Adoption**

Jose Rodriguez, Building Plan Review Manager, Public Works Dept., Building Division

Scott Berg, Chief Building Official, Public Works

- This was presented to the Joint Task Force Committee on July 8,2021 and the Building Code and Contractor's Appeals and Standards Board Meeting on July 13, 2021 where it received support from both groups.
- The Building Division believes that adoption of the 2021 International Codes will allow the City of Aurora to stay current with the new national codes that have been developed to provide uniformity among different jurisdictions across the country. Architects, engineers and other design professionals are familiar with the current edition of these codes and adoption of the 2021 editions will allow for an easier interaction with the city of Aurora.
- Does the Committee wish to adopt the 2021 International Codes as recommended by staff and forward the Ordinance onto Study Session for consideration by the whole Council?
- Scott Berg, Chief Building Official, assisted since Jose was having technical issues.
    - CM Gruber asked if they have received feedback from the Homeowner Associations and construction companies and were the comments included in the plan? Is there a plan for the Unified Ordinance Office (UDO) to authorize tiny houses and cargo shipping container houses within the city? He asked that if they approve this today would that make it possible for a builder to start building homes using cargo shipping containers within the next few months, or is that something still to be addressed by the council? CM Gruber added that various types of Tiny Homes are coming to fill an important gap of providing low-cost housing.Scott Berg responded that they had done outreach through the joint task force meeting and email blasts to licensed contractors who

have pulled permits in the last couple of years. They have received the feedback, and everything brought up has been addressed. Jason Batchelor responded thatwhatever is constructed has to conform to code. The UDO does not prescribe building materials. Scott Berg responded that using a cargo shipping container would be addressed by the building code. The UDO would address the size, location on the property, and appearance. CM Berzins asked if we have shipping container homes now? Scott respondedthat such a structure was completed years ago at the solar tech project where a shipping container was used for a Solar Decathlon home. Karen Hancock responded that the definition for Tiny Homes is specific. They look at definitions of where they go and where they are allowed. Brandon Cammarata added that "tiny homes" are limited to the Residential Manufactured Home Park District (R-MH) or as Accessory Dwelling Units in Original Aurora. They are not proposed that often. Container housing, like modular housing, has the same general aesthetic requirements.

- See the attached "Planning Update for 8.11.2021 PED."
- CM Gruber recommends approving everything except the tiny homes and cargo container homes. He would like to see a follow-up meeting where the terms and a broader picture of other city regulations is presented to this committee. CM Berzins asked for this to move to the Study Session. CM Gruber agrees that the council will have to approve this. He requested the terms and a broader picture of the other city regulations done by staff and present them to the Study Session. Brandon added that the Tiny Homes guard rails are limited to zoned districts for residential or communities where they permit mobile homes. It is a limited scope, so if the council wanted to expand that or something, but it's limited at this time. GM Gruber asked if they have shipping container homes permitted? Brandon would need to check, but it would be much like a modular-type home. If they could meet the design, setback, and aesthetic requirements, they've met the city's requirements. Karen H added that they do have a Starbucks, and it was a difficult project to review.
- CM Berzins asked about the cost for tiny homes vs. shipping container homes. Bob Oliva responded that the shipping containers are the go-to pop-up device.
- Andrea Amonick suggested that the planning staff work with Mr. Berg to provide more information on how the current UDO handles this and what the impact might be. They need to work through some of the analysis and report back at the Study Session.
- CM Lawson asked how do future innovations get introduced or added to the building code? Scott responded that there is a request for modification or alternative construction provision in the building code. The code is

reactive, but if they can show it meets the code, he can approve it. CM Berzins asked if a lot of codes will be changing with the energy changes from Washington? Scott responded that it's a three-year cycle, but there are provisions for approving alternative construction means.

- CM Berzins, CM Gruber, and CM Lawson approved this item to be moved to the Study Session once staff has worked through some of the analysis and report back at the Study Session.

Does the Committee wish to adopt the 2021 International Codes as recommended by staff and forward the Ordinance onto Study Session for consideration by the whole Council?

Council Members Berzins, Gruber, and Lawson approve this item to be moved to the Study Session once staff has worked through some of the analysis and report back at the Study Session.

**Carried**

**3.c Annual Small Business SBDC Update Pandemic 8/11/21**

Marcia McGilley, Executive Director, Aurora-South Metro Small Business Development Center (SBDC)

- In September 2014, the South Metro Denver Small Business Development Center (SBDC) moved to the City of Aurora, and Aurora became the Host for the rebranded Aurora–South Metro SBDC during 2015. As the host organization, the full time Executive Director moved to the City.
- The Aurora–South Metro SBDC helps existing and new businesses grow and prosper by offering free and confidential business consulting and free/low-cost workshops. The Aurora-South Metro SBDC Center covers Aurora as well as Arapahoe, Douglas and South Adams and Jefferson counties. In 2020, the Aurora-South Metro SBDC served over 3,000 citizens with one-on-one consulting, presented 125 workshops and referred over 5,000 calls to the needed small business resources. Funding comes from several grants (SBA, CARES Act (separate from City funding), Minority Business Office, Connect2DOT, Childcare, Leading Edge), City of Aurora, municipalities, and public/private partnerships.
- The Aurora-South Metro SBDC achieved the following milestones from 1/1/2020 – 12/31/2020:
    - Created **economic impact** to the local community **(City of Aurora)** - Jobs Created: 104, Jobs Retained: 152, Capital Formation: $7.8M; Increased Sales Increase: $17.3M; Contracts/Amount: $1.7M

- Provided Exceptional **Customer Service** (CORE4 Value): Client Satisfaction rating of 97% for consulting and 96% for workshop instruction (out of 100%)

- **Pandemic and Recovery Trends and SBDC Response Strategy -** Discussion

- **Additional Funding**: In 2020, the SBDC brought in much needed extra funding to meet the needs of the local business community. Over and above the $155,000 from the Small Business Administration and $9,000 from the State of Colorado, we received $254,000 in supplemental funding from the CARES Act, $10,000 from the Office of Minority Business, $20,130 from the Department of Transportation and $26,500 from the Office of Early Childcare; a total of approximately $300,000 in additional funding.

- **Key strategic partnerships**: Chambers of Commerce, Aurora and Arapahoe Libraries, Arapahoe/Douglas Works! Workforce Center, PTAC, City of Aurora Retail Specialist, Community College of Aurora, Pickens Technical College, Office of International and Immigrant Affairs, NAACP, and others.

  - CM Lawson asked if they have training/consulting for people who want to start in Aurora with a tech type of innovation? Marcia responded that they put them through the SBDCs startup program. They have consultants that are competent and confident in doing one on one tech consulting. If it is not something that they have the expertise to take them from A to Z, they refer them within Colorado.

  - CM Gruber asked a question regarding a recent presentation he received about the impact due to the lack of childcare businesses moving into the area. Is there a way to emphasize or stress the creation of larger facilities to take care of children for the entire Aurora economy? Marcia responded that they added the home-based childcare and the center childcare program. They offer four per year and have experts on the City of Aurora team that know how to help entrepreneurs start and grow those businesses. CM Gruber is thinking of going beyond and incentivizing people to create childcare with funding for facilities. Andrea Amonick responded that Marcia and some development staff are working to help develop the childcare centers in redevelopment areas. CM Gruber responded that the only thing about the redevelopment areas is the location. They need to make sure they have centers near large employment centers. Kevin added that Bob Oliva from Development Services had done a great job working behind the scenes working with Janel Highfill with the Community College of Aurora on retail locations that might be available. CM Berzins added that there are billions of dollars coming from the government to help with daycare.

**3.d Public Works Development Review Update**

Victor Rachael, Deputy Director, Public Works Engineering

- As part of the general business agenda of the March 10, 2021 meeting, Item 3a, 2020 Development Review Annual Report and Development Process Update, an overview of various departments on time review performance was discussed. The Public Works – Engineering were very far below the performance metric goals. At the PED Committee meeting in July, the committee requested follow-up and additional discussion around drainage reviews.
- Public Works will provide an update on current performance metric measures and a brief overview on drainage reviews. Victor presented a short presentation on where they are and touched on drainage reviews.
    - CM Berzins & CM Gruber responded that they are happy to hear this and hoping we hear the same feedback from Developers.
    - CM Gruber commented that the feedback he has received is that the Master Drainage Plan is the hold-up on many of the projects in the city. Victor responded that the Master Drainage Plan set's the baseline and is the first step in the process. With the improved on-time performance, not only in civil plans but in drainage reviews, including master drainage, those are moving forward much more quickly, including utilization of the outside consultants to make sure developers can continue in the development process. CM Gruber asked if they are using the outside consultants to assist in expediting the review. Victor responded that they are utilized to supplement city resources and distribute the workload to hit the deadlines. CM Berzins commented that the delay makes the prices go higher, with the longer the land sits and the building is delayed. Victor responded they are also seeing the increased cost on the city projects as well.
    - CM Berzins asked Victor to provide another quick update next month.

## 4. Miscellaneous Matters for Consideration

### 4.a Aurora Economic Development Council

- Yuriy Gorlov reported on:

There is good activity going on in the city. There is a lot of construction underway. Of the items they're tracking, there are 2.5 million square feet of construction in the city, and 3300 acres are entitled. Businesses are moving forward with plans. There is a lot of shuffling happening in the workforce. They have a couple of deals closing in the next couple of months. They are on track to bring another two thousand jobs to the city.

### 4.b Havana Business Improvement District

- Chance Horiuchi reported on:

HBID Sales Tax Update/June YTD Report Here: Notes from Bill Levine at the City of Aurora: Through the first half of the year, the Havana BID represents 9.38% of the sales tax collections from the entire city of Aurora. While this might have been slightly higher historically, I think I mentioned to you that over the last few years the BID contributed about 10-12% in sales tax of the City's total collections (as a result of court cases and an new ordinance passed by the City of Aurora), it is inevitably true that a growing percent of sales tax is collected from online sales (not from a store located anywhere in Aurora). So, I would view this percentage holding fairly steady as a positive given this fact.

Finally, I wanted to add one additional bit of analysis that very much relates to how I think about sales tax. You will see that YTD sales tax collections generated from the Havana BID are up 15.3%. Since we are comparing back to a time period (first half of 2020) that includes when the economy was partly shut down last year due to the pandemic, it can be hard to make sense of this number. Is it good? Normally 15.3% growth would be obviously good, but we are comparing to an extremely weird and bad year. So, I like to compare my numbers back to 2019 as my pre-pandemic baseline. The numbers show that Havana BID sales tax collections in the first half of 2021 are up 9.54% compared to the first half of 2019. My mind has a much easier time comprehending that last statistic; it is clearly good growth!

- New Businesses with updates from July 2021:

NOW OPEN - Ross Dress for Less at the Gardens on Havana <https://onhavanastreet.com/business/ross-gardens-on-havana/> Cobblestone Auto Spa<https://onhavanastreet.com/business/cobblestone-auto-spa/> (Autawash/Autalube sold 5/26/2021) Coffee Story <https://onhavanastreet.com/business/coffee-story/> – Korean Coffee Shop & Café – June 2021

- Events On Havana Street

August 11, 2021, 6:30pm, Ward IV Meeting, Juan Marcano, Aurora City Council Ward IV - Five Star Residences of Dayton Place, Presentation from Aurora Water on the city's water supply, future projections based on growth, and sustainability efforts. Followed by an open Q/A.
Thursday, August 19, 2021, 8 pm, $50, Live Music – PANTEÓN ROCOCO at The Stampede
Saturday, August 21, 2021, 9pm, $40, Live Music – VIVE TOUR 2021 at The Stampede
Sunday, August 22, 2021, 11-9pm, The Stampede, FREE, SarCO te invita al 6to Festival Salvadoreño/SarCO invites you to the 6th Salvadoran Festival
Thursday, August 26, 2021, 8am, Learn More at www.ColoradoKRA.com, 1st Koreatown Aurora Golf Tournament Fundraiser
Friday, August 27, 2021, 10am, FREE, Coffee & Donuts Networking at GEICO Insurance Agency – John Sanchez
Wednesday, September 8, 2021, 6:30pm-8pm, Aurora Central Library, FREE, Ward III Town Hall – Candidate forum for Ward III and At-Large council seats, Learn More Here
Tuesday, September 28, 2021, 6:30 p.m. - 8:30 p.m., Doors Open at 6 p.m., FREE, Last Days of Summer Concert – Dotsero at The Stampede
Friday, October 1, 2021, 8 pm, FREE, Live Music – INSPECTOR, ELEFANTE at The Stampede.* See more BID Stakeholder Events on our website, The BID will promote and share existing events here at https://onhavanastreet.com/events/

## 4.c Aurora Chamber of Commerce

- Kevin Hougen reported on:

They are seeing a record number of businesses joining the Chamber and a record number of ribbon cuttings. They have a ribbon cutting on August 12, 2021 at the new Aurora Eatery at the Town Center. On August 20, 2021, the recognition of the Armed forces will honor thirteen men and women in the armed forces. Molly Coombs will be hosting a business after hours on August 26, 2021 at the Homewood Suites on Tower close to the airport. On September 16-18, 2021 they have the Leadership Retreat in Breckenridge. The Forum for the City Council Candidates is on September 29, 2021 in council chambers. It's an opportunity to listen to the candidates in Wards I, II, III and at Large. There is a Rotary State of the City Luncheon on October 13, 2021. General Raymond, Commander of the United States Space Command, has invited the Aurora Chamber to the Pentagon in Washington DC on October 12-14, 2021. On November 10, 2021 they have a joint mission with the Military Affairs Committee of Colorado Springs.

The Association of Defense Communities has its annual event in San Antonio on November 1-3, 2021.

**4.d Planning Commission**

- Melvin Bush reported on:

Tonight, will be busy as they have two comprehensive plan amendment issues; one zoning map amendment and a couple of multifamily site plans. They have a 711, and a chick-fil remodel. They are looking at a car wash, demo, and a couple of multifamily projects.

**4.e Oil and Gas Committee**

- Brad Pierce reported on:

There is an Ordinance that a council member introduced to create a climate action committee and abolish the oil & gas committee, which is on the Study Session agenda for Monday, August 16, 2021. CM Berzins commented that she wasn't sure why it did not come through the Planning & Economic Development Committee.

**4.f Business Advisory Board**

- Elena Vasconez reported on:

They have a BAB Board meeting on Monday. The report will be available next month.

**4.g Retail**

- Bob Oliva reported:

There will be a retail update next month.

The sales are exceeding pre-pandemic numbers. There are significant workforce issues. They are meeting with Aurora ONE after this meeting regarding their project. There is momentum with what's going on in the Arts District. They have opened their research department with the latest technology for shopping center owners. There is a meeting to come with Bruce, Kevin, & Rob to discuss the 40,000 acres for the Inland Port project, a decent office and retail component, and is a game-changer. They have several childcare centers ready to go. The childcare business owners need money and know there is access to money but aren't sure how to connect the dots. They are connecting them with people who can help them work on grants.

**4.h Small Business**

- See item 3.c

**4.i Visit Aurora**

- Bruce Dalton reported on:

They hosted their official open house on July 29, 2021. They are open for business at The Stanley Marketplace. They plan to expand their visitor information kiosk and help areas in other parts of the city. The Colorado tourism office just got a report from Dean Runyan Associates about the whole state of the travel industry in 2020. It was reported that Colorado tourism spending plummeted nearly $9 billion in 2020 and lost over 31,000 jobs. On a positive note, the hotels are seeing a solid recovery for the last 30 days, with an occupancy rate of 75%. Tax collections are solid right now. The one thing that is affecting our hotels and the lead volume is the Delta variant. They are hopeful that the current regulations will not change within the counties that they operate.

**5. Confirm Next Meeting Date**

September 8, 2021 at 8:30 AM Teleconferencing meeting

**6. Adjournment**

Marsha Berzins

Marsha Berzins, Chair

Planning Update for the 8/11 PED
Brandon Cammarata – Planning Manager
303.739.7251; bcammara@auroragov.org

**Tiny Homes in the Unified Development Ordinance (UDO)**

Definition

A single-family dwelling constructed on a frame and capable of being transported on its own wheels but from which the wheels have been removed, that contains less than 400 square feet of gross floor area, and that meets either the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sections 5401 et seq.) or the building code.

Permitted Zone District

RESIDENTIAL -- MANUFACTURED HOME PARK DISTRICT (R-MH).

- Tiny Homes are only permitted as a principal uses in the Manufactured Home zone district.
- Proposals must meet requirements for manufactured home parks which include; minimum lot size; outdoor common areas; streets or drives; pedestrian linkages, refuse disposal and lighting.

ADU (Accessory Dwelling Unit) Approach

- ADU's are only permitted in Original Aurora and require Planning Commission approval.
- When a Tiny Home is proposed as an ADU, it must follow design and site layout requirements.

**Shipping Containers as Residential Structures in the Unified Development Ordinance (UDO)**

- Shipping containers would need to meet architectural design and materials requirements.
- Shipping containers would need to meet site layout requirements such as setbacks and minimum landscaping.

MEA Consulting Engineers, Inc.

July 28, 2021

City of Aurora
Public Works Department – Building Division
15151 E. Alameda Parkway, Suite 2400
Aurora, CO 80012

Attn: Scott Burg, AIA, Chief Building Official

Re: 2021 International Codes

Dear Scott,

Thank you for presenting the building department's position and thoughts regarding the adoption of the 2021 International Codes at the July 13, 2021 board meeting.

The Building Code and Contractor's Appeals and Standards Board is in support of your recommendation to adoption the 2021 International Codes.

If you should have any concerns or questions, please do not hesitate to contact me.

Sincerely,

**MEA Consulting Engineers, Inc.**

Michael E. Aitken, P.E. LEED AP O+M, CxA
Board Chairman

# SOME OF THE BIGGER CHANGES FOUND IN THE 2021 INTERNATIONAL CODES

## General Items

1. One of the findings from this evaluation is that ICC has really made a good effort to align all the codes, so any conflicts between codes are minimized.

## 2021 International Building Code (IBC)

2. 311.2 311.3 Alcoholic Beverage Storage – New occupancy group classifications for alcohol content above 16% to S-1 and below 16% to S-2.

3. 404.5 Smoke control in Atriums – Expanded exceptions for Atriums are greater than 2 stories with two conditions.
   Condition 1- only the two lowest stories can be open to the atrium
   Condition 2 – all stories above the lowest two shall be separated from the atrium.

4. 404.10 Exit Stairway in an Atrium – Five conditions have been added for exit stairways in Atriums.

5. 406.6.4 Mechanical Access Enclosed Parking Garages – Section added for access-controlled garages.2hr separation from other occupancies. Smoke removal required. Fire control equipment and fire department access door required.

6. 407.2.7 / 420.9 Domestic Cooking Appliances in I-1 and I-2 Occupancies – Group I-2 which have domestic cooking appliances have six itemized requirements for code compliance.

7. 407.4.4.3 Access to Corridor – Group I-2 care suites shall have a door leading to an exit access with not more than 100 feet of travel.

8. 411.5 Puzzle Room Exiting Puzzle - Puzzle room exits have 3 options for code compliance.

9. 503.1.4 / 1006.3 Occupied Roofs – Occupied roofs are not included in building height. Method for egress from occupied roofs is defined.

10. Tables 504.3, 504.4, 506.2 Allowable Height, Stories Above Grade Plane, and Allowable Area – All tables have been revised for easier calculations.

11. 602.4 /602.4.3 Type IV- C Construction – This section is revised to accommodate Mass Timber buildings along with heavy timber construction.

12. 703.6 Determination of Noncombustible Protection Time Contribution – Added section for mass timber protection for comparison against ASTM and UL standards.

13. 704.6.1 Secondary Attachments and Fire Proofing – Secondary steel attachments to have the same fireproofing for primary structural members.

14. 1010.2.4 Locks & Latches – Institutional use I-1 occupancy group now has special locking arrangements.

15. 1030.16 Handrails at Social Stairs – Social stair safety requirements are now in the building code.

16. 1107.2 Vehicle Charging Stations – Accessibility requirements for accessible parking spaces with charging stations in R-2, R-3, and R-4 occupancies.

17. 1110.6 Bottle Filling Stations – Accessible bottle filling stations requirements are now in the building code.

18. 1207 Enhanced Classroom Acoustics – Education occupancies have a stricter requirement for acoustics in classrooms that are deemed essential for learning.

19. 1210.3 Restroom Privacy – Concerns regarding privacy within public restrooms have been addressed by requiring a screening element at the entry to the restroom.

20. 3115 Intermodal Shipping Containers – Use of intermodal shipping containers as buildings and structures now address in code.

**2021 International Residential Code (IRC)**

1. R302.2.2 Common Walls exception – Walls separating townhouses shall be fire- rated in accordance with two criteria. An exception is added for common walls.

2. R303.4 Mechanical Ventilation – Building and dwellings built in accordance with N1102.4.1 (Building Thermal Envelope) shall be provided with mechanical ventilation.

3. R310.4.2.2 Steps (Area Wells) – Formerly window wells; area wells are given minimum dimensions for steps for these areas.

4. R320.2 Accessibility for Live Work Units – Non-residential portions of these units shall meet accessibility requirements in the 2021 IBC.

5. R326 Habitable Attics – Habitable attics are addressed and given criteria for construction in houses.

6. R328 Energy Storage Systems – This new section provides direction for energy storage systems in houses.

7. R507.10 Exterior Guards (Decks) – Exterior guards for decks has requirements for constructability.

8. Table R602.10.3 Wall Bracing Requirements Based on Wind Speed – This table changed to account for the wind speeds for less than or equal to 95MPH.

9. R704 Soffits – Soffits has new criteria for windspeed and materials.

10. R802.6 Bearing – Roof bearing changes for wood roof framing.

11. N1101.7.2 Climate Zone Definitions – New climate zone definitions are included for the houses.

12. Table N1102.1.3 Insulation Minimum R-values and Fenestration Requirements by Component – Increased prescriptive insulation values.

## 2021 International Plumbing Code (IPC)

1. 403.1.1 Exceptions 2 and 3 Fixture Calculations – The code recognizes new options for calculating fixtures based on occupant load.

2. 403.2 Exceptions 5 and 6 Separate Facilities – This section considers use of toilet rooms for all genders.

3. 410.3.2 /410.4 Drinking fountains – The code does not permit bottled water dispensers for substitutions to drinking fountains.

**2021 International Energy Conservation Code (IECC)**

1. C405.3.2 Interior Lighting power allowance – New requirements for total building interior lighting power.

2. C405.4 Lighting for Plant Growth – This section gives criteria for lighting for commercial plant growth.

3. C405.11.1Automatic Receptacle Control - Rough inspections were added to sequence of required inspections.

4. C406 Additional Efficiency Requirements – Credits are given for certain items in a new commercial building's energy plan.

**2021 International Mechanical Code (IMC)**

1. 403.3.2.5 Ventilation Equipment – equipment shall be listed and labeled.

2. 502.20.1 Manicure and Pedicure Stations – Operation shall operate continuously while space is occupied.

3. 507.1 Exception 4. Commercial Kitchen Hoods - Requires a smoker oven to utilize an integral exhaust system or use type 1 grease hood.

4. 1105.9 Means of Egress – Machinery room larger than 1,000sf requires two exits.

5. 1107/1108/1109/1110 Refrigerant piping – New requirements for refrigerant piping.

City of Aurora
Public Works, Building Division
15151 East Alameda Parkway
Aurora, Colorado 80012
Worth Discovering • auroragov.org

**MEMORANDUM**

DATE:

TO: Planning, and Economic Development Committee

FROM: Jose Rodriguez, Plan Review Manger, Public Works Dept., Building Division

RE: 2021 Code adoption summary

**BACKGROUND**

Building codes are a set of rules that are to be followed to satisfy the minimum acceptable levels of safety for all buildings and structures. The objective of building codes is to ensure the health, safety and protection of the public when it comes to the construction and occupancy of buildings. Building codes stipulate details of the construction and maintenance of a building. These include fire safety rules; safety exits in buildings, limitations regarding how far a fire can spread and the provision of adequate firefighting equipment. There are also structural requirements; buildings need to be built strong enough to resist internal and external forces (wind, snow, etc.) without collapsing. Codes also cover health stipulations such as adequate air circulation, lighting and plumbing facilities.

The Building Division believes that adoption of the 2021 International Codes will allow the City of Aurora to stay current with the new national codes that have been developed to provide uniformity among different jurisdictions across the country. Architects, engineers and other design professionals are familiar with the current edition of these codes and adoption of the 2021 editions will allow for an easier interaction with the city of Aurora. Below is a summary of the jurisdictions that plan to adopt the 2021 Codes within the next 6-12 months.

| | | |
|---|---|---|
| Denver | Longmont | Thornton |
| Glenwood Springs | Westminster | Boulder County |
| Lakewood | Broomfield (April 2023) | Golden |
| Town of Erie | Lafayette | Lone Tree |

State of Colorado Department of Public Safety Division of Fire Prevention and Control (July 2021)

**INTRODUCTION**

In 2015 Aurora City Council approved the adoption of the International Building Codes which became effective on November 15, 2015. The codes adopted at that time were the 2015 editions of the International Building Code, International Residential Code, International Mechanical Code, International Fuel Gas Code, International Existing Building Code, International Energy Conservation Code and the International Plumbing Code.

The 2021 editions have now been published and are available for use and adoption by jurisdictions nationwide. For the Building Division to remain consistent with surrounding jurisdictions and enforce the most current building codes we are proposing that the city adopt the 2021 editions of these international codes. The proposed revisions to Chapter 22 of the City of Aurora Code to reflect the adoption of these codes are attached.

Groups representing the construction industry are familiar and supportive of the International Codes and adoption of the 2021 International Codes by the City of Aurora would allow the City to remain consistent with surrounding jurisdictions which have already adopted, or are soon planning on adopting these codes in the next six to twelve months. The City of Aurora Building Code and Contractor's Appeals and Standards Board has written a letter of support which are contained in the back up materials.

In an effort to provide education about the new code requirements the Building Division will provide free code training to the general public including city of Aurora licensed contractors and other industry representatives. This will allow any questions to be answered about upcoming changes and how they may affect future construction projects.

## STAFF RECOMMENDATIONS

It is the recommendation of the Building Division to adopt the 2021 International Building Code, 2021 International Residential Code, 2021 International Mechanical Code, 2021 International Plumbing Code, 2021 International Energy Conservation Code, 2021 International Existing Building, 2021 International Swimming Pool and Spa Code and the 2021 International Fuel Gas Code. Adoption of these codes will contribute to maintaining a consistent and coordinated set of building codes for all new construction projects in the City of Aurora.

## ATTACHMENTS

Revised Chapter 22 of the City Code of the City of Aurora reflecting 2021 I-Code adoption.
Summary of significant changes contained in the 2021 version of the International Codes

## POLICY QUESTION FOR THE COMMITTEE

Does the Committee wish to adopt the 2021 International Codes as recommended by staff and forward the Ordinance onto Study Session for consideration by the whole Council?

# 2021 Building Code Adoption

## *City of Aurora, Building Division*

# 2021 International Codes Adoption

## What are building codes?

Building codes are a set of rules to be followed to satisfy the minimum acceptable levels of safety for all buildings and structures.

The objective of building codes are to ensure the health, safety and protection of the public when it comes to the construction and maintenance of a building.

# 2021 International Codes Adoption

What has changed?

Building codes are modified and published on a 3 year cycle.

The city of Aurora currently has adopted the 2015 International Codes. The 2021 versions have now been published and we believe adopting this edition will allow Aurora to stay current and provide uniformity with other jurisdictions.

# 2021 International Codes Adoption

What codes are up for adoption?

# 2021 International Codes Adoption

Other local adoption of the 2021 International Codes

# 2021 International Codes Adoption

## Outreach

- Public input via email: Aurora2021codeupdate@auroragov.org
- 2021 Code update training for the public
- 3–4 month transition period where applicants have the choice of 2015 or 2021 codes for projects
- Letter of support from the Building Codes and Contractors Appeals Board
- Support from JTF members including HBA

# 2021 International Codes Adoption

## Shipping Containers and Tiny House requirements

PED Follow up - August 11, 2021, questions arose regarding “Tiny Homes” and using shipping containers as habitable structures.

- The building code will now clarify the methods of construction for these buildings. This does not change zoning allowances.
- Zoning Allowances
  - Tiny Homes – Limited to the Manufactured Home zone district (R-MH) or as an Accessory Dwelling unit in Original Aurora
  - Shipping Containers - These are not specifically addressed in the UDO, but they must comply with building design and site design standards if they are proposed.

# 2021 International Codes Adoption

Does Council support adoption of the 2021 International Codes?

**CITY OF AURORA**

**NOTICE OF PUBLIC HEARING**
**ON PROPOSED ADOPTION OF CODES BY REFERENCE**

NOTICE IS HEREBY GIVEN of a public hearing on November 22, 2021, at 6:30 p.m. at the regular meeting of the City Council of the City of Aurora, Colorado regarding the adoption by reference of the 2021 codes published by the International Code Council, Inc, 500 New Jersey Ave, NW, 6th Floor, Washington D.C., 20001. THIS MEETING WILL BE A VIRTUAL MEETING, PLEASE GO TO THE CITY OF AURORA WEBSITE (AURORAGOV.ORG) FOR INSTRUCTIONS ON PARTICIPATION.

The 2021 International Code Council codes to be adopted by reference are as follows:
International Building Code (IBC)
International Residential Code (IRC)
International Plumbing Code (IPC)
International Mechanical Code (IMC)
International Fuel Gas Code (IFGC)
International Energy Conservation Code (IECC)
International Existing Building Code (IEBC)
International Swimming Pool and Spa Code (ISPSC)
International Fire Code (IFC)

Each of the above codes are available online at: https://codes.iccsafe.org.

The primary purposes of the codes are for building construction and greater safety to the public by uniformity in building laws and building fire safety. Any person may participate at such virtual hearing and speak upon any matter to be determined by the City Council. Copies of the codes being considered for adoption are on file with the City Clerk and are open to public inspection.

Kadee Rodriguez, City Clerk

Publication Dates: November 1, 2021 and November 10, 2021

ORDINANCE NO. 2021-___

A BILL

FOR AN ORDINANCE AMENDING CHAPTER 22 OF THE CITY CODE OF THE CITY OF AURORA, COLORADO, REGARDING BUILDING AND BUILDING REGULATIONS, AND THE ADOPTION BY REFERENCE OF THE INTERNATIONAL BUILDING CODE, THE INTERNATIONAL PLUMBING CODE, THE INTERNATIONAL MECHANICAL CODE, THE INTERNATIONAL FUEL GAS CODE, THE INTERNATIONAL ENERGY CONSERVATION CODE, THE INTERNATIONAL RESIDENTIAL CODE, THE INTERNATIONAL EXISTING BUILDING CODE, AND THE INTERNATIONAL SWIMMING POOL AND SPA CODE

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

Section 1. That Section 22-2 is hereby amended to read as follows:

Sec. 22-2. - Fees.

Section 109 of the IBC adopted in section 22-131, section ~~106.6~~ **109** of the IFGC adopted in section 22-284, section ~~106.5~~ **109** of the IMC adopted in section 22-276, section ~~106.6~~ **109** of the IPC adopted in section 22-316 and section R108 of the IRC adopted in section 22-181 are each deleted in their entirety and amended to read as follows:

*Permit fees.* A permit shall not be issued until the applicable fees have been paid. The fee for each building permit shall be as set forth in a schedule of fees recommended by the chief building official and approved by the city manager. ~~Prior to the city manager's approval, the manager shall submit such proposed schedule of fees to the city council for its review.~~ The determination of the permit fee to be assessed under any of the provisions of this code shall be made by the chief building official ~~and shall be calculated from the fee determination assessment~~.

*Plan review fees.* When a plan or other data are required to be submitted a plan review fee shall be paid at the time of ~~submitting plans and specifications for review. Said plan review fee shall be as set forth in the approved schedule of fees. Where plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in the approved schedule of fees.~~ **invoice.**

***Building fees (square foot fees and flat fees). A*** **permit shall not be issued until the applicable fees have been paid. The fee for each building permit shall be as set forth in a schedule of fees recommended by the chief building official and approved by the city manager. The determination of the building fee to be assessed under any of the provisions of this code shall be made by the chief building official**.

**109.3 Permit valuations, shall be amended as follows: 100 percent of the total estimated cost of construction materials and/or fixtures used in the building, construction, reconstruction, alteration, expansion, modification, or improvement of**

**the building, dwelling, or structure for which the building permit is issued or the improvement for which the public improvement permit is issued shall be provided for the purpose of determining the appropriate use tax deposit to be paid to the City.**

*Work commencing before permit issuance.* Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to 100 percent of the usual permit fee **or building fee** in addition to the required permit fees **or building fee**.

*Waiver for phase III wood-burning device.* The chief building official shall waive the permit fee for the installation of a phase III certified solid fuel-fired heating device, as defined in section 146-2001, that is a direct replacement for a solid fuel-fired heating device.

*Waiver for natural gas conversion.* The chief building official shall waive the permit fee for the installation of a natural gas fuel-fired heating device that is a direct replacement for a solid fuel-fired heating device.

*Refunds:*

*Fee refunds.* The chief building official may **establish a refund policy to** authorize the refunding of fees, upon written application, ~~as follows~~ **including:**

(1) The full amount of any fee paid hereunder which was erroneously paid or collected.

(2) Not more than ~~80~~ **75** percent of the permit **fee or building** fee paid when no work has been done and ~~no plan review or~~ no inspections **have been** performed under a permit issued in accordance with this code.

(3) Not more than ~~80~~ **75** percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan review effort has been expended.

Section 2. That Section 22-3 is hereby amended to read as follows:

Sec. 22-3. - Board of appeals.

Section ~~112.1~~ **113.1** of the IBC adopted in section 22-131, section ~~109~~ **114.1** of the IPC adopted in section 22-316, section ~~109~~ **114.1** of the IMC adopted in section 22-276, section ~~109~~ **113.1** of the IFGC adopted in section 22-284, and section R112 of the IRC adopted in section 22-181 are each deleted in their entirety and amended to read as follows:

*Board of appeals.* General. Appeals from orders, decisions or determinations made by the chief building official regarding the application and interpretation of this code shall be heard by the building code and contractor's appeals and standards board as established by chapter 22, article II, of the city Code.

Section 3. That Section 22-4 is hereby amended to read as follows:

Sec. 22-4. - Unlawful acts.

Section ~~113.1~~ **114.1** of the IBC adopted in section 22-131, section ~~108.1-4~~ **115.1** of the IPC adopted in section 22-316, section ~~108.1~~ **115.1** of the IFGC adopted in section 22-284, section ~~108.1~~ **115.1** of the IMC adopted in section 22-276, and section R113.1 of the IRC adopted in section 22-181 are each deleted in their entirety and amended to read as follows:

*Unlawful acts.* It shall be unlawful for any person, firm or corporation to erect, construct, alter, repair, move, remove, convert or demolish, equip, use, occupy or maintain any building, or structure in the city, or cause the same to be done, contrary to or in violation of any of the provisions of this code or of the provisions of any code adopted by reference herein. Any person, firm or corporation violating any of the provisions of this code or any provision of any code adopted by reference herein shall, upon conviction thereof, be punished as provided in the city Code of the City of Aurora, section 1-13.

Section 4. That Section 22-5 is hereby amended to read as follows:

Sec. 22-5. - Stop work order.

Section ~~114.1~~ **115** of the ~~2006~~ **2021** IBC, 108.5 of the IMC, 108.5 of the IFGC, 108.5 of the IPC and Section R114.1 of the IRC are amended to read as follows:

~~*Authority.* Whenever the chief building official finds any work regulated by this code being performed in a manner either contrary to the provisions of this code or dangerous or unsafe, the chief building official is authorized to issue a stop work order.~~

~~*Issuance.* The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume.~~ **Posting of a written notice in a conspicuous location on the property shall be considered adequate notice when such persons are not available on the premises. Removal of such notice by unauthorized persons shall be unlawful.**

~~*Unlawful continuance.* Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.~~

Section 5. That Section 22-6 is hereby amended to read as follows:

Sec. 22-6. - Notice of violation.

Section ~~108.2~~ **115.2** of the IFGC, Section ~~108.2~~ **115.2** of the IPC, Section ~~108.2~~ **115.2** of the IMC, ~~R104.3~~ **R113.2** of the IRC, and ~~113.2~~ **114.2** of the IBC are each deleted in their entirety and amended to read as follows:

*Notice of violation.* The chief building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation. Posting of a written notice in a conspicuous location on the property shall be considered adequate notice when such persons are not available on the premises. Removal of such notice by unauthorized persons shall be unlawful. Upon the notice posted on the property shall be stated the violation by section number of this code.

Section 6. That Section 22-7 is hereby amended to read as follows:

Sec. 22-7. - Violation penalties.

Section ~~108.4~~ **115.4** of the IFGC, section ~~113.4~~ **114.4** of the IBC, section ~~R114.4~~ **R113.4** of the IRC, section ~~108.4~~ **115.4** of the IMC, and section ~~108.4~~ **115.4** of the IPC are hereby deleted in their entirety and amended to read as follows:

> Any person, firm or corporation violating any provision of this article or failing to comply with any of the provisions of this article or violating any of the provisions or failing to comply with any of the provisions of this code shall, upon conviction thereof, be punished as provided for in section 1-13 of the city Code. The issuance or granting of a permit or approval of plans and specifications shall not be deemed or construed to be a permit for, or an approval of, any violation of any of the provisions of this code. No permit presuming to give authority to violate or cancel the provisions of this code shall be valid, except insofar as the work or use which it authorized is lawful. The issuance or granting of a permit or approval of plans shall not prevent the administrative authority from thereafter requiring the correction of errors in said plans and specifications or from preventing construction operations being carried on thereunder when in violation of this code or of any other ordinance or from revoking any certificate of approval when issued in error.

Section 7. That Section 22-32 is hereby amended as to subsection (b) to read as follows:

Sec. 22-32. - Appeals from administrative action.

(a) *Method of application.* Prior to an action by the building code board and within 30 days from the date of the action of the administrative official appealed from, an application shall be filed in the office of the chief building official on a form providing all the information required by the board, and the application fee shall be paid. The application shall contain a short and concise statement of the action appealed from, the action requested of the board and the grounds for the appeal. If the appellant will be accompanied or represented by an attorney, the application shall so state; if the appellant does not thus give notice of attorney in writing filed in the office of the chief building official at least ten days prior to the meeting, the building code board shall, upon the appellant's or his or her agent's appearing accompanied or represented by an attorney, postpone the hearing of appellant's application to a date and time not less than ten days subsequent from the meeting. The application shall not be considered unless filed at least ten days prior to the meeting.

(b) *Fee.* Upon application, fees in the amount established by the ~~director of development services~~ **city manager** in accordance with the provisions of section 2-587 of this Code for a regular meeting or for a special meeting shall be paid to the city. The fee shall be returned to the appellant at the discretion of the building code board and if the board finds that the position of the appellant as set forth in the application is substantially sustained.

(c) *Notice to board.* Upon filing of the application or any paper or notice permitted or required, the chief building official or the official's designated representative for appeals matters shall forthwith cause the application, paper or notice to be delivered to the appropriate official of the building code board and a copy thereof to the city attorney.

(d) *Effect of appeal.* The filing of an application shall not stay the action of the administrative official appealed from, except as provided in article III of this chapter in the case of suspension or revocation of licenses, registration certificates or certificates of qualification.

Section 8. That Section 22-91 is hereby amended as to subsection (3) and amended to add a new subsection (18) to read as follows:

Sec. 22-91. - Classification of licenses.

There shall be various classes of contractor licenses, and the holder thereof shall be authorized to perform the following:

(1) *Commercial building contractor.* To erect, add to, alter, demolish or repair any building or structure. Scope of allowable work also includes: fences over seven feet; roofing of all types and on all buildings; solar energy installations; hook, set and tie for construction and sales trailers on commercial and residential properties; racking and storage systems; other work as approved by the chief building official.

(2) *Residential building contractor.* To erect, add to, alter or repair any International Residential Code (IRC) defined group R-3 or any group U occupancy building. Scope of allowable work also includes: decks; patio covers; carports; roofing of R-3 and group U buildings only; sunrooms; fences; seasonal use rooms; sheds; residential garages (i.e. group U); residential solar energy installations; hook, set and tie for construction and sales trailers on residential properties; and other work as approved by the chief building official.

(3) *Roofing contractor.* Installation, repair, and removal of all types of roof coverings on all building types. scope of allowable work includes: installation of all types of roofing materials; valleys; gutters and downspouts; **residential siding**; other work as approved by the chief building official.

(4) *Swimming pool contractor.* Installation of all types of swimming pools (commercial and residential), and hot tubs (except utilities).

(5) *Fire alarm systems contractor.* To install, add to, alter or repair fire alarm systems of all types.

(6) *Fire extinguishing systems contractor.* To install, add to, alter or repair all types of fire-extinguishing systems, including commercial hood and duct systems; wet chemical systems; dry chemical systems; foam systems; carbon dioxide systems; halon systems; clean agent systems; automatic water mist systems; commercial cooking systems.

(7) *Fire sprinkler systems contractor.* To install, add to, alter or repair automatic fire sprinkler and standpipe systems of all types.

(8) *Underground fire service line contractor.* To install, add to, alter or repair approved underground fire service lines.

(9) *Fuel tank contractor.* To install, remove, alter or repair above ground (AST), or underground (UST) fuel storage tanks.

(10) *Emergency responder radio systems contractor.* To install, remove, alter or repair approved emergency responder radio coverage systems.

(11) *Mobile home installer.* Installation of mobile homes, including leveling, blocking, skirting, electrical, gas, water and sewage connection and permitted accessory items.

(12) *Remodeling contractor.* Nonstructural work and repairs on single-family dwellings, including siding removal and installation; basement finish work; nonstructural metals for all types of buildings or structures such as guardrails, handrails, stair replacements; other work as approved by the chief building official.

Scope of excluded work from this license includes, but is not limited to: any load bearing or structural building elements such as columns, joists, beams, trusses, girders or similar structural components; fire rated walls or partitions; decks; balconies; patio covers;

roofing; pergolas; ramps; sun shades or canopies; carports; sunrooms; fences; seasonal use rooms; sheds; residential (group U) garages; solar energy installations; hook, set and tie for construction and sales trailers on residential properties.

(13) *Demolition contractor.* To demolish any building, structure or utilities or portion thereof except fuel storage tanks. A commercial building contractor is allowed to demolish any building type allowed to be built under that license; a residential building contractor is allowed to demolish residential buildings allowed to be built under that license.

(14) *Sign contractor.* To fabricate, install, erect or maintain all types of signs except electrical wiring and connections which must be installed by a State of Colorado licensed electrical contractor.

(15) *Mechanical systems contractor.* In all building types, the installation, removal, alteration, or repair of all types of heating and cooling systems. Scope of allowable work includes: warm air heating, venting, evaporative and refrigeration cooling, exhaust systems and their appurtenances; steam and hot water systems; process piping and related accessories; fuel gas piping; refrigeration systems and related accessories; other mechanical work as approved by the chief building official.

(16) *Residential elevator contractor.* To install, add to, alter or repair elevators, escalators, moving walks and ramps and dumbwaiters located in single-family homes.

(17) *Right-of-way contractor.* The holder of a public right-of-way contractor license shall be licensed for all types of concrete construction; replacement or repair of all types of concrete work that is in or will be in the public right-of-way; for all types of asphalt construction, replacement or repair of all types of asphalt paving that is in or will be in the public right-of-way; for all types of excavation work, including but not limited to water mains, sanitary sewer mains, storm sewer mains, underground TV cable lines, water or sewer service lines, petroleum transmission lines and natural gas lines that will be placed in the public right-of-way; for all types of grading and earthwork, including fills, embankments, sub-grade preparation and gravel base course construction, that are in or will be in the public right-of-way.

**(18) Limited building commercial contractor. To install storage racks; art structures; fences; commercial solar systems; commercial prefabricated shade structures; bollards; construction trailers; other work as approved by the chief building official.**

Section 9. That Section 22-101 is hereby amended as to subsection (b) to read as follows:

Sec. 22-101. - Suspension or revocation.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Revocation* means that the license or certificate of qualification shall become null and void. The licensee or certificate holder may reapply for a new license or certificate of qualification one year from date of revocation.

*Suspension* means, for licensees, that the authority of the licensee to perform work or supervise, as authorized by the license, and, for holders of certificates of qualification, that the qualification and authority of the certificate holder to perform work or supervise work, as authorized by the certificate, is temporarily withdrawn for any period of time from a period of 24 hours up to and including but not to exceed six months.

(b) *Authority.* The building division may suspend or revoke a license or certificate of qualification when the licensee or certificate holder commits one or more of the following acts or omissions:

(1) Fails to comply with any of his or her responsibilities as outlined in this article;

(2) Knowingly conspires with a person to permit his or her license or certificate of qualification to be used by another person;

(3) Acts as an agent, partner, associate or acts in any capacity with persons to evade any provisions of this chapter;

(4) Violates any provision of this chapter; or

(5) That the licensee fails to pay laborers, materialmen or subcontractors on a project or wrongfully permits the filing of a mechanic's lien by any such laborer, employee, materialman or subcontractor under control of the licensee or registrant.

**(6) Incompetence.**

**(7) Misuse of the license.**

**(8) Threatens or assaults any representative of the city.**

**(9) Creates, as a result of work performed, an unsafe condition as defined by the code.**

**(10) Repeatedly or willfully violates or disregards any of the provisions of this code or repeatedly fails to obey orders of the building official.**

(c) *Licensee responsibility for correction.* If the circumstances or events leading to a revocation or suspension of a license are correctable, as determined by the chief building official, the correction of circumstances or events by the licensee shall be a condition for reinstatement of a suspended license or reapplication of a revoked license.

Section 10. That Section 22-130 is hereby amended to read as follows:

Sec. 22-130. - Title.

Section 101.1 of the IBC is deleted in its entirety and replaced with the following:

These regulations shall be known as the Building Code of Aurora, **hereinafter referred to as "this code".**

Section 11. That Section 22-131 is hereby amended to read as follows:

Sec. 22-131. - Code adopted.

The International Building Code, 20~~15~~**21** edition, first printing, dated ~~May 2015~~**, October 2020**, published by the International Code Council, Inc., including appendix chapters C, E, I, ~~published by the International Code Council, Inc.~~ is hereby adopted**, except as amended in this Chapter**. The International Building Code is dedicated to the development of better building construction and greater safety to the public by uniformity in building laws, and not less than three copies of the code are on file at the offices of the city clerk, the city attorney, and the chief building official, and open to inspection by the public at reasonable times. Where the abbreviation "IBC" appears in this article, this shall mean the International Building Code, 20~~15~~**21** edition. Where the abbreviation "IRC." appears in this article, this shall mean the International Residential Code, 20~~15~~**21** edition. Where the abbreviation "IPC" appears in this article, this shall mean the International Plumbing Code, 20~~15~~**21** edition. Where the abbreviation "IMC" appears in this article, this shall mean the International Mechanical Code, 20~~15~~**21** edition. Where the abbreviation "IFGC" appears in this article, this shall mean the International Fuel Gas Code, 20~~15~~**21** edition. Where the abbreviation "IECC" appears in this article, this shall mean the International Energy Conservation Code, 20~~15~~**21** edition. Where the abbreviation "IEBC" appears in this article, this shall mean the International Existing Building Code, 20~~15~~**21** edition. **Where the abbreviation "ISPSC" appears in this article, this shall mean the International Swimming Pool and Spa Code, 2021 edition.**

Section 12. That Section 22-133 is hereby amended to read as follows:

Sec. 22-133. ~~Department of building safety~~**Code compliance agency**.

Section 103 of the IBC adopted in section 22-131 is deleted in its entirety.

Section 13. That Section 22-135 is hereby amended to read as follows:

Sec. 22-135. - Work exempt from permit.

Section 105.2, "Work exempt from permit"**,** ~~exception~~**Item 1** of the IBC is deleted in its entirety and replaced with the following:

1. One-story detached accessory residential storage shed or playhouse provided the floor area does not exceed 120 square feet and is not used for storage of vehicles.

Section 105.2. "Work exempt from permit", ~~exception~~**Item 2** of the IBC is ~~amended by adding the following:~~**deleted in its entirety and replaced with the following**:

2. **Fences not over 7 feet high and all chain link fences.**

Section 105.2, "~~w~~**W**ork exempt from permit", of the IBC shall be amended by adding the following exception Item 14:

**14. Antennae and towers not in excess of 25 feet in height shall not require permits.**

Section 14. That Section 22-137 is hereby amended as to subsection (a) to read as follows:

Sec. 22-137. - Minimization of construction activity impact on residential neighborhoods.

Section 105 of the IBC adopted in section 22-131 is amended by adding the following:

(a) All exterior work required for construction of new additions, garages (attached and detached), patio covers, decks, swimming pools, gazebos, sun rooms, porches, and carports**, roofing**, required to be permitted by the City of Aurora building codes, commenced by a homeowner acting as contractor shall be completed within one year of the issuance of the permit for such work. Failure to complete all exterior work within the one-year period shall void the permit, and require reapplication for a six-month permit extension for the work, and the fee therefor shall be the full amount required for the original work. A homeowner acting as contractor may apply for one and only one such extension for one additional six-month extension within which the work must be completed. Failure to acquire such an extension or failure to complete such exterior work under such an extension shall constitute a violation of this section as described in subsection (b) below.

(b) It shall be unlawful for a homeowner acting as contractor to undertake, maintain, or continue construction without a lawfully issued, current building permit unless such structure is exempt from a building permit requirement.

(c) This section shall apply to current building permits issued prior to the effective date of this section. The one-year period shall commence upon the effective date of this section.

Section 15. That Section 22-138.1 is hereby amended to read as follows:

Sec. 22-138.1. - Compliance with utility undergrounding requirements.

Section 112.1 ~~service utilities~~ **"Connection of service utilities"** of the IBC adopted in section 22-131 is amended by adding the following:

The issuance of a certificate of occupancy shall be conditioned upon compliance with the covenants provided for in subsection 146-2123(J) of this code.

Section 16. That Section 22-141 is hereby amended to read as follows:

Sec. 22-141. – ~~Door security~~ **Locks and Latches**.

Section 310 of the IBC adopted in section 22-131 is amended by adding the following:

(a) Every exterior door from any individual dwelling unit or guestroom of a group R occupancy, except hotels and motels, as defined in section 310 of the IBC adopted in section 22-131, shall be equipped with a deadbolt unless prohibited by the fire code. For purposes of this section any door between the main dwelling unit and an attached garage shall be deemed to be an exterior door, requiring the installation of a deadbolt. A deadbolt, as defined in this section, shall be deemed to be a lockbolt which does not have a spring action. The deadbolt required by this section shall be designed to be actuated by a key from the exterior and a knob or thumb turn from the interior.

(b) Exterior sliding glass doors in group R occupancies, except hotels and motels, shall be equipped with either a locking bar device or a pin or bolt device.

(c) No deadbolt or other security device shall be mounted or installed at a height in excess of 48 inches above the finished floor.

(d) This section shall not prohibit the optional installation of additional types of security devices such as night latches and security chains as provided for in the building code adopted in section 22-131.

(e) This section will apply to all applicable structures on which building permits are issued on or after September 1, 1983.

Section 17. That Section 22-146 is hereby amended to read as follows:

Sec. 22-146. - Care facilities ~~in R-3 occupancies~~ **within a dwelling**.

Section ~~310.5~~ **310.4.1** of the IBC is amended by changing the statement on "Care facilities" to read:

Care facilities that provide accommodations for six or fewer persons receiving care.

Section 18. That Section 22-148 is hereby amended to read as follows:

Sec. 22-148. - Roof drainage.

Section ~~1503.~~4 **1502.1** of the IBC is amended by adding the following paragraph:

All roofs of Group R occupancies that are sloped to drain over the edges shall have gutters and downspouts. All downspouts shall have at least a five-foot splash block or a five-foot downspout hinged section to direct water away from foundations.

Exceptions:

(1) On roofs having a projection beyond the wall of the building of at least four feet, gutters may be omitted except at entrances to and exits from the building.

(2) Gutters are not required on patio covers, awnings, greenhouses, and sheds which do not receive drainage from the building roof.

(3) Gutters are not required on roofs which drain onto another roof which complies with this section.

Downspouts shall not be constructed in such a manner as to drain across primary walkways serving any type of residential unit or tenant space, nor shall they discharge in such fashion as to divert drainage onto adjacent properties.

Section 19. That Section 22-149 is hereby amended to read as follows:

Sec. 22-149. - Structural design criteria.

Section 160~~3~~**1** of the IBC is amended to add the following:

Snow and wind loads are as designated in section 22-186 of city code. Earthquake loads are in accordance with section 1613 of the IBC.

Section 20. That Section 22-151 is hereby amended to read as follows:

Sec. 22-151. - Establishment of flood hazard areas.

Section 1612.**3** of the IBC adopted in section 22-131 is deleted in its entirety and amended to read as follows:

The establishment of flood hazard areas is governed solely by the regulations listed in Chapter 70 of the City of Aurora City Code.

Section 21. That Section 22-180 is hereby amended to read as follows:

Sec. 22-180. - Title.

Section R101.1 of the IRC adopted in section 22-181 is amended to read as follows:

These regulations shall be known as the Residential ~~Building~~ Code for One and Two Family Dwellings of **the city of** Aurora, **and shall be cited as such and will be referred** to herein~~after referred to~~ as "this code".

Section 22. That Section 22-181 is hereby amended to read as follows:

Sec. 22-181. - Code adopted.

The International Residential Code, 20~~15~~**21** edition, first printing, ~~May 2015,~~**January 2021**, published by the International Code Council, Inc., including ~~appendix~~ **appendices** chapter**s A**H, **AQ, AR, AS, AU, AW** referenced herein in their entirety are hereby adopted with the amendments as noted in this article and as may be made, from time to time. The International Residential Code is dedicated to the development of better building construction and greater safety to the public by uniformity in building laws, and not less than three copies of each code are on file at the offices of the city clerk, the city attorney, and the chief building official, and open to inspection by the public at reasonable times. Where the abbreviation "IRC" appears in this article, this shall mean the International Residential Code, 20~~15~~**21** edition.

<u>Section 23.</u> That Section 22-184 is hereby amended as follows:

Sec. 22-184. - Work exempt from permit.

Section R105.2, ~~exception~~ **Item** 1 of the IRC is deleted in its entirety and replaced with the following:

1. One-story detached accessory residential storage sheds, playhouses, or shade structures provided the floor area does not exceed 120 square feet, is not attached to the residence, and is not used for storage of vehicles.

~~Section R105.2 exception 10, of the IRC as is deleted in its entirety and replaced with the following:~~

~~10. Decks that are not more than 30 inches (762 mm) above grade at any point, are not attached to a dwelling and do not serve the exit door required by section R311.2.~~

<u>Section 24.</u> That Section 22-185 subsection (a) is hereby amended to read as follows:

Sec. 22-185. - Minimization of construction activity impact on residential neighborhoods.

Section R105.5 "Expiration" of the IRC adopted in section 22-181 is amended by adding the following:

(a) All exterior work required for construction of new additions, garages (attached and detached), patio covers, decks, swimming pools, gazebos, sun rooms, porches, **roofing,** and carports, required to be permitted by the City of Aurora building codes, commenced by a homeowner acting as contractor shall be completed within one year of the issuance of the permit for such work. Failure to complete all exterior work within the one-year period shall void the permit, and require reapplication for a six-month permit extension for the work, and the fee therefor shall be the full amount required for the original work. A homeowner acting as contractor may apply for one and only one such extension for one additional six-month extension within which the work must be completed. Failure to acquire such an extension or failure to complete such exterior work under such an extension shall constitute a violation of this section as described in subsection (b) below.

(b) It shall be unlawful for a homeowner acting as contractor to undertake, maintain, or continue construction without a lawfully issued, current building permit unless such structure is exempt from a building permit requirement.

(c) This section shall apply to current building permits issued prior to the effective date of this section. The one-year period shall commence upon the effective date of this section.

<u>Section 25.</u> That Section 22-186 is hereby amended to read as follows:

Sec. 22-186. - Climatic and geographic design criteria.

Table R301.2(1) "Climatic and Geographic Design Criteria" of the IRC is amended to read as follows:

Ground Snow Load: ~~34~~ **40** pounds per square foot.

~~Roof Snow Load 30 pounds per square foot--Unreducible~~.

Wind design:

**Wind Speed for Risk Category I Structures: 100 miles per hour for 3-second gust**

Wind Speed for Risk Category II Structures: ~~115~~ **105** miles per hour for 3-second gust

Wind Speed for Risk Category ~~IV~~ **III** Structures: ~~120~~ **110** miles per hour for 3-second gust

**Wind Speed for Risk Category IV Structures: 115 miles per hour for 3-second gust**

Topographic Effects: No

Special Wind Region: Yes

Wind-Borne Debris Zone: No

Seismic Design Category: B

Subject to Damage from Weathering: Severe

Frost Line Depth: 36 inches

Subject to Damage from Termite: Slight to moderate

Subject to Damage from Decay: None to slight

Winter Design Temperature: 1 Degree (F)

Ice Shield Underlayment required: Yes

Flood Hazards: Varies, refer to City of Aurora Code, Chapter 70

Air Freezing Index: 712

Mean Annual Temperature: 50**.3** Degrees F

Section 26. That Section 22-193 is hereby amended to read as follows:

Sec. 22-193. - Subflooring.

Section ~~R503.2.1.1~~ **R503.2.3** of the IRC adopted in section 22-181 is amended by adding the following.

All subflooring in new type R occupancies shall be attached to structural members by both screws and glue or shall be of tongue and groove type with attachment by screws or ring shank nails. All such installations shall be in compliance with the building code and manufacturer's recommendations for the utilized materials.

Section 27. That Section 22-196 is hereby amended to read as follows:

Sec. 22-196. - Roof construction.

Section ~~R801.3~~ **R903.4** of the IRC is amended to add the following:

R903.4.2 Gutters and downspouts.

All roofs sloped to drain over roof edges shall have gutters and downspouts. All downspouts shall have at least a five-foot splash block or a five-foot downspout hinged section to direct water away from foundations.

Exceptions:

(1) On roofs having a projection beyond the wall of the building of at least four feet, gutters may be omitted except at entrances to and exits from the building.

(2) Gutters are not required on patio covers, awnings, greenhouses, and sheds which do not receive drainage from the building roof.

(3) Gutters are not required on roofs which drain onto another roof which complies with this section.

Downspouts shall not be constructed in such a manner as to drain across primary walkways serving any type of residential unit or tenant space, nor shall they discharge in such fashion as to divert drainage onto adjacent properties.

Section 28. That Section 22-200 is hereby amended to read as follows:

Sec. 22-200. - Sewer depth for private sewage disposal systems.

Section ~~P2603.6.1~~ **P2603.5.1** of the IRC adopted in section 22-181 is deleted in its entirety and amended to read as follows:

~~P2603.~~6 **P2603.5.1** Sewer depth for private sewage disposal systems.

Building sewers that connect to private sewage disposal systems shall be installed in accordance with Tri-County Health Department requirements.

Section 29. That Section 22-201 is hereby amended to read as follows:

Sec. 22-201. - Floor drains.

Section P2719.1 of the IRC adopted in section 22-181 is amended adding the following:

Floor drains must be installed in **a** space that is in full view and may not be installed in a crawl space or attic.

Section 30. That Section 22-203 is hereby amended to read as follows:

Sec. 22-203. - Code adopted.

The International Energy Conservation Code, 20~~15~~**21** edition, first printing, ~~May 2015~~ **January 29, 2021,** published by the International Code Council, Inc. is hereby adopted with the amendments as noted in this article and as may be made, from time to time. The International Energy Conservation Code is designed to achieve the effective use of energy and not less than three copies of each code are on file at the offices of the city clerk, the city attorney, and the chief building official, and open to inspection by the public at reasonable times. Where the abbreviation "IECC" appears in this article, this shall mean the International Energy Conservation Code, 20~~15~~**21** edition.

**Section C101.1 of the energy code adopted in Sec. 22-203 is deleted in its entirety and amended to read as follows:**

**This code shall be known as the Energy Conservation Code of the city of Aurora and shall be cited as such. It is referred to herein as "this code**".

Section 31. That Section 22-213 subsection (f) is hereby amended to read as follows:

Sec. 22-213. - Permits and inspections required.

Article 110.1 of the N.E.C. is amended by adding the following:

(a) Before any electrical construction work is started, whether the installation of new wiring or apparatus or the repairing of wiring or apparatus already in use, the person responsible for such work shall have paid for and received an electrical permit allowing such work. An application shall be filed with the building division explaining in detail the material and appliances intended to be used, replaced, or installed. Such application shall give the location of the work by street and number and shall be countersigned by the person under whose supervision it is to be done, and, if found proper and conforming with the rules and regulations contained in this article and the electrical code adopted in section 22-211, a permit shall be issued by the building division.

(b) Electrical contractors shall furnish such plans and specifications of the proposed work as may be deemed necessary by the building division before any permit for the work shall be issued.

(c) It shall be unlawful for any person to allow his or her license to be used fraudulently to obtain electrical permits for another.

(d) Electrical inspections shall be requested in a timely manner so as to permit inspection of work without removal or alteration of any part of the structure for inspection purposes.

(e) It shall be unlawful for any person to erect, install, alter, repair, add to or replace electrical equipment or installations within the city or cause or permit such to be done contrary to or in violation of any provision of the electrical code adopted in section 22-211 by reference. Any person violating any provision of this article or failing to comply with the provisions of the electrical code adopted in section 22-211 shall, upon conviction thereof, be punished as provided for in section 1-13 of the city Code.

(f) Permit fees for electrical work are as established and adopted as published by the Colorado State Electrical Board **or as set forth in a schedule of fees recommended by the chief building official and approved by the city manager**.

(g) Sections 22-4, 22-5, 22-6 of the city Code are to be referenced concerning lawful inspection of equipment.

(h) The building official may, in writing, suspend or revoke a permit issued under this article whenever the permit is issued in error or on the basis of incorrect information supplied or in violation of any ordinance or regulation of any provision of this article.

(i) Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each. The extension shall be requested in writing and justifiable cause demonstrated.

Section 32. That Section 22-276 is hereby amended to read as follows:

Sec. 22-276. - Code adopted.

The International Mechanical Code, 20~~15~~**21** edition, first printing, March 2020, published by the International Code Council, Inc., including appendix A, referred to in this article as the "IMC," is adopted in its entirety with amendments as noted in this article and as may be made from time to time. Copies of the mechanical code are available for inspection at the offices of the city clerk, the city attorney, and the chief building official.

Section 101.1 of the mechanical code is **deleted in its entirety and** amended to read as follows:

These regulations shall be known as the International Mechanical Code of the city of Aurora hereinafter referred to as ~~the mechanical code~~ **"this code".**

Section 33. That Section 22-278 is hereby amended to read as follows:

Sec. 22-278. - ~~Department of mechanical inspection.~~ **Code compliance agency**.

Section 103 of the IMC adopted in section 22-276 is deleted in its entirety.

Section 34. That Section 22-284 is hereby deleted in its entirety.

~~Sec. 22-284. - Title.~~

~~Section 101.1 of the fuel gas code adopted in section 22-285 is amended to read as follows:~~

~~These regulations shall be known as the International Fuel Gas Code of the City of Aurora hereinafter referred to as the fuel gas code.~~

Section 35. That Section 22-285 is hereby amended to read as follows:

Sec. 22-285. - Codes adopted.

The International Fuel Gas Code, 20~~15~~**21** edition**, first printing, August 2020,** published by the International Code Council, Inc., including appendix B, referred to in this article as the "IFGC," is adopted in its entirety with amendments as noted in this article and as may be made from time to time.

Section 101.1 of the fuel gas code is **deleted in its entirety and** amended to read as follows:

These regulations shall be known as the ~~International~~ Fuel Gas Code of the City of Aurora hereinafter referred to as ~~the fuel gas code~~ **"this code".** ~~Copies of the fuel gas code are~~

~~available for inspection at the offices of the city clerk, the city attorney, and the chief building official.~~

Section 36. That Section 22-286 is hereby amended to read as follows:

Sec. 22-286. – ~~Department of inspection~~ **Code compliance agency.**

Section 103 of the IFGC adopted in section 22-284 is deleted in its entirety.

Section 37. That Section 22-287 is hereby amended to read as follows:

Sec. 22-287. - Appliance location.

Section 303.3 Prohibited Locations of the IFGC adopted in section 22-284 is amended by adding the following exception:

Exceptions: ~~6~~**7**. Except in R occupancies, fuel burning appliances vented through a draft hood shall not be installed in the same room that contains a kitchen exhaust hood.

Section 38. That Section 22-288 is hereby amended to read as follows:

Sec. 22-288. – ~~Gas pipe strain~~ **Avoid strain on gas piping.**

Section 305.12 of the IFGC is amended by adding the following:

In buildings and structures designed for expansive soils and where there is danger of differential movement between the appliance and the gas supply piping, all gas-fired appliances shall be connected to the piping by an approved semi-rigid or flexible metal connector in accordance with the International Fuel Gas Code, section 411.

Section 39. That Section 22-290 is hereby amended to read as follows:

Sec. 22-290. – ~~Gas log installations and decorative appliances.~~ **Decorative appliances for installation in fireplaces.**

Section 602.1 ~~General Decorative Appliances~~ **Decorative appliances for installation in fireplaces** of the IFGC adopted in section 22-28~~4~~**5** is amended to read as follows:

In addition to the general requirements specified in section 602, every vented decorative appliance shall comply with the requirements specified for heating equipment and heating appliances of this code.

Approved gas logs may be installed only in solid fuel burning fireplaces, provided:

(1) If the fireplace is equipped with a damper, the damper shall be removed, permanently blocked partially open, or an opening cut into the damper to provide a minimum flue opening such that there shall be no less than one square inch of opening for each 2,000 Btu/h input.

(2) Gas logs must be approved by an approved testing agency.

(3) Gas pipe joints shall be tested by the installing contractor in the presence of the inspector. The test shall be a "liquid soap" test or other approved test.

(4) Ventless Decorative Appliances are prohibited.

Section 40. That Section 22-316 is hereby amended to read as follows:

Sec. 22-316. - Code adopted.

The International Plumbing Code, 20~~15~~**21** edition**, first printing, March 2020,** published by the International Code Council, including appendices B, D, and E, and referenced standards attached thereto, referred to in this article as the "IPC," is adopted with the amendments as set forth in this article. Copies of the plumbing code are available for inspection at the offices of the city clerk, the city attorney, and the chief building official. The intent of this code is to meet or exceed the requirements of the State of Colorado Plumbing Code. When technical requirements, specifications or standards in the State of Colorado Plumbing Code conflict with requirements herein, the most restrictive shall apply.

Section 41. That Section 22-318 is hereby amended to read as follows:

Sec. 22-318. - Administrative authority.

Section 101.1 of the IPC is **deleted in its entirety and** amended to read as follows:

These regulations shall be known as the ~~International~~ Plumbing Code of the city of Aurora hereinafter referred to as ~~the plumbingcode~~**"this code".**

Section 42. That Section 22-319 is hereby amended to read as follows:

Sec. 22-319. **–** ~~Department of plumbing~~ inspection **Code compliance agency**.

Section 103 of the IPC adopted in section 22-316 is hereby deleted in its entirety.

Section 43. That Section 22-322 is hereby amended to read as follows:

Sec. 22-322. - Service sinks and drinking fountains.

Footnote ~~F~~ **G** added to Section 403 Table 403.1 is amended by adding the following:

Footnote ~~F~~ **G**. Drinking fountains and service sinks are not required in existing buildings or spaces in existing buildings that have an occupant load of less than 100. Where this exception is utilized, an approved, accessible alternate drinking water source must be provided and maintained.

Section 44. That Section 22-326 is hereby amended to read as follows:

Sec. 22-326. - Water conservation.

Sections ~~420.1~~ **419.1** and ~~424.1~~ **412.1** of the IPC are amended by adding the following:

(a) Faucets or lavatories located in restrooms intended for public use shall be of the metering type or self-closing. Exception: Restrooms not required to be made available to the public.

(b) Special purpose shower heads and faucets, necessary for health and safety purposes, may be exempt from the requirements of this section when approved by the building official.

Section 45. That Section 22-332 is hereby amended to read as follows:

Sec. 22-332. - Vent extension through roof.

Section ~~903.1~~**903.1.1** of the IPC is hereby deleted in its entirety and amended to read as follows:

~~903.1~~**903.1.1** Roof extension **unprotected**.

All open vent pipes which extend through a roof shall be terminated ~~at least~~**not less than** 6 inches above the roof or 6 inches above the anticipated snow accumulation, except that where a roof is to be used for any purpose other than weather protection, the vent extensions shall be run at least 7 feet above the roof.

Section 46. That Section 22-333 is hereby deleted in its entirety and replaced with the following:

~~Sec. 22-333. - Deletions of certain sections.~~ **Reserved.**

~~Section 1003.8 Slaughterhouses of the IPC adopted in section 22-316 is deleted in its entirety.~~

Section 47. That Section 22-341 is hereby amended to read as follows:

Sec. 22-341. - Code adopted.

The International Existing Building Code, 20~~15~~**21** edition, first printing ~~May 2015~~**,December 2020**, published by the International Code Council, and referenced standards attached thereto, referred to in this article as the "IEBC," is adopted with the amendments and resources as set forth in this article. Copies of the IEBC are available for inspection at the offices of the city clerk, the city attorney, and the chief building official. The IEBC is intended to encourage the use and reuse of existing buildings while requiring reasonable upgrades and improvements.

**Section 101.1 of the existing building code adopted in section 22-341 is deleted in its entirety and amended to read as follows:**

**These regulations shall be known as the Existing Building Code of the city of Aurora, hereinafter referred to as “this code".**

Section 48. That Section 22-342 is hereby amended to read as follows:

Sec. 22-342. - Square footage.

Section 110.2 of the IEBC is amended to add a new Item 13 as follows:

**13. The square footage of the structure or portion of the structure for which the certificate of occupancy is issued.**

Section 49. That Section 22-342.5 is hereby amended to read as follows:

Sec. 22-342.5. - Qualified historic buildings and facilities.

Section ~~408~~**507** of the IEBC is ~~created~~ **amended** by adding the following:

Section ~~408.4~~**507.5** - Qualified historic buildings and facilities.

~~408.4.1~~ **507.5.1** General. Qualified historic buildings and facilities shall comply with Sections ~~408.4.2~~**507.5.1** through ~~408.4.7~~**507.5.7.**

~~408.4.2~~ **507.5.2** Qualified historic buildings and facilities. These procedures shall apply to buildings and facilities designated as historic structures that undergo alterations or a change of occupancy.

~~408.4.3~~ **507.5.3** Qualified historic buildings and facilities subject to Section 106 of the National Historic Preservation Act. Where an alteration or change of occupancy is undertaken to a qualified historic building or facility that is subject to Section 106 of the National Historic Preservation Act, the federal agency with jurisdiction over the undertaking shall follow the Section 106 process. Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for accessible routes, ramps, entrances or toilet facilities would threaten or destroy the historic significance of the building or facility, the alternative requirements of Section 410 for that element are permitted.

~~408.4.4~~ **507.5.4** Qualified historic buildings and facilities not subject to Section 106 of the National Historic Preservation Act. Where an alteration or change of occupancy is undertaken to a qualified historic building or facility that is not subject to Section 106 of the National Historic Preservation Act, and the entity undertaking the alterations believes that compliance with the requirements for accessible routes, ramps, entrances or toilet facilities would threaten or destroy the historic significance of the building or facility, the entity shall consult with the State Historic Preservation Officer. Where the State Historic Preservation Officer determines that compliance with the accessibility requirements for accessible routes, ramps, entrances or toilet facilities would threaten or destroy the historical significance of the building or facility, the alternative requirements of Section 410 for that element are permitted.

~~408.4.5~~ **507.5.5** Consultation with interested persons. Interested persons shall be invited to participate in the consultation process, including state or local accessibility officials, individuals with disabilities and organizations representing individuals with disabilities.

~~408.4.6~~ **507.5.6** Certified local government historic preservation programs. Where the State Historic Preservation Officer has delegated the consultation responsibility for purposes of this section to a local government historic preservation program that has been certified in accordance with Section 101 of the National Historic Preservation Act of 1966 [(16 U.S.C. 470a(c)] and implementing regulations (36 CFR 61.5), the responsibility shall be permitted to be carried out by the appropriate local government body or official.

~~408.4.7~~ **507.5.7** Displays. In qualified historic buildings and facilities, where alternative requirements of Section 408 are permitted, displays and written information shall be located where they can be seen by a seated person. Exhibits and signs displayed horizontally shall be 44 inches (1120 mm) maximum above the floor.

Section 50. That Section 22-345 is hereby amended to read as follows:

Sec. 22-345. – ~~Mixed use allowable area~~ **Height & Area for change to a higher-hazard category.**

Section ~~912.5.1~~**1101.6.1** of the IEBC adopted in section 22-341 is amended by adding the following: The mixed use allowable area square footage must comply with IBC 508.4.2.

Section 51. That Section 22-348 is hereby amended to read as follows:

Sec. 22-348. - Chapter applicability.

Section ~~1401.2~~**1301.2** of the IEBC is hereby amended to read as follows:

Structures existing prior to 1952, in which there is work involving additions, alterations or changes of occupancy shall be made to conform to the requirements of this chapter or the provisions of chapters ~~4~~ **3** through ~~13~~ **12**. The provisions of sections ~~1401.2.1~~**1301.2.1** through ~~1401.2.5~~**1301.2.6** as amended by city amendments shall apply to structures existing prior to 1952 that will continue to be, or are proposed to be, in Groups A, B, E, F, M, R, and S. These code provisions shall not apply to buildings with occupancies in Group H or Group I.

Section 52. That Article X.B and Section 22-349 is hereby added as a new section and reads as follows:

**ARTICLE X.B - INTERNATIONAL SWIMMING POOL AND SPA CODE**

**Sec. 22-349. - Code adopted.**

**The International Swimming Pool and Spa Code, 2021 edition, first printing October 2020, published by the International Code Council, and referenced standards attached thereto, referred to in this article as the "ISPSC," is adopted with the amendments and resources as set forth in this article. Copies of the ISPSC are available for inspection at the offices of the city clerk, the city attorney, and the chief building official.**

**Section 101.1 of the swimming pool and spa code is deleted in its entirety and amended as follows:**

**These regulations shall be known as the Swimming Pool and Spa Code of the city of Aurora, hereinafter referred to as “this code”.**

Section 53. That Section 22-350 is hereby added as a new section and reads as follows:

**Sec. 22-350. – Backwash water or draining water.**

**Section 320.1 of the ISPSC adopted in section 22-316 is hereby deleted in its entirety and amended to read as follows:**

**Backwash water and draining water shall be discharged to the sanitary drain. Direct connections shall not be made between the end of the backwash line and the disposal system. Drains shall discharge through an air gap.**

Section 54. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 55. Penalty. City employees violating the terms, directives, or mandates of this Code are not subject to the general penalty provisions contained in Section 1-13 of this City Code.

Section 56. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 57. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this _______ day of ______________, 2021.

PASSED AND ORDERED PUBLISHED BY REFERENCE this ________ day of ______________, 2021.

___________________________________
MIKE COFFMAN, Mayor

ATTEST:

________________________________________
KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

________________________________________
MICHELLE GARDNER, Sr. Assistant City Attorney

# CITY OF AURORA
## Council Agenda Commentary

| | |
|---|---|
| **Item Title:** 2021 International Fire Code Adoption | |
| **Item Initiator:** Deputy Chief Caine G. Hills | |
| **Staff Source/Legal Source:** Deputy Chief Caine G. Hills/ Angela Garcia, Senior Assistant City Attorney | |
| **Outside Speaker:** N/A | |
| **Council Goal:** 2012: 1.0--Assure a safe community for people | |

**COUNCIL MEETING DATES:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/08/2021

**ITEM DETAILS:**

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated Presentation/discussion time

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO AMENDING CHAPTER 66 OF THE CITY CODE "FIRE PREVENTION AND PROTECTION" RELATED TO THE NEW 2021 EDITION OF THE INTERNATIONAL FIRE CODE AND AMMENDMENTSStaff Source: Deputy Chief Caine G. Hills/Angela Garcia, Senior Assistant City AttorneyEstimated Presentation/Discussion 15 minutes

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**ACTIONS(S) PROPOSED** ***(Check all appropriate actions)***

☐ Approve Item and Move Forward to Study Session

☐ Approve Item as proposed at Study Session

☒ Approve Item and Move Forward to Regular Meeting

☐ Approve Item as proposed at Regular Meeting

☐ Information Only

☐ Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field.

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**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** Public Safety, Courts & Civil Service

**Policy Committee Date:** 10/14/2021

**Action Taken/Follow-up:** ***(Check all that apply)***

☐ Recommends Approval

☐ Does Not Recommend Approval

☒ Forwarded Without Recommendation

☐ Recommendation Report Attached

☐ Minutes Attached

☒ Minutes Not Available

**HISTORY** ***(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)***

Item was presented to the Public Safety, Courts and Civil Service Committee on October 14, 2021.

**ITEM SUMMARY** ***(Brief description of item, discussion, key points, recommendations, etc.)***

Presentation of the Ordinance adopting the 2021 Edition of the International Fire Code (IFC)

**QUESTIONS FOR COUNCIL**

Does Council approve moving the 2021 IFC Adoption forward to regular City Council meeting?

**LEGAL COMMENTS**

City Council has the power to make and publish from time to time ordinances not inconsistent with the laws of the state for carrying into effect or discharging the powers and duties conferred by the state constitution, statute or city Charter and such as it shall deem necessary and proper to provide for the safety; preserve the health; promote the prosperity; and improve the morals, order, comfort and convenience of the city and the inhabitants thereof. (City Code, Section 2-32 and C.R.S. § 31-15-103) (Garcia)

**PUBLIC FINANCIAL IMPACT**

☐ YES ☒ NO

**If yes, explain:** N/A

**PRIVATE FISCAL IMPACT**

☒ Not Applicable ☐ Significant ☐ Nominal

**If Significant or Nominal, explain:** N/A

# 2021 INTERNATIONAL FIRE CODE ADOPTION OVERVIEW

**Aurora Fire Rescue**
**Inspections and Investigations Division**

# CORE 4 VALUES

- Respect
- Integrity
- Professionalism
- Customer Service

# FIRE INSPECTIONS UNIT MISSION

THE MISSION OF THE FIRE INSPECTIONS UNIT IS TO PROTECT THE LIVES AND PROPERTY OF THE CITIZENS AND VISITORS TO THE CITY OF AURORA FROM PREVENTABLE FIRE. AS WELL AS ENSURING THE SAFEST ENVIRONMENT BY UPHOLDING THE INTERNATIONAL FIRE CODE.

# CURRENT STAFFING

The Fire Inspections Bureau is comprised of a Fire Marshal (Deputy Chief), a Commander, Lieutenant, and six Fire Inspectors (including one lead inspector).

# OUR VISION

Adoption of the 2021 IFC with the proposed amendments will enable Aurora Fire Rescue to provide the greatest level of fire prevention and life safety for the citizens and visitors to the City of Aurora.

# INTERNAL/EXTERNAL STAKEHOLDER COLLABORATION AND COMMUNICATION PROCESS

- Business Advisory Board Meeting (January 2020)
- Building Department (IBC/IFC) alignment
- Tax and Licensing
- Legal
- Community Engagement

# 2021 FIRE CODE ADOPTION GOALS

- Adopt the 2021 International Fire Code (IFC), replacing the currently adopted 2015 IFC
- Amend any sections of the 2021 IFC which AFR believes (based upon data) would increase the risk of fire
- Effectively enforce 2021 IFC requirements throughout the City of Aurora (COA)

# 2021 IFC OVERVIEW

- 2021 adoption by COA will include any updates and revisions from the 2018 IFC presently in the 2021 edition (2018 edition was not adopted by COA).
- 2021 adoption adds four chapters of fire code not present in the 2015 IFC
  - Energy Systems
  - Higher Education Laboratories
  - Processing and Extraction Facilities
  - Storage of Distilled Spirits and Wines

# 2021 IFC ADOPTION SIGNIFICANT CHANGES

*Chapters not identified had no significant changes

- Chapter 3, General Requirements
  - Sec. 311.2 allows seasonal out of service for fire protection systems in vacant buildings when less than 12,000 sq ft and does not store vehicles or hazmat
  - Sec 315.3.1 removes 18" and 24" ceiling clearance requirements for storage when storage is against a wall – <u>AFR recommends not adopting this section</u>
- Section 4, Emergency Planning
  - Sec 403.3.1 Updates staff training requirements and fire safety/ evacuation plan requirements for several occupancy groups
  - Sec 404.3.2 Clarifies who may approve lockdown plans

# 2021 IFC ADOPTION SIGNIFICANT CHANGES

- Chapter 5, Fire Service Features
  - Sec 501.3.1 adds requirement for owners to develop and maintain an approved site safety plan with construction plans
  - Sec 510 requires two-way, in-building emergency responder communication coverage in all new buildings, that the communication system be monitored by the fire alarm control unit, and adds the authority of Fire Code Officials to request as-built documentation of communication system
- Chapter 6, Building Services and Systems
  - Sec 603.5 permits temporary daisy-chain of up to five power taps in Group A and some areas of B occupancies, not to exceed 90 days. Power taps are not defined as having surge protection and have a history of overheating/arcing when overloaded. - AFR recommends not adopting this section.

# 2021 IFC ADOPTION SIGNIFICANT CHANGES

- Chapter 7, Fire and Smoke Protection Features
  - Secs 701-708 adds requirements for maintenance of fire-resistant constructions (penetrations, joint and voids, spray and intumescent materials, and doors and windows installed in fire-resistant constructions)
- Chapter 9, Fire Protection and Life Safety Systems
  - Sec 901.4.7 adds requirements for access, marking, temperatures, and permanent lighting requirements to fire pump and valve rooms
  - Sec 901.7 provides an exception to fire-watch for out-of-service fire systems for buildings with an approved notification and management program
  - Sec 903 adds requirements for auto-sprinklers for Groups A, E,F, and S occupancies when specific criteria are met

# 2021 IFC ADOPTION SIGNIFICANT CHANGES

- Chapter 9, Fire Protection and Life Safety Systems - Continued
  - Sec 905.3.1 clarifies building heights requiring Class III standpipes and lists exceptions where Class I standpipes in place of Class III.
  - Sec 905.11 authorizes Fire Code Officials to require locking outlet caps on dry standpipes
  - Sec 907.2 requires a manual fire alarm and detection system in Group A occupancies with an Occupancy Load >100 above or below exit discharge level.
  - Sec 908.3 requires an emergency alarm tied into a fire alarm to produce a "supervisory" signal

# 2021 IFC ADOPTION SIGNIFICANT CHANGES

- Chapter 10, Means of Egress
  - Sec 1010.2.8 allows doors to be locked which are designed to prevent intruders in educational occupancies if the door can be opened from the inside, and the door can be unlocked from the outside with a key
  - Sec 1032.4 clarifies that exit signs shall be installed and maintained in accordance with the adopted code at the time of construction and the existing buildings chapter
- Chapter 11, Construction Requirements for Existing Buildings
  - Sec 1103.5 requires auto sprinklers in existing A-2 occupancies with an occupancy load of >300 or where alcoholic beverages are consumed
  - Sec 1105.6.1 requires means of egress from smoke compartments without having to return through the compartment of origin

# 2021 IFC ADOPTION SIGNIFICANT CHANGES

- Chapter 12, Energy Systems
  - New Chapter in the 2018 IFC: Relocated sections on Emergency and Standby Power, Photovoltaic Power, and other, pertinent sections to consolidate requirements
  - Secs 1206 and 1207 requires permits for installation of Stationary Fuel Cell Power Systems and Electrical Energy Storage Systems
- Chapter 22, Combustible Dust-Producing Operations
  - Sec 2203.6 requires an SOP for dust-producing operations and lists the required topics
  - Sec 2203.8 required a Fire Code Official to approve SOP and ERP and for annual updates/reviews. This section also required training for those involved with combustible dust operations.
- Chapter 23, Motor Fuel Dispensing Facilities and Repair Garages
  - Sec 2303.1 requires self-service fuel dispensing to be observable by an attendant: If approved by the Fire Code Official video monitoring may be used
  - Sec 2306 authorizes the Fire Code Official to require additional impact protection where fuel dispensing equipment is in an area of higher potential for vehicle impact

# 2021 IFC ADOPTION SIGNIFICANT CHANGES

- Chapter 28, Lumber Yards and Agro-Industrial, Solid Biomass and Woodworking Facilities
  - Sec 2810 requires a site plan, fire prevention, evacuation plan, and security plan for outdoor storage of pallets at pallet manufacturing and recycling facilities
- Chapter 31, Tents, Temporary Event Structures, and Other Membrane Structures
  - Sec 3106.3 requires Fire Code Official to approve means of egress and occupancy load for outdoor assembly events
  - Sec 3106.4 requires public safety plan, weather monitoring person, crowd managers to be included for outdoor assembly events
- Chapter 32, High-Piled Combustible Storage
  - Sec 3201 requires approved construction documents and plans be in an approved area and for a floor plan to be posted and protected from damage
  - Sec 3205.1 requires annual verification and evaluation of approved storage layout of high-piled combustible storage

AURORA COLORADO 1902 FIRE RESCUE

# 2021 IFC ADOPTION SIGNIFICANT CHANGES

- Chapter 33, Fire Safety During Construction and Demolition
  - Sec 3302 explains owner's responsibility for fire safety during construction and demolition which include a site safety plan, identification of a Site Safety Director, and daily fire safety inspection
  - Sec 3305 details fire-watch procedures, adds separation from cooking to combustibles at 10 ft, and adds separation Constuction area from occupied areas of the building
  - Sec 3313 requires 500 gpm fire-flow provisions once combustible building materials arrive on-site. This section also requires one fire hydrant within 500 feet of all combustible materials
- Chapter 38, Higher Education Laboratories
  - New chapter in 2018 IFC addressing chemical use, storage, and safety precautions for small labs unique to higher learning facilities
- Chapter 39, Processing and Extraction Facilities
  - New chapter in 2018 IFC focusing on the processing and extraction of oils and fats from various plants. This chapter addresses processing using solvents that may or may-not be hazardous materials

AURORA COLORADO 1902 FIRE RESCUE

# 2021 IFC ADOPTION SIGNIFICANT CHANGES

- Chapter 40, Storage of Distilled Spirits and Wines
  - New chapter in the 2021 IFC addressing occupancies that store beverages up to and including 16 % acohol, which are designated Group S-2
  - Storage facilities designated Group S-1 or H occupancies are not covered by this chapter
- Chapter 50, Hazardous Materials General Provisions
  - Sec 5001.1 provides exceptions of hazmat requirements for products complying with other chapters of the code
- Chapter 51, Aerosols
  - Sec 5103.1 expands the clasification and identification of aerosols
  - Sec 5104.3 limits the amount of aerosol cooking spray products to 2500 pounds when stored indoors at a warehouse

## 2021 IFC ADOPTION SIGNIFICANT CHANGES

- Chapter 52, Compressed Gases
  - Sec 5305.4 requires access to compressed gas systems and valves be provided and maintained
- Chapter 56, Explosives and Fireworks
  - Sec 5606 adds commercial reloading of small arms ammunition to the indoor storage or display items to comply with this chapter
- Chapter 57, Flammable and Combustible Liquids
  - Sec 5701.2 requires leak detection panel status to be announced to an approved location
  - Sec 5707 is a new section relating to on-demand, mobile fueling operations

# 2021 IFC ADOPTION SIGNIFICANT CHANGES

- Chapter 60, Highly Toxic and Toxic Materials
  - Sec 6004. Requires gas detection systems in highly toxic and toxic rooms to comply with this chapter as well as initiate a response when discharge of at or below one half IDLH limit
- Chapter 61, Liquefied Petroleum gases
  - Table 6104.3 notes that above ground LP containers ≤2000 gal are required to be separated from public ways by no less than 5 feet
  - Sec 6110 requires LP gas containers discontinued from use to be removed
- Chapter 62, Oxidizers, Oxidizing Gases, and Oxidizing Cryogenic Fluids
  - Sec 6304 provides updated limits for storage of Class 1, 2, and 3 oxidizing liquids and solids

# INTENDED OUTCOMES

Adopt the 2021 IFC with amendments

- 111.1 **Board of appeals**
- 112.4 **Violation penalties**
- 113.4 **Stop-work violation penalty**
- 503.2.1 **Fire apparatus roads**
- 503.2.3 **Apparatus road minimum weight**
- 2303.1 **Fuel dispensing distance allowance exceptions**

# INTENDED OUTCOMES

- 503.6 **Security gates on apparatus roads**
- 66-39 **Appeal of re-inspection fee**
- **Ceiling height storage** Rescind exception from Sec 315.3.
- **Relocatable power-taps** Rescind Sec 603.5
- **Elevators in service** Additional sub-section 604.2.1
- 66-43 **Fire apparatus access roads**

# SOURCES

International Fire Code 2015, 2018, and 2021 Editions

# THANK YOU

ORDINANCE NO. 2021- ____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 66 OF THE CITY CODE ENTITLED "FIRE PREVENTION AND PROTECTION" RELATED TO THE ADOPTION OF THE 2021 EDITION OF THE INTERNATIONAL FIRE CODE AND LOCAL AMENDMENTS THERETO

WHEREAS, the International Fire Code ("IFC") is a model fire code that regulates minimum fire safety requirements for new and existing buildings, facilities, storage and processes; and

WHEREAS, a new edition of the IFC is produced every three years, and the 2021 Edition of the IFC has been issued by the International Code Council; and

WHEREAS, the current edition of the IFC adopted for the City of Aurora is the 2015 Edition of the IFC; and

WHEREAS, the adoption of the 2021 Edition of the IFC, including the local amendments, will provide the most current fire and life safety applications with respect to construction, occupancy, use and maintenance of buildings and structures in the City of Aurora.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. That section 66-26 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 66-26. Adopted.

The International Fire Code, ~~2015~~ **2021** edition, promulgated by the International Code Council, with appendices A through ~~J and L~~ **I**, are adopted with the amendments, additions and deletions specified in this article. Copies of the codes adopted in this section are available for inspection at the ~~office~~ **Office** of the ~~city~~ **City** ~~clerk~~ **Clerk**.

Section 2. That section 66-28 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 66-28. Board of appeals.

The International Fire Code, section ~~108.1~~ **111.1** is hereby amended to read as follows:

~~108.1~~ **111.1**. Board of appeals established. In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The recognized board of appeals for fire code related appeals shall be the regional fire code board of appeals. Appeals for fire code related issues shall be made to the regional fire code board of appeals pursuant to the intergovernmental agreement and bylaws of the board of appeals. The fire code official shall be an ex officio member of the board of appeals, but shall have no vote on any matter before the board. The board of appeals shall adopt rules of procedure for conducting its business and shall render its decisions and findings in writing to the appellant with a duplicate copy to the fire code official.

<u>Section 3.</u> That section 66-29 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 66-29. Violations.

The International Fire Code, section ~~109.4~~ **112.4** is hereby amended to read as follows:

~~109.4~~ **112.4** Violation penalties.

Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of a municipal ordinance violation, punishable by a fine of not more than the maximum fine set forth in the general penalty provision of section 1-13(a) of the City Code or by imprisonment not to exceed the maximum imprisonment set forth in the general penalty provisions of section 1-13(a) of the City Code, or both such fine and imprisonment, for each offense. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

<u>Section 4.</u> That section 66-30 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

The International Fire Code, section ~~111.4~~ **113.4** is hereby amended to read as follows:

~~111.4~~ **113.4** Failure to comply.

It shall be unlawful for any person to continue any work after having been served with a stop work order. Any person who shall continue any work after having been served with a stop work order, except such work as the person is directed to perform to remove a violation or unsafe condition, shall be subject to a fine not to exceed maximum fine set forth in the general penalty provisions of section 1-13(a) of the City Code.

<u>Section 5.</u> That section 66-32 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

The ~~international~~ **International** ~~fire~~ **Fire** ~~code~~ **Code**, subsections 503.2.1 and 503.2.3 are hereby amended to read as follows:

503.2.1. Dimensions.

Fire apparatus access roads shall have an unobstructed width of not less than 23 feet, unless a greater width is ~~otherwise specified in the code~~ **required elsewhere within the code**, except for approved security gates in accordance with section 503.6, and an unobstructed vertical clearance of not less than 13 feet, 6 inches.

503.2.3. Surface.

Fire apparatus access roads shall be designated and maintained to support the **85,000 lbs.** imposed loads of the fire apparatus ~~up to 85,000 pounds~~ and shall be surfaced so as to provide all weather driving capabilities. No speed reducing devices or traffic-calming features of any type that alter the elevation of the roadway shall be permitted on any fire apparatus access road, unless approved by the fire code official.

Section 6. That section 66-33 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 66-33. Motor fuel dispensing facilities **and Repair Garages**.

The International Fire Code, section ~~2203.1~~ **2303.1** is hereby amended by adding additional subsections (6) and (7) to read as follows:

~~2203.1~~ **2303.1** Location of dispensing devices.

(6) No dispensing or delivery of flammable or combustible liquids will be permitted within 500 feet of any E, I, or R-4 occupancy. This distance shall be measured from the nearest transfer or delivery point of the fuel to the nearest portion of the building or to the nearest activity area of the use, such as a playground or recreational area. This restriction shall not apply to the normal scheduled delivery of combustible fuel into approved tanks used for heating or the operation of emergency electrical generating equipment, provided such delivery is made in accordance with approved dispensing practices with regard to public safety.

Exceptions:

a. The distance restrictions for the dispensing of flammable or combustible liquids can be eliminated if site grading and run-off control features will maintain a distance of at least 20 feet between any potential fuel release and the E, I, or R-4 occupancy and that the fuel, due to elevation differences, will not be able to pool or congregate in or around any E, I, or R-4 occupancy.
b. The distance restrictions for the delivery of flammable or combustible liquids can be eliminated if the delivery occurs when the E, I, or R-4 occupancy is not in use.

(7) The chief may modify the provision of subsection (6) where there are practical difficulties in carrying out the strict letter of this subsection; provided, that the spirit of this section shall be complied with, public safety secured, and substantial justice done. Where an E, I or R-4 occupancy is located at a grade higher than where motor fuel dispensing occurs a reduction in the 500**’** ~~foot~~ restriction may occur as follows:

"SEPARATION OFF-SET CHART"

- 1-FOOT = 400'
- 2-FEET = 300'
- 3-FEET = 200'
- 4-FEET = 100'

Section 7. That the City Code of the City of Aurora, Colorado, is hereby amended by adding a section to be numbered 66-37, which section shall read as follows:

**Sec. 66-37. Security gates.**

**The International Fire Code, section 503.6 is hereby amended to read as follows:**

**The installation of security gates across a fire apparatus access road shall be approved by the fire chief. Where security gates are installed at primary access points, as determined by the fire chief, those gates shall have an approved automatic means of emergency operation. Additionally, each automatic gate shall have a back-up switch (Knox keyed), as well as accessible means of manual operation. Security gates installed at secondary access points, as determined by the fire chief, shall have a means of operation approved by the fire chief. The security gates and the emergency operation shall be maintained in proper working condition at all times. In the event that there are electric gate operators, they shall be listed in accordance with UL 325. Gates intended for automatic operation shall be designed, constructed, and installed in compliance with the requirements of ASTM F 2200.**

Section 8. That section 66-39 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 66-39. ~~Re-inspection fee~~ **Fees**.

(a) *Generally.* Administrative fees may be assessed against any real property owner **or business owner** for **inspections and** re-inspections under this article~~ due to any violation of chapter 66 of the City Code or any violation of the International Fire Code~~. Fees for **inspections and** re-inspections shall be established by the fire chief in accordance with the provisions of section 2-587 of this Code.

Return inspection fees shall be assessed whenever the **real property** owner or occupant **or business owner**:

(1) Fails to provide access to the property being inspected and return visits are necessary.

(2) Fails to provide access on dates and times scheduled.

(3) Cancels an inspection visit without notice of at least three working days prior to scheduled inspection. Cancellations must be justifiable and appropriate.

(b) *Recovery of costs from multi-family housing, creation of a lien.* The city manager or manager's designee, using the appropriate billing forms as supplied by the director of finance, shall notify the owner of multi-family housing of the assessed fees for **inspections and** re-inspection**s** ~~of a fire code violation~~ by certified mail. If the owner fails within 30 days after the date of transmission of notification to pay for the costs and expenses to the city clerk, the costs and expenses shall become a lien against the property. The director of finance shall certify to the treasurer of the appropriate county the legal description of the real property subject to the lien and the amount of costs and fees assessable to such property, plus 15 percent, for administrative fees for collection in the same manner as general property taxes are authorized to be collected by such treasurer.

(c) *Appeal from assessment of re-inspection fee.* If a re-inspection fee is assessed pursuant to subsection (a) of this section, an appeal may be initiated in accordance with this subsection. Within 15 days of the date of the billing form, the owner may file a written appeal with the city manager or designee specifying the reason why the assessment is improper. The assessment shall be stayed pending the resolution of the appeal. The city manager or designee shall determine whether the appeal is valid and shall notify the owner in writing of a final decision. No hearing shall be permitted and the manager's or designee's determination shall be final subject to judicial review.

<u>Section 9.</u> That the City Code of the City of Aurora, Colorado, is hereby amended by adding a section to be numbered 66-40, which section shall read as follows:

**Sec. 66-40. General Storage.**

**The International Fire Code, Section 315.3.1 is hereby amended to read as follows:**

**315.3.1 Ceiling clearance.**
**Storage shall be maintained 2 feet (610 mm) or more below the ceiling in nonsprinklered areas of buildings or not less than 18 inches (457 mm) below sprinkler head defectors in sprinklered areas of buildings.**

<u>Section 10.</u> That the City Code of the City of Aurora, Colorado, is hereby amended by adding a section to be numbered 66-41, which section shall read as follows:

**The International Fire Code, Section 603.5.2 is hereby amended to read as follows:**

**Section 603.5.2 Application and use of relocatable power taps.**

**Relocatable power taps and current taps shall be directly connected to a permanently installed receptacle.**

**Exception 1: Where approved for use in a Group A occupancy or in a meeting room in a Group B occupancy, not more than five surge-protected, relocatable power taps shall be permitted to be connected together or connected to an extension cord for temporary use to supply power to electronic equipment.**

Section 11. That the City Code of the City of Aurora, Colorado, is hereby amended by adding a section to be numbered 66-42, which section shall read as follows:

**The International Fire Code, Section 604.2 is hereby amended by adding a section to be numbered 604.2.1, which section shall read as follows:**

**604.2.1 Where elevators are provided for occupant use, a minimum of one elevator per structure must be operational at all times for firefighters' emergency operations/emergency medical use.**

Section 12. That the City Code of the City of Aurora, Colorado, is hereby amended by adding a section to be numbered 66-43, which section shall read as follows:

**Sec. 66-43. Appendix D - Fire Apparatus Access Roads.**

**The International Fire Code, Appendix D, is hereby amended to read as follows:**

**D103.1 Access road width with a hydrant.**

**Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet (7925 mm), exclusive of shoulders (see Figure D103.1). The dead-end fire apparatus access road turnaround 60' "Y" option shown in Figure D103.1 is repealed.**

**D104.2 Buildings exceeding 62,000 square feet in area.**

**Buildings or facilities having a gross building *area* of more than 62,000 square feet (5760 $m^2$) shall be provided with two separate and approved fire apparatus access roads.**

**D106.1 Projects having more than 100 dwelling units.**

**Multiple-family residential projects having more than 100 dwelling units shall be equipped throughout with two separate and approved fire apparatus access roads.**

Section 13. That the City Code of the City of Aurora, Colorado, is hereby amended by adding a section to be numbered 66-121, which section shall read as follows:

**Sec. 66-121. Fire Lane Obstruction.**

**(a) *Parking or Stopping*. Parking or stopping is not permitted within fire lanes designated by the City of Aurora for any vehicles other than emergency response and**

**enforcement vehicles. To provide access for emergency response and enforcement vehicles, storage of property or otherwise obstructing city-designated fire lanes is prohibited at all times.**

**(b)** ***Private Property.*** **Property owners or owner's agents may designate additional fire lanes on their private property but are not enforceable by City of Aurora officials as indicated in section (d) of this section and are the sole responsibility of the owner or owner's agent to enforce.**

**(c)** ***School Drop-off and Pick-up Location.*** **Where approved by the Fire Chief or designee, schools may mark a city-designated fire lane adjacent to the school as a student drop-off and pick-up location. If approved, vehicles must be attended to at all times while stopped in the fire lane by a licensed operator who is capable of moving the vehicle in the event of an emergency. Student pick-up and drop-off locations are intended to be for momentary stopping to enable safe ingress and egress of students and not to be used to for parking, or other activities which may obstruct the fire lane when needed by emergency response or enforcement vehicles. Where approved, the Fire Chief or designee may require on-site traffic control personnel be used to ensure safe traffic flow through student pick-up and drop-off locations within a fire lane and are to be provided by the school.**

**(d)** ***Penalty*****. Property owners or vehicle owners convicted of violating this section shall be guilty of a municipal ordinance violation, punishable by a fine of not more than the maximum fine set forth in the general penalty provision of section 1-13(a) of the City Code.**

Section 14. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 16. All acts, orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this _____ day of ___________, 2021.

PASSED AND ORDERED PUBLISHED this ______ day of ____________, 2021.

___________________________________

MIKE COFFMAN, Mayor

ATTEST:

______________________________
KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

Angela L. Garcia RLA
______________________________
ANGELA L. GARCIA, Senior Assistant City Attorney

## Aurora Business Advisory Board

15151 E. Alameda Parkway
Aurora, Colorado 80012
Ph: (303) 326-8690
Fax: (303) 739-7136

October 21, 2021

Mayor & City Council
City of Aurora
15151 E. Alameda Pkwy., 5th Floor
Aurora, CO 80012

**Subject: 2021 International Fire Code**

Dear Mayor Coffman & Members of City Council:

Commander Steven Wright has been actively participating in the Business Advisory Board meetings since February, 2020. He has brought to the Board's attention several fire and safety topics, as it pertains to the business community. Among those topics, he discussed the 2021 International Fire Code.

Commander Wright has shared the IFC 2021 Implementation presentation and the Ordinance for the Board to review. The Board will study these documents and bring questions to its November meeting, at which point the BAB will provide recommendations.

Respectfully submitted,

Garrett Walls, Chairperson

GW/ev

CC: BAB Members
Elena Vasconez, Economic and Business Development Supervisor
Trevor Vaughn, Manager of Tax & Licensing

**CITY OF AURORA**

**NOTICE OF PUBLIC HEARING**
**ON PROPOSED ADOPTION OF CODES BY REFERENCE**

NOTICE IS HEREBY GIVEN of a public hearing on November 22, 2021, at 6:30 p.m. at the regular meeting of the City Council of the City of Aurora, Colorado regarding the adoption by reference of the 2021 codes published by the International Code Council, Inc, 500 New Jersey Ave, NW, 6th Floor, Washington D.C., 20001. THIS MEETING WILL BE A VIRTUAL MEETING, PLEASE GO TO THE CITY OF AURORA WEBSITE (AURORAGOV.ORG) FOR INSTRUCTIONS ON PARTICIPATION.

The 2021 International Code Council codes to be adopted by reference are as follows:
International Building Code (IBC)
International Residential Code (IRC)
International Plumbing Code (IPC)
International Mechanical Code (IMC)
International Fuel Gas Code (IFGC)
International Energy Conservation Code (IECC)
International Existing Building Code (IEBC)
International Swimming Pool and Spa Code (ISPSC)
International Fire Code (IFC)

Each of the above codes are available online at: https://codes.iccsafe.org.

The primary purposes of the codes are for building construction and greater safety to the public by uniformity in building laws and building fire safety. Any person may participate at such virtual hearing and speak upon any matter to be determined by the City Council. Copies of the codes being considered for adoption are on file with the City Clerk and are open to public inspection.

Kadee Rodriguez, City Clerk

Publication Dates: November 1, 2021 and November 10, 2021

# CITY OF AURORA
## Council Agenda Commentary

| | |
|---|---|
| **Item Title:** Resolution Approving Regional Fire Code Board of Appeals IGA | |
| **Item Initiator:** Steven Wright, Fire Commander | |
| **Staff Source/Legal Source:** Caine Hills, Deputy Fire Chief / Angela Garcia, Senior Assistant City Attorney | |
| **Outside Speaker:** N/A | |
| **Council Goal:** 2012: 1.0--Assure a safe community for people | |

**COUNCIL MEETING DATES:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

**ITEM DETAILS:**

Caine Hills, Deputy Fire Chief / Angela Garcia, Senior Assistant City Attorney

**ACTIONS(S) PROPOSED** ***(Check all appropriate actions)***

☐ Approve Item and Move Forward to Study Session

☐ Approve Item as proposed at Study Session

☒ Approve Item and Move Forward to Regular Meeting

☐ Approve Item as proposed at Regular Meeting

☐ Information Only

☐ Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field.

**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** Public Safety, Courts & Civil Service

**Policy Committee Date:** 10/14/2021

**Action Taken/Follow-up:** ***(Check all that apply)***

☐ Recommends Approval

☐ Does Not Recommend Approval

☒ Forwarded Without Recommendation

☐ Recommendation Report Attached

☐ Minutes Attached

☒ Minutes Not Available

**HISTORY** ***(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)***

Item was presented to the Public Safety, Courts, Civil Service Policy Committee on 10/14/2021.

**ITEM SUMMARY** ***(Brief description of item, discussion, key points, recommendations, etc.)***

Intergovernmental Agreement between the City of Aurora, South Metro Fire Rescue Fire Protection District, City of Sheridan, West Douglas Fire Protection District, Jackson-105 Fire Protection District, and Bennett Fire Protection District No. 7 regarding the Regional Fire Code Board of Appeals

**QUESTIONS FOR COUNCIL**

Does Council approve moving the Regional Fire Code Board of Appeals IGA forward to the regular City Council meeting?

**LEGAL COMMENTS**

City Council may, by resolution, enter into Intergovernmental Agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter, Art. §10-12). Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat. § 29-1-203(1)) (Garcia)

**PUBLIC FINANCIAL IMPACT**

☐ YES ☒ NO

**If yes, explain:** N/A

**PRIVATE FISCAL IMPACT**

☒ Not Applicable ☐ Significant ☐ Nominal

**If Significant or Nominal, explain:** N/A

EFFECTIVE DATE: 3-7-11

**RESOLUTION NO.** 2011-14

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA AND THE LITTLETON FIRE PROTECTION DISTRICT, CUNNINGHAM FIRE PROTECTION DISTRICT, JACKSON 105 FIRE PROTECTION DISTRICT, WEST DOUGLAS FIRE PROTECTION DISTRICT, SOUTH METRO FIRE RESCUE AUTHORITY, AND THE CITY OF SHERIDAN REGARDING THE REGIONAL FIRE CODE BOARD OF APPEALS**

---

**WHEREAS**, Section 10-12 of the City Charter authorizes the City Council of the City of Aurora, Colorado, by resolution, to enter into contracts or agreements with other governmental units or special districts for the joint use of buildings, equipment, or facilities, and for the furnishing or receiving of services; and

**WHEREAS**, Fire Districts and Departments within Arapahoe and Douglas counties have established a Regional Fire Code Board of Appeals, which complies with the mandates of the International Fire Code, Section 108.1, to hear and decide appeals of orders, decisions, or determinations made by a district or department's fire code official regarding the application and determination of the International Fire Code; and

**WHEREAS**, the City of Aurora, in order to draw upon the resources, experience, and expertise of the Regional Fire Code Board of Appeals, desires to have the Regional Fire Code Board of Appeals serve as the City's fire code appeals board; and

**WHEREAS,** Sections 29-1-203 Colorado Revised Statutes provide authority for the execution of the intergovernmental agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA:**

That the Mayor of the City of Aurora, Colorado, is hereby authorized to execute, on behalf of the City, the intergovernmental agreement between the City of Aurora and the Littleton Fire Protection District, Cunningham Fire Protection District, Jackson 105 Fire Protection District, West Douglas Fire Protection District, South Metro Fire Rescue Authority, and the City of Sheridan in a document titled: Fourth Amendment to Intergovernmental Agreement creating the Regional Fire Code Board of Appeals.

**RESOLVED AND PASSED** this 7th day of March, 2011.

Edward J. Tauer

**EDWARD J. TAUER**, Mayor

**ATTEST**:

DEBRA A. JOHNSON, City Clerk

**APPROVED AS TO FORM**:

Dana Spade, Asst. City Attorney

RESOLUTION NO. R2021- ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF AURORA, SOUTH METRO FIRE RESCUE FIRE PROTECTION DISTRICT, CITY OF SHERIDAN, WEST DOUGLAS FIRE PROTECTION DISTRICT, JACKSON-105 FIRE PROTECTION DISTRICT, AND BENNETT FIRE PROTECTION DISTRICT NO. 7 REGARDING THE REGIONAL FIRE CODE BOARD OF APPEALS

WHEREAS, on August 1, 2006, South Metro Fire Rescue, City of Sheridan, West Douglas Fire Protection District, Jackson-105 Protection District, Littleton Fire Protection District and Cunningham Fire Protection District, entered into an Intergovernmental Agreement creating the Regional Fire Code Board of Appeals ("2006 IGA"); and

WHEREAS, the Regional Fire Code Board of Appeals hears and decides appeals of orders, decisions or determinations made by a fire chief or other fire code official vested with the right to apply and interpret the controlling fire code in its respective jurisdiction; and

WHEREAS, in R2011-14, City Council authorized the City of Aurora to draw upon the resources, experience, and expertise of the Regional Fire Code Board of Appeals and have the Regional Fire Code Board of Appeals serve as the City's fire code appeals board; and

WHEREAS, a new Intergovernmental Agreement is necessary since the 2006 IGA was terminated as of September 2021 considering the Littleton Fire Protection District was dissolved as of December 31, 2018 and Cunningham Fire Protection District consolidated with South Metro Fire Rescue in January 2020; and

WHEREAS, the City of Aurora, South Metro Fire Rescue Fire Protection District, City of Sheridan, West Douglas Fire Protection District, Jackson-105 Fire Protection District, and Bennett Fire Protection District No. 7 are entering into a new Intergovernmental Agreement regarding the Regional Fire Code Board of Appeals; and

WHEREAS, Article XIV, Section 18(2)(a) of the Constitution of the State of Colorado and Part 2, Article 1, Title 29, C.R.S., encourage and authorize intergovernmental agreements; and

WHEREAS, Section 29-1-203, C.R.S., authorizes governments to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each, and to establish a separate legal entity to do so; and

WHEREAS, Article 10-12 of the City Charter authorizes the City Council, by resolution, to enter into contracts or agreements with other governmental units or special districts for the joint use of buildings, equipment, or facilities, and for the furnishing or receiving of services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the City of Aurora, South Metro Fire Rescue Fire Protection District, City of Sheridan, West Douglas Fire Protection District, Jackson-105 Fire Protection District, and Bennett Fire Protection District No. 7 regarding the Regional Fire Code Board of Appeals is hereby approved.

Section 2. The Mayor and City Clerk are hereby authorized to execute the attached Intergovernmental Agreement in substantially the form presented at this meeting with such technical additions, deletions, and variations as may be deemed necessary or appropriate by the City Attorney.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this ________ day of ______________________, 2021.

________________________________________
MIKE COFFMAN, Mayor

ATTEST:

___________________________________
KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

Angela L. Garcia RLA
___________________________________
ANGELA L. GARCIA, Senior Assistant City Attorney

## TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT (this "Termination Agreement") is made and entered into as of this ___ day of ________, 2021, by and among the following (individually "Party;" collectively "Parties"):

1. SOUTH METRO FIRE RESCUE, a quasi-municipal corporation and political subdivision of the State of Colorado, organized pursuant to Article 1, Title 32, C.R.S., which assigned its rights and obligations under the 2006 IGA (defined below) to South Metro Fire Rescue Authority, which subsequently transferred all of its assets, including its rights and obligations under the 2006 IGA, to Parker Fire Protection District, then to South Metro/Cunningham Fire Rescue Authority, and then to South Metro Fire Rescue Fire Protection District, all while doing business as South Metro Fire Rescue ("South Metro"); and

2. The CITY OF SHERIDAN ("Sheridan"), a municipal corporation and political subdivision of the State of Colorado; and

3. WEST DOUGLAS FIRE PROTECTION DISTRICT ("West Douglas"), a quasi-municipal corporation and political subdivision of the State of Colorado, organized pursuant to Article 1, Title 32, C.R.S.; and

4. JACKSON-105 FIRE PROTECTION DISTRICT ("Jackson-105"), a quasi-municipal corporation and political subdivision of the State of Colorado, organized pursuant to Article 1, Title 32, C.R.S.; and

5. The CITY OF AURORA ("Aurora"), a home rule municipal corporation and political subdivision of the State of Colorado.

## RECITALS

A. The Parties, along with the Littleton Fire Protection District and Cunningham Fire Protection District, each quasi-municipal corporations and political subdivisions of the State of Colorado, organized pursuant to Article 1, Title 32, C.R.S. ("Littleton Fire" and "Cunningham," respectively), entered into that certain Intergovernmental Agreement Creating Regional Fire Code Board of Appeals dated August 1, 2006, as amended by the First Amendment to Intergovernmental Agreement Creating Regional Fire Code Board of Appeals dated June 27, 2007, the Second Amendment to Intergovernmental Agreement Creating Regional Fire Code Board of Appeals dated December 12, 2007, the Third Amendment to Intergovernmental Agreement Creating Regional Fire Code Board of Appeals dated February, 2008, and the Fourth Amendment to Intergovernmental Agreement Creating Regional Fire Code Board of Appeals dated May, 2011 (together, the "2006 IGA"); and

B. Littleton Fire was dissolved as of December 31, 2018; and

C. Cunningham Fire consolidated with South Metro in January 2020 by excluding all of its property and including such property within the boundaries of South Metro; and

D. The Parties desire to terminate the 2006 IGA.

**NOW THEREFORE**, the Parties agree as follows:

1. **Termination of 2006 IGA**. Pursuant to Paragraph 10 of the 2006 IGA, the 2006 IGA is hereby terminated in its entirety as of the date first listed above and is of no further force and effect, and each Party to the 2006 IGA is hereby released and discharged of any and all obligations thereunder.

2. **Counterpart Execution**. This Termination Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one in the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Termination Agreement as of the day and year first above written.

SOUTH METRO FIRE RESCUE FIRE PROTECTION DISTRICT

By: ______________________________
Fire Chief

[Signature Page to Termination Agreement]

CITY OF SHERIDAN

By: ________________________________
Mayor

Attest:

________________________________
City Clerk

[Signature Page to Termination Agreement]

WEST DOUGLAS FIRE PROTECTION DISTRICT

By: ________________________________
President

Attest:

________________________________
Secretary

[Signature Page to Termination Agreement]

JACKSON-105 FIRE PROTECTION
DISTRICT

By: ___________________________________
Fire Chief

[Signature Page to Termination Agreement]

CITY OF AURORA

By: ________________________________
Mayor

Attest:

________________________________
City Clerk

Approved as to Form:

________________________________
Senior Assistant City Attorney

**INTERGOVERNMENTAL AGREEMENT**
**CREATING REGIONAL FIRE CODE BOARD OF APPEALS**

THIS INTERGOVERNMENTAL AGREEMENT CREATING REGIONAL FIRE CODE BOARD OF APPEALS (the "Agreement") is made and entered into this ___ day of ________, 2021, by and among the following (individually "Party"; collectively "Parties"):

1. SOUTH METRO FIRE RESCUE FIRE PROTECTION DISTRICT ("South Metro"), a quasi-municipal corporation and political subdivision of the State of Colorado, organized pursuant to Article 1, Title 32, C.R.S.;

2. The CITY OF SHERIDAN ("Sheridan"), a municipal corporation and political subdivision of the State of Colorado;

3. WEST DOUGLAS FIRE PROTECTION DISTRICT ("West Douglas"), a quasi-municipal corporation and political subdivision of the State of Colorado, organized pursuant to Article 1, Title 32, C.R.S.;

4. JACKSON-105 FIRE PROTECTION DISTRICT ("Jackson-105"), a quasi-municipal corporation and political subdivision of the State of Colorado, organized pursuant to Article 1, Title 32, C.R.S.;

5. The CITY OF AURORA ("Aurora"), a home rule municipal corporation and political subdivision of the State of Colorado; and

6. BENNETT FIRE PROTECTION DISTRICT NO. 7 ("Bennett"), a quasi-municipal corporation and political subdivision of the State of Colorado, organized pursuant to Article 1, Title 32, C.R.S.

**RECITALS**

A. Article XIV, Section 18(2)(a) of the Constitution of the State of Colorado and Part 2, Article 1, Title 29, C.R.S., encourage and authorize intergovernmental agreements; and

B. Section 29-1-203, C.R.S., authorizes governments to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each, and to establish a separate legal entity to do so; and

C. The Parties are each lawfully authorized to hear and decide appeals of orders, decisions or determinations made by a fire chief or other fire code official vested with the right to apply and interpret the controlling fire code in its respective jurisdiction ("Fire Code Official"), regardless of whether such jurisdiction is a party to this Agreement; and

D. Littleton Fire Protection District, Parker Fire Protection District, Sheridan, South Metro Fire Rescue, Cunningham Fire Protection District, West Douglas, Jackson-105, and Aurora entered into that certain Intergovernmental Agreement Creating Regional Fire Code Board of Appeals dated August 1, 2006, as amended by the First Amendment to Intergovernmental Agreement Creating Regional Fire Code Board of Appeals dated June 27, 2007, the Second Amendment to Intergovernmental Agreement Creating Regional Fire Code Board of Appeals dated December 12, 2007, the Third Amendment to Intergovernmental Agreement Creating Regional Fire Code Board of Appeals, and the Fourth Amendment to Intergovernmental Agreement Creating Regional Fire Code Board of Appeals dated June 2011 (together, the "2006 IGA"); and

E. Pursuant to the 2006 IGA, a Regional Fire Code Board of Appeals was established; and

F. The 2006 IGA was terminated by that certain Termination Agreement dated as of __________, 2021; and

G. The Parties desire to create by this Agreement a new Regional Fire Code Board of Appeals (the "Board") to hear and decide appeals for each Party and any other jurisdictions served by the Board (the "Jurisdiction") pursuant to the terms of this Agreement.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. Creation of the Board. In order to hear and decide appeals of orders, decisions or determinations made by a Fire Code Official relative to the application and interpretation of the controlling fire code in such Fire Code Official's jurisdiction (the "Controlling Fire Code"), the Board is hereby created. The Board shall have no authority to waive requirements of the Controlling Fire Code. The Board is authorized to hear evidence from each person having filed a proper appeal (the "Appellant") and the subject Fire Code Official related to or based upon the following:

   A. Interpretations of the Controlling Fire Code by the Fire Code Official or other employees of the applicable Party or Jurisdiction;

   B. Applicability of the provisions of the Controlling Fire Code; and

   C. Equivalent methods of protection or safety proposed by the Appellant.

2. Additional Parties. Any jurisdiction providing fire protection services within the State of Colorado may request to become an additional party to this Agreement in accordance with Section 8 hereof.

3. Governance.

A. Members of the Board. The Board shall consist of five (5) voting members (individually, a "Member" and collectively, the "Members") who are qualified by experience and training to pass on matters pertaining to hazards of fire, explosions, hazardous conditions or fire protection systems and are not employees or representatives of any Party that has entered into this Agreement. The Members shall have the qualifications set forth below:

(1) Design professional. One Member shall be a practicing design professional registered in the practice of engineering or architecture in Colorado.

(2) Fire protection engineering professional. One Member shall be a qualified engineer, technologist, technician or safety professional trained in fire protection engineering, fire science or fire technology. Qualified representatives in this category shall include fire protection contractors and certified technicians engaged in fire protection system design.

(3) Industrial safety professional. One Member shall be a registered industrial or chemical engineer, certified hygienist, certified safety professional, certified hazardous materials manager or comparably qualified specialist experienced in chemical process safety or industrial safety.

(4) General contractor. One Member shall be a contractor regularly engaged in the construction, alteration, maintenance, repair or remodeling of buildings or building services and systems regulated by the fire code.

(5) General industry or business representative. One Member shall be a representative of business or industry not represented by a Member from one of the other categories described above.

B. Appointment to the Initial Board. The initial Board shall be composed of Members selected by a majority of the votes submitted by the Fire Code Officials of the Parties within sixty (60) days following the close of the nomination period, regardless of the number of nominations received. The initial terms for such Members shall expire on the date noted below:

(1) Design professional – initial term of three (3) years;

(2) Fire protection engineering professional – initial term of two (2) years;

(3) Industrial safety professional – initial term of two (2) years;

(4) General contractor – initial term of two (2) years; and

(5) General industry or business representative – initial term of three (3) years.

C. Terms of office. Following the initial terms set forth above, Members shall be appointed for terms of four (4) years. No Member shall be reappointed to serve more than two consecutive full terms.

D. Vacancies. Within sixty (60) days of the date of a vacancy on the Board, each Party's Fire Code Official may submit nominations for a new Member, who shall be selected by a majority of the votes submitted by the Fire Code Officials of the Parties within sixty (60) days following the close of the nomination period, regardless of the number of nominations received. Any Member appointed to fill a vacancy in an unexpired term shall be eligible for reappointment to two full four-year terms. For purposes of this Agreement, each Party shall be deemed to have only one (1) Fire Code Official.

E. Officers. Following appointment, the Board shall elect a Chairperson and Vice-Chairperson on an annual basis.

F. Removal from Board. Any Member may be removed from the Board prior to the end of his or her term for any reason and without notice, upon a majority vote of the Fire Code Officials of the Parties.

G. Quorum. A majority of the sitting Members, but in no case less than three Members, shall constitute a quorum. In varying the application of any provisions of the Controlling Fire Code or in modifying an order of a Fire Code Official, affirmative votes of the majority of the Members present, but not less than three, shall be required.

H. Conflict of Interest. Members shall not be interested personally in a matter before the Board, whether such interest is directly in said matter or the Member is currently retained by an Appellant, Party, or Jurisdiction on other matters. In the event of such interest, the Member shall declare such interest at the Board meeting and shall thereafter refrain from participating in all discussions or deliberations on such matter, and shall refrain from voting on such matter.

I. Procedures. The Board shall establish additional rules and regulations for its own procedure not inconsistent with the provisions of Colorado law.

J. Compensation. Members shall serve without remuneration or compensation.

K. Administration of Board Matters and this Agreement. The administrative affairs of the Board including without limitation official recordkeeping, mailings, and other administrative support, as well as administration of this Agreement, shall be handled by South Metro, except that each Party shall be responsible for handling and staffing matters before the Board that originated in such Party's jurisdiction. Each Party shall be responsible for maintaining any records and documents related to matters before the Board related to such Party, and with processing any Colorado Open Records Act requests which pertain to a matter of the Party before or heard by the Board.

4. Meetings. The Board shall meet on an "as-needed" basis to hear appeals and conduct other business. The date and time of any and all meetings shall be determined by the Chairperson, who shall take into account the availability of the Appellant if the same has been communicated to the Board. All meetings shall be subject to applicable laws concerning their conduct. In any event, the Board shall meet within fifteen (15) business days after a properly filed notice of appeal has been received.

A. Notice of Meetings. Written notice of any meeting of the Board shall be delivered to each Member and each Party to this Agreement care of their respective Fire Code Official. For meetings at which appeals are heard, written notice shall also be delivered to the Appellant and the Fire Code Official for the Jurisdiction whose action is being appealed, if applicable. All such notices shall be delivered not less than three (3) days before the date fixed for such meeting, either personally, by e-mail if an address was provided for that purpose, or by mail.

B. Waiver of Notice. Whenever any notice is required to be given to any Member under the provisions of this Agreement, a waiver thereof in writing by such Member, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a Member at any meeting of the Board shall constitute a waiver by such Member of notice of such meeting.

C. Location of Meetings. Meetings at which appeals are heard shall be held at a location provided by the Party or Jurisdiction whose action is being appealed. The location of meetings for general business discussions of the Board will be agreed upon by the Parties.

5. Decisions of the Board. Every decision of the Board shall be filed with the office of the Fire Code Official for the Party or Jurisdiction whose action is being appealed no later than thirty (30) days after the date on which the Board hears the appeal and shall be a public record of that Party or Jurisdiction, provided that proprietary information contained in such decisions shall be subject to protection afforded by Colorado law. In addition, a copy of the Board decision shall be sent by mail to the Appellant and each Party to this Agreement. All decisions made by the Board shall be applicable to all Parties and Jurisdictions to the extent of each such decision unless the

Controlling Fire Code is more restrictive, in which case the Controlling Fire Code shall supersede the decision.

6. Expenses of the Board — Appeal Fee. In order to off-set the meeting expenses of the Board and any legal fees paid by the Parties in administering appeals, the Appellant shall pay to the Party whose action is being appealed an appeal fee in the amount of Seventy-Five Dollars ($75.00) upon submission of an appeal. No appeal shall proceed in the absence of such payment.

7. Indemnification.

A. Indemnification of Members. Each Member shall, for purposes of the Colorado Governmental Immunity Act, as the same may be amended from time to time, be considered an authorized volunteer of the Parties, collectively and shall, to the extent allowed by law, be indemnified by the Parties against all costs and expenses actually and necessarily incurred by such person in connection with the defense of any action, suit or proceeding arising out of an act or omission of a Member or Members during the performance of their duties, except in relation to matters as to which a Member or Members acted in a manner outside of the scope of their appointment to the Board, or where the act or omission was willful or wanton. Such costs and expenses shall include amounts reasonably paid in settlement for the purpose of curtailing the cost of litigation, or in satisfaction of any judgment, but only if the Parties are advised in writing by opinion of legal counsel, or the court finds that the act or omission of the Member or Members occurred during the performance of their duties and within the scope of their appointment to the Board, and that such act or omission was not willful and wanton. The foregoing right of indemnification shall not be exclusive of other rights to which a Member may be entitled as a matter of law or by agreement.

B. Indemnification of Parties. To the extent allowed by law, each Party shall indemnify and hold the other Parties harmless for any costs, expenses, or liabilities incurred by such other Parties in connection with any action, suit or proceeding arising out the Board's actions or inactions on behalf of the indemnifying Party.

8. Additional Parties. Additional parties may be added to this Agreement by Amendment hereof.

9. Assignment. No Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties.

10. Term. This Agreement shall become effective on execution by the Parties, and shall extend until terminated as provided herein. This Agreement may be terminated at any time by written agreement of all Parties at the time of such termination. In addition, a Party may withdraw from this Agreement by written notice authorized by

such Party, provided to each of the remaining Parties sixty (60) days prior to effective date of the withdrawal.

11. Amendments. This Agreement may be amended only by written document approved by all of the Parties.

12. Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one in the same instrument.

13. Notices. Except as provided in Section 4.A. hereof, any formal notice or request required or provided for in this Agreement shall be in writing and shall be deemed properly given or made if delivered in person, or sent by U.S. Mail, postage prepaid, to the Parties at the addresses as set forth on each signature page attached hereto, unless another address is certified to the Board.

EXECUTED as of the date first written above.

[SIGNATURE PAGES FOLLOW]

[Signature Page to Intergovernmental Agreement
Creating Regional Fire Code Board of Appeals]

SOUTH METRO FIRE RESCUE FIRE
PROTECTION DISTRICT

By: ________________________________
Fire Chief

Attn: Fire Chief
9195 E. Mineral Avenue
Centennial, CO 80112

[Signature Page to Intergovernmental Agreement
Creating Regional Fire Code Board of Appeals]

CITY OF SHERIDAN

By: ________________________________
Mayor

Attn: City Manager
4101 S. Federal Boulevard
Sheridan, CO 80110

Attest:

________________________________
City Clerk

[Signature Page to Intergovernmental Agreement
Creating Regional Fire Code Board of Appeals]

WEST DOUGLAS FIRE PROTECTION DISTRICT

By: ________________________________
President

Attn: Fire Chief
4037 Platte Avenue
Sedalia, CO 80135

Attest:

________________________________
Secretary

[Signature Page to Intergovernmental Agreement
Creating Regional Fire Code Board of Appeals]

JACKSON-105 FIRE PROTECTION
DISTRICT

By: ________________________________
Fire Chief

Attn: Fire Chief
435 N. Perry Park Road
Sedalia, CO 80135

[Signature Page to Intergovernmental Agreement
Creating Regional Fire Code Board of Appeals]

CITY OF AURORA

By: ______________________________
Mayor

Attn: City Manager
15151 E. Alameda Parkway
Aurora, CO 80012

Attest:

______________________________
City Clerk

Approved as to Form:

Angela L. Garcia
______________________________
Senior Assistant City Attorney

{00598479.DOCX / 6 }

[Signature Page to Intergovernmental Agreement
Creating Regional Fire Code Board of Appeals]

BENNETT FIRE PROTECTION
DISTRICT NO. 7

By: ______________________________
President

Attn: Fire Chief
355 4th Street
Bennett, CO 80102

Attest:

______________________________
Secretary

# CITY OF AURORA
## Council Agenda Commentary

| | |
|---|---|
| **Item Title:** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REPEALING THE REQUIREMENT FOR STABLE LICENSES | |
| **Item Initiator:** Trevor Vaughn, Manager of Tax and Licensing | |
| **Staff Source/Legal Source:** Trevor Vaughn / Hanosky Hernandez | |
| **Outside Speaker:** n/a | |
| **Council Goal:** 2012: 6.0--Provide a well-managed and financially strong City | |

**COUNCIL MEETING DATES:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

**ITEM DETAILS:**

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REPEALING THE REQUIREMENT FOR STABLE LICENSES

Staff Source: Trevor Vaughn, Manager of Tax and Licensing
Legal: Hanosky Hernandez , Assistant City Attorney
Estimated Presentation / Discussion time 5/5 minutes.

**ACTIONS(S) PROPOSED** ***(Check all appropriate actions)***

☐ Approve Item and Move Forward to Study Session

☐ Approve Item as proposed at Study Session

☒ Approve Item and Move Forward to Regular Meeting

☐ Approve Item as proposed at Regular Meeting

☐ Information Only

☐ Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field.

**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** Management & Finance

**Policy Committee Date:** 10/26/2021

**Action Taken/Follow-up:** ***(Check all that apply)***

☐ Recommends Approval ☐ Does Not Recommend Approval

☐ Forwarded Without Recommendation ☐ Recommendation Report Attached

☐ Minutes Attached ☒ Minutes Not Available

**HISTORY** ***(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)***

This item was reviewed with the Business Advisory Board on October 18th, 2021. The BAB did not raise any concerns regarding the item.

**ITEM SUMMARY** ***(Brief description of item, discussion, key points, recommendations, etc.)***

In 1974 the city imposed a license requirement along with an occupational tax requirement on horse stables. In reviewing the original ordinance, it appears the intent of the ordinance was for tax revenue. At some point the occupational tax requirement was repealed. Currently the license is held by seven businesses listed below:

| | |
|---|---|
| GODS LITTLE ACRE | 211 S EVANSTON WAY |
| L&P RANCH | 1350 N AIRPORT BLVD |
| BIG R STABLES | 2000 N SABLE BLVD |
| AURORA STABLES | 10850 E EXPOSITION AVE |
| SALVADOR CONTRERAS NORIEGA | 17051 E 10TH AVE |
| KENLYN STABLES | 1000 N SALIDA ST |
| HERNANDEZ HORSE BOARDING | 15965 E 36TH AVE |

This license has an annual fee of $146. The license has very little regulatory effect and does not impose any screening or regulatory elements outside of a reference to other city codes and state law. Stable businesses are required to have a general business license. A general business license can be revoked or denied for violation of city codes or state law. The business license also allows for inspection of businesses. Therefore, staff including the Animal Care Manager believe this license can be eliminated without diminishing regulatory or enforcement ability.

**QUESTIONS FOR COUNCIL**

Does the council approve of moving the item forward for formal consideration?

**LEGAL COMMENTS**

The City of Aurora is a home rule municipality, organized and existing under the Colorado Constitution. (Colo. Const. Article XX, Section 6). Article XX Section 6 grants the city and its citizens the right to self-government in matters of local affairs not preempted by the State legislature. The City Council shall have and shall exercise the powers, privileges and duties granted and conferred by the state constitution, statute or city Charter. The City Council has the power to make and publish from time to time ordinances, and to repeal previously passed ordinances, as it shall deem necessary and proper to provide for the safety; preserve the health; promote the prosperity; and improve the morals, order, comfort and convenience of the city. (City Code Section 2-32.) This action repeals a legislative enactment and it must be take in the form of an ordinance. (Aurora City Charter Article 5-1). (Hernandez).

**PUBLIC FINANCIAL IMPACT**

☒ YES ☐ NO

**If yes, explain:** Loss of fee revenue of $1022 likely offset by soft cost savings.

**PRIVATE FISCAL IMPACT**

☐ Not Applicable ☐ Significant ☒ Nominal

**If Significant or Nominal, explain:** Fee savings for seven businesses.

# Division 6.
# Stable License



## Sec. 86-296. Definitions.

Except as otherwise indicated by the context, the following words and phrases shall have the following meanings for purposes of this division:

*Horse* means any member of the equidae family and equus genus, regardless of gender, including horses, burros, donkeys, and mules.

*Pack animal* means any animal used for carrying materials, including horses, burros, donkeys, mules, and llamas.

*Stable* means any structure or enclosure maintained for the purpose of housing, feeding, or keeping horses or pack animals where four or more horses or pack animals are boarded, kept for hire to the general public, or otherwise kept for compensation. Any time that four or more horses or pack animals are located on a particular lot or parcel of land, they will be presumed to be boarded, kept for hire to the general public, or otherwise kept for compensation; provided, however, that such presumption may be rebutted by the presentation of sufficient evidence to the contrary by the owner of such horses or pack animals. (Ord. No. 98-86, § 10, 11-30-1998)

## Sec. 86-297. License required.

No person shall be permitted to operate a stable in the city without a valid stable license. (Ord. No. 98-86, § 10, 11-30-1998)

## Sec. 86-298. Review by other departments.

Prior to the issuance of any stable license, each license application shall be submitted to the animal care division for review as provided in section 86-34. The division shall inspect the premises for which a stable license is sought for the purposes of:

(1) Ensuring compliance with any and all provisions of this code pertaining to the keeping, boarding, and care of horses or pack animals;

(2) Where a stable is used for the purpose of keeping horses or pack animals for hire to the general public, ensuring that sanitary rest room facilities are readily available on the premises for visitors to, or clients and patrons of, the stable. (Ord. No. 98-86, § 10, 11-30-1998)

## Sec. 86-299. Issuance; denial.

(a) In order for a stable license to issue, the licensing administrator must find, in addition to the findings required by section 86-35, that the premises for which a stable license is sought has been inspected and approved by the animal care division as provided in section 86-298.

(b) If the licensing administrator finds that the applicant does not meet all of the requirements for issuance set forth in this section and in section 86-35, he or she shall deny the stable license or defer a decision on the license application as provided in section 86-36. During said deferral period, the applicant may request a reinspection of the premises for the purpose of demonstrating compliance with the conditions set forth in section 86-298. (Ord. No. 98-86, § 10, 11-30-1998)

## Sec. 86-300. Suspension or revocation.

In addition to the reasons set forth in section 86-47, the director shall suspend or revoke a stable license if he or she finds that the license is no longer in compliance with:

(1) Any provision of this code pertaining to the keeping, boarding, and care of horses or pack animals;

(2) Any provision of this code pertaining to the keeping of sanitary rest room facilities; or

(3) Any provision of state or federal law pertaining to the humane and sanitary care of animals. (Ord. No. 98-86, § 10, 11-30-1998)

## Sec. 86-301. Fees.

Application and annual license fees for stable licenses shall be established by the director in accordance with the provisions of section 2-587 of this Code. (Ord. No. 2005-92, § 15, 12-5-2005; Ord. No. 98-86, § 10, 11-30-1998)

**The Aurora City Code is current through Ordinance 2021-09, passed March 22, 2021.**

Disclaimer: The city clerk's office has the official version of the Aurora City Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

**Note:** This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: www.auroragov.org
Code Publishing Company

ORDINANCE NO. 74-8

A BILL

FOR AN ORDINANCE ENACTING CHAPTER 2A OF TITLE VI OF THE CITY CODE OF AURORA, COLORADO, ESTABLISHING AN OCCUPATIONAL LICENSE TAX FOR COMMERCIALLY-OPERATED HORSE STABLES, AND AMENDING SECTION 6-1-1 OF CHAPTER 1, TITLE VI, OF THE CITY CODE OF AURORA, COLORADO, ENTITLED "DEFINITIONS," BY ADDING THERETO A DEFINITION OF THE TERM "COMMERCIAL HORSE STABLE"

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

Section 1. That Section 2A of Title VI of the City Code of Aurora, Colorado, be and the same is hereby enacted to read as follows, to-wit:

CHAPTER 2A

OCCUPATIONAL TAX; COMMERCIAL STABLES

6-2A-1. OCCUPATIONAL LICENSE TAX. THE COUNCIL HEREBY FINDS AND DETERMINES THAT THE NATURE OF THE BUSINESS OF OPERATING A COMMERCIAL HORSE STABLE WITHIN THE CITY LIMITS OF THE CITY IS SUCH AS TO PRESENT SPECIAL PROBLEMS WITH RELATION TO THE HEALTH, WELFARE AND SAFETY OF THE CITIZENS OF AURORA REQUIRING THE CLASSIFICATION OF SUCH BUSINESS AS A SEPARATE OCCUPATION AND FOR THE IMPOSITION OF A REASONABLE, PROPER, UNIFORM AND NON-DISCRIMINATORY OCCUPATIONAL LICENSE TAX SO AS TO PROVIDE FOR A PROPER AND JUST DISTRIBUTION OF THE TAX BURDEN WITHIN THE CITY OF AURORA.

(A) THERE IS HEREBY LEVIED AND ASSESSED FOR EACH YEAR AN ANNUAL OCCUPATIONAL LICENSE TAX OF THREE HUNDRED DOLLARS ($300.00) UPON THE BUSINESS OF OPERATING A COMMERCIAL HORSE STABLE IN THE CITY OF AURORA, AS THAT TERM IS HEREIN DEFINED. EACH LOCATION SHALL BE CONSIDERED A SEPARATE BUSINESS FOR PURPOSES OF IMPOSING OF THE OCCUPATIONAL LICENSE TAX.

Section 2. That Section 6-1-1 of Chapter 1, Title VI, of the City Code of Aurora, Colorado, entitled "Definitions," be and the same is hereby amended by adding the definition thereto of the term "Commercial Horse Stable," to read as follows:

6-1-1:

COMMERCIAL HORSE STABLE: THE TERM "COMMERCIAL HORSE STABLE" SHALL MEAN AND INCLUDE ANY STABLE WHERE HORSES ARE BOARDED FOR REMUNERATION OR WHERE HORSES ARE KEPT FOR HIRE.

Section 3. That all Ordinances or parts of Ordinances in conflict herewith are hereby expressly repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this 17th day of December, A.D. 1973.

PASSED AND ORDERED PUBLISHED this 7th day of January, A.D. 1974.

Paul C. Beck

PAUL C. BECK, Mayor

ATTEST:

Gail C. Johnston

GAIL C. JOHNSTON, Deputy City Clerk

| | |
|---|---|
| First Publication: | 12/27/73 |
| Final Publication: | 1/17/74 |
| Effective Date: | 2/16/74 |

ORDINANCE NO. 2021- ____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REPEALING THE REQUIREMENT FOR STABLE LICENSES

WHEREAS, a Stable License requirement is no longer needed as other federal, state, and local codes are in place to ensure the safety of the animals; and

WHEREAS, the City Council wishes to eliminate the stable license currently required.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

<u>Section 1.</u> Division 6 of Article IV of Chapter 86 is hereby repealed.

<u>Section 2.</u> The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

<u>Section 3.</u> Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

<u>Section 4.</u> All acts, orders, resolutions, ordinances, or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this ___________ day of ___________________________, 2021.

PASSED AND ORDERED PUBLISHED BY REFERENCE this __________ day of ___________________________, 2021.

____________________________________
MIKE COFFMAN, Mayor

ATTEST:

____________________________
KADEE RODRIGUEZ,
City Clerk

APPROVED AS TO FORM:

RLA

____________________________
HANOSKY HERNANDEZ,
Assistant City Attorney

# CITY OF AURORA
## Late Submission Approval for Agenda Item

| | |
|---|---|
| **Item Title:** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REPEALING THE REQUIREMENT FOR STABLE LICENSES | |
| **Item Initiator:** Trevor Vaughn Manager of Tax and Licensing | |
| **Staff Source/Legal Source:** Trevor Vaughn / Hanosky Hernandez | |
| **Outside Speaker:** Click here to type the name and title (e.x. Jane Smith, Executive Director) of outside speaker(s) | |
| **Council Goal:** 2012: 6.0--Provide a well-managed and financially strong City | |

**CRITERIA - PLEASE CONSIDER ITEM FOR LATE SUBMISSION FOR THE FOLLOWING REASON:**

☒ There is a time-sensitive legal requirement that must be met and cannot be met by a future meeting date

☐ The delay will result in an adverse financial impact to the city

☐ The item is related to a disaster and must be addressed before the next available meeting

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**COUNCIL MEETING DATES FOR LATE SUBMISSION:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

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**EXPLANATION:** ***(Please provide a detailed explanation as to why the item falls into one or more of the above criteria and why it may not be set for a future meeting date.)***

Time sensitive item

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I understand the agenda item will not be added to the agenda without submitting this completed form as an attachment in e-Scribe. The agenda item will not be added to the agenda if the workflow is not completed by the WORKFLOW COMPLETED date indicated on the agenda deadline calendar.

Trevor Vaughn
Agenda Item Initiator Name

Terri Velasquez
Late Submission Approver Name

___________________________________________ ___________________________________________ 10/22/2021

Agenda Item Initiator Signature Date Late Submission Approver Signature Date

10/22/21

# CITY OF AURORA
## Council Agenda Commentary

| |
|---|
| **Item Title:** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ADDING A NEW SECTION TO THE CITY CODE PERTAINING TO ALCOHOL BEVERAGE FESTIVAL PERMIT |
| **Item Initiator:** Trevor Vaughn, Manager of Tax and Licensing |
| **Staff Source/Legal Source:** Trevor Vaughn, Manager of Tax and Licensing / Tim Joyce, Assistant City Attorney |
| **Outside Speaker:** n/a |
| **Council Goal:** 2012: 1.0--Assure a safe community for people |

**COUNCIL MEETING DATES:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

**ITEM DETAILS:**

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated Presentation/discussion time

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ADDING A NEW SECTION TO THE CITY CODE PERTAINING TO ALCOHOL BEVERAGE FESTIVAL PERMIT

Staff Source: Trevor Vaughn, Manager of Tax and Licensing
Legal: Tim Joyce, Assistant City Attorney
Estimated Presentation / Discussion time 5/5 minutes.

**ACTIONS(S) PROPOSED** ***(Check all appropriate actions)***

☐ Approve Item and Move Forward to Study Session

☐ Approve Item as proposed at Study Session

☒ Approve Item and Move Forward to Regular Meeting

☐ Approve Item as proposed at Regular Meeting

☐ Information Only

☐ Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field.

**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** Management & Finance

**Policy Committee Date:** 10/26/2021

**Action Taken/Follow-up:** ***(Check all that apply)***

| | |
|---|---|
| ☐ Recommends Approval | ☐ Does Not Recommend Approval |
| ☐ Forwarded Without Recommendation | ☐ Recommendation Report Attached |
| ☐ Minutes Attached | ☒ Minutes Not Available |

**HISTORY** ***(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)***

This item was presented at the Business Advisory Board on October 18th, 2021. The Board did not raise any concerns regarding the item.

This is a new permit program as a result of the passage of Colorado Senate Bill 21-082

**ITEM SUMMARY** ***(Brief description of item, discussion, key points, recommendations, etc.)***

Colorado Senate Bill 21-082 extended the ability for an alcohol beverage festival to include almost all on-premise licensees. This now allows someone that already holds a liquor license such as a restaurant or bar to participate in or hold a festival and serve alcohol anywhere in the city or the state. Prior to the passage of this bill, alcohol festivals were limited to wineries or non-profit entities via a special event permit. This bill allows for a local permit to be created.

Staff recommends creation of a local permit to ensure the safety, health and welfare of the community and to maintain safety and control standards similar to special events and all other liquor licensed premises.

The proposed ordinance creates the local permitting requirement. Similar to a special event permit, the proposed requirements include that plans for the event be submitted at least thirty days in advance of the festival. These plans will need to have an alcohol control plan, evidence of licenses, security, and zoning approval.

**QUESTIONS FOR COUNCIL**

Does the council approve of forwarding the item for formal consideration?

**LEGAL COMMENTS**

All legislative enactments must be in the form of an ordinance. (City Charter Art. V, Sec. 1). Council has the power to publish ordinances consistent with the laws of the state for carrying into effect or discharging the powers and duties conferred by the state constitution, statute, or City Charter deemed necessary and proper to provide for the safety; preserve the health; promote the prosperity; and improve the morals, order, comfort and convenience of the City and its inhabitants. (C.R.S. Sec. 31-15-103 and City Code Sec. 2-32). SB 21-082 created festival permits with C.R.S. Sec. 44-3-404(1)(a)(III) authorizing a local licensing authority to create a local permit for festivals. (TJoyce)

## PUBLIC FINANCIAL IMPACT

☒ YES ☐ NO

**If yes, explain:** Additional fees for the permit to offset additional expense with processing the permits.

## PRIVATE FISCAL IMPACT

☐ Not Applicable ☐ Significant ☒ Nominal

**If Significant or Nominal, explain:** Fees charged for the permits.

# An Act

SENATE BILL 21-082

BY SENATOR(S) Priola and Pettersen, Bridges, Gardner, Jaquez Lewis, Lundeen, Moreno, Smallwood, Winter;
also REPRESENTATIVE(S) Mullica and Williams, Baisley, Bernett, Bockenfeld, Boesenecker, Cutter, Gray, Herod, Hooton, Jackson, Kipp, McCluskie, McCormick, Michaelson Jenet, Ortiz, Pico, Sandridge, Snyder, Titone, Valdez A., Van Winkle.

CONCERNING AUTHORIZATION FOR CERTAIN ALCOHOL BEVERAGE LICENSE HOLDERS TO HOLD FESTIVALS FOR ALCOHOL BEVERAGE RETAIL ACTIVITY, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 44-3-301, **amend** (3)(a) as follows:

**44-3-301. Licensing in general.** (3) (a) Each license issued under this article 3 and article 4 of this title 44 is separate and distinct. It is unlawful for any person to exercise any of the privileges granted under any license other than the license the person holds or for any licensee to allow any other person to exercise the privileges granted under the licensee's

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

license, except as provided in section 44-3-402 (3), 44-3-403 (2)(a), 44-3-404, or 44-3-417 (1)(b). A separate license must be issued for each specific business or business entity and each geographic location, and in the license the particular alcohol beverages the applicant is authorized to manufacture or sell must be named and described. For purposes of this section, a resort complex with common ownership, a campus liquor complex, a hotel and restaurant licensee with optional premises, an optional premises licensee for optional premises located on an outdoor sports and recreational facility, and a ~~wine~~ festival at which more than one licensee participates pursuant to a ~~wine~~ festival permit is considered a single business and location.

**SECTION 2.** In Colorado Revised Statutes, 44-3-404, **amend** (1), (2), (4) introductory portion, (5), (6), and (7); and **add** (9) and (10) as follows:

**44-3-404. Festival permit - rules.** (1) (a) A ~~wine~~ PERSON LISTED IN SUBSECTION (9) OF THIS SECTION MAY FILE A festival permit application ~~may be filed~~ with the state licensing authority. ~~by any limited winery licensee or by any manufacturer licensee that is licensed to manufacture vinous liquors.~~ The applicant ~~shall~~ MUST:

(I) Specify the licensed premises for the first of the ~~wine~~ festivals to be held; ~~which application shall be filed~~

(II) FILE THE APPLICATION at least ten business days before the festival is to be held; ~~The applicant shall~~ AND

(III) Include a twenty-five dollar annual processing fee with the application filed with the state licensing authority.

(b) (I) A LOCAL LICENSING AUTHORITY MAY CREATE A LOCAL PERMIT FOR FESTIVALS; EXCEPT THAT A LIMITED WINERY LICENSEE OR WINERY LICENSEE NEED NOT OBTAIN A LOCAL PERMIT TO PARTICIPATE IN OR HOLD A FESTIVAL. IF A LOCAL LICENSING AUTHORITY DOES NOT CREATE A LOCAL PERMIT UNDER THIS SUBSECTION (1)(b), AN APPLICANT NEED NOT OBTAIN A LOCAL PERMIT UNDER THIS SUBSECTION (1)(b) TO CONDUCT FESTIVALS.

(II) IF A LICENSEE IS APPLYING FOR BOTH A FESTIVAL PERMIT AND A SPECIAL EVENT LIQUOR PERMIT ISSUED UNDER ARTICLE 5 OF THIS TITLE 44,

THE LICENSEE NEED NOT APPLY FOR ANY LOCAL PERMIT ESTABLISHED IN ACCORDANCE WITH SUBSECTION (1)(b)(I) OF THIS SECTION.

(c) ~~Such fee shall entitle the permittee to use the wine festival permit for twelve months after the date of issuance, so long as the permittee notifies the state licensing authority and the appropriate local licensing authority of the location of all other wine festivals under this permit at least ten business days before any such festival is to be held. A wine festival permit shall entitle the permittee to hold no more than nine wine festivals during the twelve-month period~~ IF A FESTIVAL PERMITTEE NOTIFIES THE STATE LICENSING AUTHORITY AND THE APPROPRIATE LOCAL LICENSING AUTHORITY OF THE LOCATION OF AND DATES OF EACH FESTIVAL AT LEAST TEN BUSINESS DAYS BEFORE HOLDING THE FESTIVAL, THE PERMITTEE MAY HOLD UP TO, BUT NO MORE THAN, NINE FESTIVALS DURING THE TWELVE MONTHS AFTER THE FESTIVAL PERMIT IS ISSUED.

(2) ~~The applicant shall be the licensee filing the application, but any wine festival permit that is issued as a result of such application shall be considered to be jointly held by the permittee and the participating limited winery licensees. or manufacturer licensees that are licensed to manufacture vinous liquors~~ THE LICENSEE THAT HOLDS THE FESTIVAL MUST FILE THE APPLICATION FOR THE PERMIT, BUT OTHER LICENSEES MAY JOINTLY PARTICIPATE UNDER THE PERMIT ISSUED TO THE LICENSEE THAT APPLIED FOR THE PERMIT.

(4) The state licensing authority may deny a ~~wine~~ festival permit or supplemental application for any of the following reasons:

(5) After the issuance of an initial ~~wine~~ festival permit, all supplemental applications that are complete and filed in a timely manner ~~shall be~~ ARE deemed approved unless the state licensing authority provides the permittee with a notice of denial at least seventy-two hours prior to the date of the event.

(6) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE 3, the permittee and participating licensees are authorized to use the licensed premises jointly to conduct ~~wine~~ ALCOHOL BEVERAGE tastings and ~~sell any vinous liquors manufactured by a Colorado limited winery or manufacturer licensed to manufacture vinous liquors. No wine~~ TO ENGAGE IN THE SAME RETAIL SALES OF ALCOHOL BEVERAGES THAT THE PERMITTEE AND

PARTICIPATING LICENSEES ARE AUTHORIZED TO CONDUCT AT THEIR LICENSED PREMISES. A festival permit ~~shall~~ DOES NOT authorize the permittee to use the licensed premises for more than seventy-two hours for any one ~~wine~~ festival.

(7) If a violation of this article 3 occurs during a ~~wine~~ festival and the licensee responsible for the violation can be identified, the STATE OR LOCAL LICENSING AUTHORITY MAY CHARGE AND IMPOSE APPROPRIATE PENALTIES ON THE licensee. ~~may be charged and the appropriate penalties shall apply.~~ If the responsible party cannot be identified, the state licensing authority may send a written notice to every licensee identified on the permit application and may fine each the same dollar amount, which ~~amount shall~~ FINE MUST not exceed twenty-five dollars per licensee or two hundred dollars in the aggregate. ~~No~~ A joint fine levied pursuant to this subsection (7) ~~shall~~ DOES NOT apply to the revocation of the licensee's license under section 44-3-601.

(9) THIS SECTION APPLIES TO A PERSON LICENSED UNDER SECTION 44-3-402, 44-3-403, 44-3-407, 44-3-411, 44-3-413, 44-3-414, 44-3-417, 44-3-422, OR 44-3-426.

(10) THE STATE LICENSING AUTHORITY MAY ADOPT RULES NECESSARY TO IMPLEMENT AND ADMINISTER THIS SECTION.

**SECTION 3.** In Colorado Revised Statutes, 44-5-103, **amend** (1)(b) as follows:

**44-5-103. Grounds for issuance of special permits.** (1) (b) If a violation of this article 5 or article 3 of this title 44 occurs during a special event ~~wine~~ festival and the responsible licensee can be identified, ~~such~~ THE STATE OR LOCAL LICENSING AUTHORITY MAY CHARGE AND IMPOSE APPROPRIATE PENALTIES ON THE licensee. ~~may be charged and the appropriate penalties may apply.~~ If the responsible licensee cannot be identified, the state licensing authority may send written notice to every licensee identified on the permit applications and may fine each the same dollar amount. The fine shall not exceed twenty-five dollars per licensee or two hundred dollars in the aggregate. ~~No~~ A joint fine levied pursuant to this subsection (1)(b) ~~shall~~ DOES NOT apply to the revocation of a ~~limited wineries~~ LICENSEE'S license under section 44-3-601.

**SECTION 4. Appropriation.** (1) For the 2021-22 state fiscal year, $511,210 is appropriated to the department of revenue. This appropriation is from the liquor enforcement division and state licensing authority cash fund created in section 44-6-101, C.R.S. To implement this act, the department may use this appropriation as follows:

(a) $10,634 for use by the executive director's office for the purchase of legal services;

(b) $35,370 for use by the executive director's office for vehicle lease payments;

(c) $363,038 for use by the liquor and tobacco enforcement division for personal services, which amount is based on an assumption that the division will require an additional 6.2 FTE; and

(d) $102,168 for use by the liquor and tobacco enforcement division for operating expenses.

(2) For the 2021-22 state fiscal year, $10,634 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of revenue under subsection (1)(a) of this section and is based on an assumption that the department of law will require an additional 0.1 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of revenue.

(3) For the 2021-22 state fiscal year, $35,370 is appropriated to the department of personnel. This appropriation is from reappropriated funds received from the department of revenue under subsection (1)(b) of this section. To implement this act, the department of personnel may use this appropriation for vehicle replacement lease/purchase.

**SECTION 5. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Leroy M. Garcia
PRESIDENT OF
THE SENATE

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED May 28, 2021 at 11:45am
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO

ORDINANCE NO. 2021- ____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ADDING A NEW SECTION TO THE CITY CODE PERTAINING TO ALCOHOL BEVERAGE FESTIVAL PERMIT

WHEREAS, the State Legislature enacted SB 21-082 that authorizes alcohol beverage festivals throughout the state; and

WHEREAS, a licensed alcohol beverage vendor may apply for a festival permit; and

WHEREAS, every municipality may create a local permit for alcohol beverage festivals; and

WHEREAS, if the City does not create a local alcohol beverage festival permit vendors may conduct an alcohol beverage festival without a local permit and without local oversight.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The City Code of the City of Aurora, Colorado, is hereby amended by adding a new subdivision, to be numbered III, to Chapter 6, Article I, Division 3, which subdivision shall read as follows:

**Subdivision III, Alcohol Beverage Festival Permit.**

Section 2. The City Code of the City of Aurora, Colorado is hereby amended by adding a new section, to be numbered 6-90, which section shall read as follows:

**Sec. 6-90. Alcohol beverage festival permit.**

**The local licensing authority of the City of Aurora, Colorado, (the "City") hereby creates a local alcohol beverage festival permit ("festival permit"). A person authorized by state statue to apply for a festival permit must also obtain a festival permit from the City before holding a festival in the City.**

Section 3. The City Code of the City of Aurora, Colorado is hereby amended by adding a new section, to be numbered 6-91, which section shall read as follows:

**Sec. 6-91. Festival permit requirements.**

**(1) Applicants must specify the licensed premises where the festival will be held and the date of the festival.**

**(2) Applications must include information such as copies of the current liquor licenses, completed applicant questionnaires, diagrams, operation plan, possession documents and other documents as required by the local licensing authority necessary to review the application.**

**(3) Applicants must file a complete festival permit application with the local licensing authority and include the local fee at least thirty business days before the festival is to be held. The City's fee will be established by the Director of Finance in accordance with the provision of section 2-587 of the City Code.**

**(4) The local licensing authority may deny a festival permit or supplemental application for any of the following reasons:**

- **a. The location where the festival is to be held is unsuitable due to time and proximity of other inhabitants of the area that would be adversely impacted; or**
- **b. The record, reputation, and character of the applicant, other associated parties and venue associated with the event are not acceptable to the authority; or**
- **c. If the issuance of the permit would be injurious to the public welfare because of the nature of the festival or its location; or**
- **d. The filing of an incomplete or late application; or**
- **e. A finding that the application, if granted, would result in violations of the Colorado Liquor Code, the Colorado Beer Code, or the rules issued pursuant thereto, or violations of the City Code.**

**(5) The local licensing authority may place conditions on a festival permit or supplemental application necessary to ensure the public health, safety, and welfare.**

**(6) If a festival permittee notifies the local licensing authority of the location of and dates of each festival at least thirty business days before holding the festival, the permittee may hold up to, but no more than, nine festivals during the twelve months after the festival permit is issued.**

**(7) Permittee and participating licensees are authorized to use the licensed premises of the permittee to jointly conduct alcohol beverage tastings and to engage in the same retail sales of alcohol beverages that the permittee and participating licensees are authorized to conduct at their licensed premises.**

**(8) Permittee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.**

**(9) Permittee must comply with all the Colorado Liquor Code, the Colorado Beer Code, and the rules issued pursuant thereto.**

**(10) If a violation occurs during a festival and the responsible licensee cannot be identified, the local licensing authority may fine each licensee the same dollar amount, which fine must not exceed five thousand dollars in aggregate. A joint fine levied pursuant to this subsection does not apply to the revocation of a licensee's license under section C.R.S. § 44-3-601, as amended.**

Section 3. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 4. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 5. All acts, orders, resolutions, ordinances, or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ, AND ORDERED PUBLISHED this _____ day of _____________, 2021.

PASSED AND ORDERED PUBLISHED this ______ day of _____________, 2021.

___________________________________
MIKE COFFMAN, Mayor

ATTEST:

___________________________________
KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

Tim Joyce RLA
___________________________
TIM JOYCE, Assistant City Attorney

# CITY OF AURORA
## Late Submission Approval for Agenda Item

**Item Title:** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ADDING A NEW SECTION TO THE CITY CODE PERTAINING TO ALCOHOL BEVERAGE FESTIVAL PERMIT

**Item Initiator:** Trevor Vaughn, Manager of Tax and Licensing

**Staff Source/Legal Source:** Trevor Vaughn, Manager of Tax and Licensing / Tim Joyce, Assistant City Attorney

**Outside Speaker:** n/a

**Council Goal:** 2012: 6.0--Provide a well-managed and financially strong City

**CRITERIA - PLEASE CONSIDER ITEM FOR LATE SUBMISSION FOR THE FOLLOWING REASON:**

☒ There is a time-sensitive legal requirement that must be met and cannot be met by a future meeting date

☐ The delay will result in an adverse financial impact to the city

☐ The item is related to a disaster and must be addressed before the next available meeting

**COUNCIL MEETING DATES FOR LATE SUBMISSION:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

**EXPLANATION:** ***(Please provide a detailed explanation as to why the item falls into one or more of the above criteria and why it may not be set for a future meeting date.)***

Time sensitive

I understand the agenda item will not be added to the agenda without submitting this completed form as an attachment in e-Scribe. The agenda item will not be added to the agenda if the workflow is not completed by the WORKFLOW COMPLETED date indicated on the agenda deadline calendar.

Trevor Vaughn
Agenda Item Initiator Name

Terri Velasquez
Late Submission Approver Name

| | |
|---|---|
| Agenda Item Initiator Signature Date | 10/22/2021<br>Late Submission Approver Signature Date |

10/22/21

# CITY OF AURORA
## Council Agenda Commentary

| |
|---|
| **Item Title:** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 26 RELATING TO THE SALES OF LODGING IN PRIVATE RESIDENCES |
| **Item Initiator:** Trevor Vaughn, Manager of Tax and Licensing |
| **Staff Source/Legal Source:** Trevor Vaughn / Hanosky Hernandez |
| **Outside Speaker:** n/a |
| **Council Goal:** 2012: 6.0--Provide a well-managed and financially strong City |

**COUNCIL MEETING DATES:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

**ITEM DETAILS:**

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated Presentation/discussion time

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 26 RELATING TO THE SALES OF LODGING IN PRIVATE RESIDENCES

Staff Source: Trevor Vaughn, Manager of Tax and Licensing
Legal: Hanosky Dened Hernandez Perez, Assistant City Attorney
Estimated Presentation / Discussion time 5/5 minutes.

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**ACTIONS(S) PROPOSED** ***(Check all appropriate actions)***

☐ Approve Item and Move Forward to Study Session

☐ Approve Item as proposed at Study Session

☒ Approve Item and Move Forward to Regular Meeting

☐ Approve Item as proposed at Regular Meeting

☐ Information Only

☐ Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field.

## PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** Management & Finance

**Policy Committee Date:** 10/26/2021

**Action Taken/Follow-up:** ***(Check all that apply)***

☐ Recommends Approval ☐ Does Not Recommend Approval

☐ Forwarded Without Recommendation ☐ Recommendation Report Attached

☐ Minutes Attached ☒ Minutes Not Available

## HISTORY ***(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)***

This item was reviewed by the Business Advisory Board on October 18th, 2021. One concern was raised regarding the day limitation and its impact. This was addressed as this day limitation would only apply to full home rentals and not those that maintain a living area on the premises while renting another segregated area of the dwelling. The day limitation is used as another enforcement point to ensure that the operator does in fact reside at the short-term rental.

## ITEM SUMMARY ***(Brief description of item, discussion, key points, recommendations, etc.)***

In late 2016, a majority of City Council agreed to a framework for managing short term rentals. A short-term rental is the provision of lodging (stays of less than 30 days) in a private residence. The framework leveraged existing zoning code to treat them as a home occupation. As a home occupation, they need to be the primary residence of the short-term rental operator. Since lodging is considered a business activity, they also need to obtain a business license and lodger's tax needs to be collected. They cannot have external evidence of the business activity and their guests need to follow all other city codes. The short-term rental is allowed only one booking at a time. The operator does not need to be on site at the time the home is rented and there are no limits on days or amount of home used for the activity.

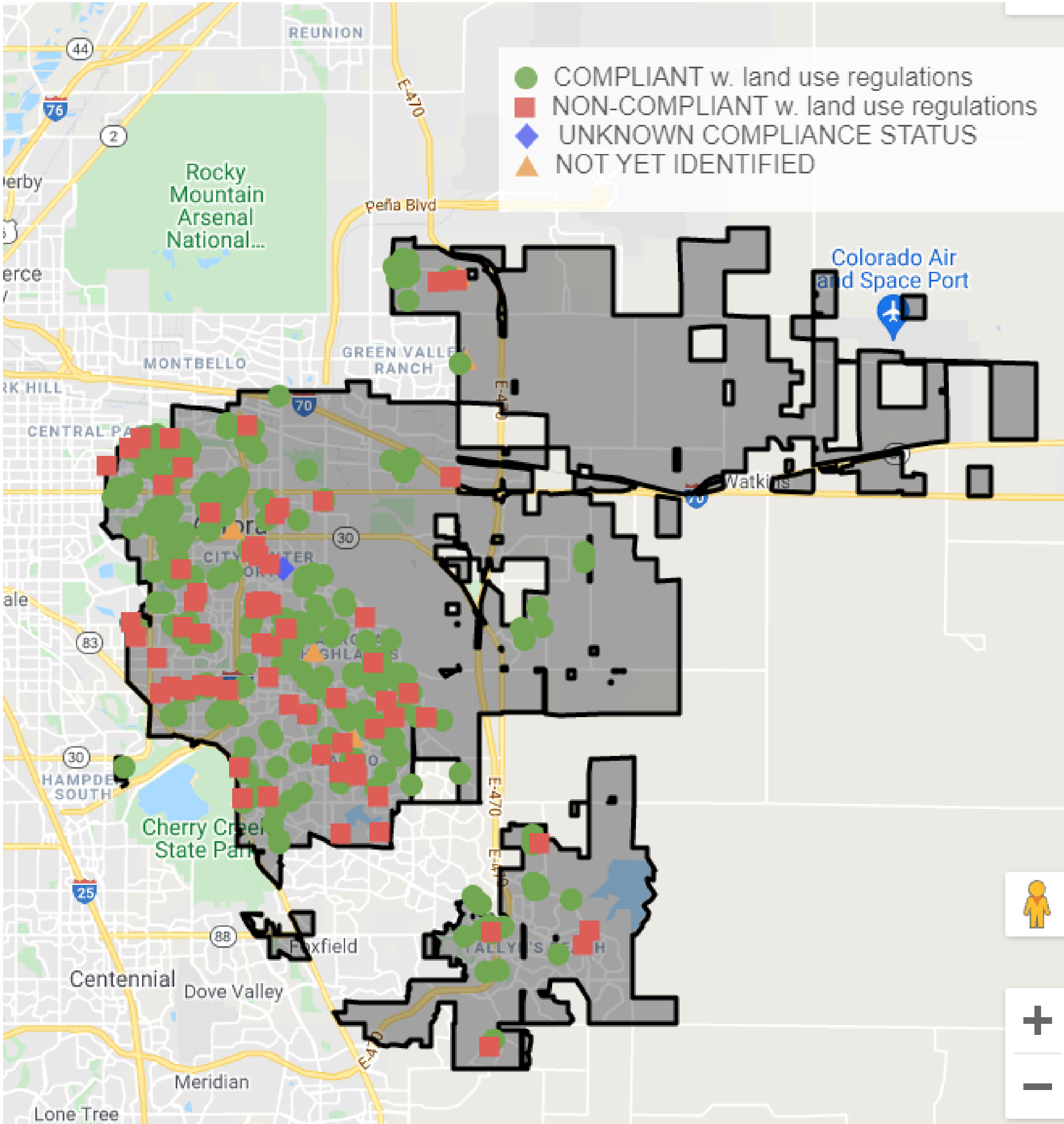
The city currently uses Host Compliance to assist with finding the addresses of short-term rentals to enforce compliance with business licenses and by extension to ensure the primary residency requirement. Below are some statistics of short-term rentals in Aurora:

Total listings: 565
Total short-term rental listings: 404 (stays of less than 30 days)
Individual short-term rental units: 269 (some list on multiple sites)
Address identification: 97.4%

Property Type:
Single Family: 83%
Multi family: 17%

Compliant Licensed STRs: 189
Long Term Rentals: 89
Noncompliant: 80 (notices sent to most)

Rental type:
Partial Home: 37%
Entire Home: 63% (apx. 169 units)
Total Aurora Households 136,400




The number of short-term rentals have stayed around 300 for the last five to six years after a rapid expansion. It is likely the city is receiving most of the owed lodgers tax as Airbnb and VRBO/Homeaway collect the tax on behalf of the operators. These websites contain nearly all short-term rental operations in the city.

Staff receives approximately one complaint every other month from neighbors that operators are not living at the location of the short-term rental. Neighbors are often very passionate in these circumstances. The operators are also equally passionate to continue operating these locations. Investment properties can have the impact of decreasing available housing stock and decreasing the overall affordability of housing. The short-term rentals also compete with area hotels that have made a commercial investment. Aurora has not had the level of impacts from the number of short-term rentals as communities such as Denver or other mountain communities. The largest issue for enforcement are those that own two properties but place their voter registration, driver's license, etc. in the address of the short-term rental.

Experience addressing the complaints and administering the regulations has demonstrated that some efficiencies can be gained with some adjustments to the city's code. The proposed ordinance for business regulations takes several steps:

- The ordinance codifies the zoning requirements and rules into chapter 26 of the city code. This allows enforcement outside the land use code and outlines very specifically that these requirements apply to short term rentals and not simply by reference to the home occupation guidelines of the zoning code.
- Booking service providers such as Airbnb and VRBO/Homeaway are held responsible for checking licenses. This is a requirement Denver enacted that has been very effective. Only about 1/3rd of operators get licensed before operating and resources are spent trying to figure out their exact address to send them a notice.
- Booking service providers will be required to remove listings that are not a primary residence of the operator. This reduces the amount of effort needed to obtain compliance.
- Short term rentals of an entire dwelling are limited to 180 days in a 365-day period. This is a fall back requirement to ensure that the dwelling is operated as a primary residence.
- The ordinance also requires that the operator permit inspections of documentation and records to confirm compliance with the regulations.

**QUESTIONS FOR COUNCIL**

Does the council approve of moving the item forward for formal consideration?

**LEGAL COMMENTS**

Pursuant to the city's home rule authority granted to the City of Aurora under the Colorado Constitution, the City has the power of taxation for local municipal purposes. (Colo. Const. Article XX, Section 6 (g)). This ordinance clarifies the enforcement section of short-term rentals, is not imposing a new tax and is compliant with the Colorado Constitution. (Colo. Const. Article XX, Section 6). City Council shall act only by ordinance, resolution or motion. All legislative enactments must be in the form of an ordinance; all actions, except as herein provided, may be in the form of Resolutions or motions. (Aurora City Charter Article 5-1). (Hernandez)

**PUBLIC FINANCIAL IMPACT**

☐ YES ☒ NO

**If yes, explain:** N/A

**PRIVATE FISCAL IMPACT**

☐ Not Applicable ☐ Significant ☒ Nominal

**If Significant or Nominal, explain:** Requirement for booking service providers to verify licensed operations and respond to removal requests for unlicensed operators and operators not residing at the short-term rental.

ORDINANCE NO. 2021-____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 26 RELATING TO THE SALES OF LODGING IN PRIVATE RESIDENCES

WHEREAS, the City of Aurora, Colorado, (the "City"), is a home rule municipality, organized and existing under and by virtue of Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, under Article XX, Section 6 the Colorado Constitution, the City has authority over local taxation matters; and

WHEREAS, the City intends to improve administration of the Tax Code and increase clarity by providing a clear framework for citizens engaging in the activity of short rentals; and

WHEREAS, the City does have a vested interest in clarifying the regulations on rental of properties in the City to protect the housing stock available to residents, preventing it from being converted into short term rentals, and therefore reducing the availability of houses in the City.

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. Article V of Chapter 26 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Article V. Hotels, Motels, **Short Term Rentals** and Similar Establishments.

**Section 26-215. Definitions**

***Booking service provider* means any person or entity who facilitates a transaction between a prospective guest and a person or entity offering a short-term rental.**

***Lodging* means the transaction for periods of less than thirty (30) consecutive days of furnishing a room or rooms, or other accommodations, by any person to a another person or persons who, for consideration, use, possess, or have the right to use or possess any room or rooms in a hotel, apartment hotel, lodging house, motor hotel, guest house, bed and breakfast residence, short-term rental, guest ranch, mobile home, auto camp, trailer court, or trailer park in the City, under any agreement, concession, permit, right of access, license, or otherwise. This definition shall not apply to the**

**transaction of furnishing rooms or accommodations for meetings or exhibitions.**

***Primary residence* means the place in which a person's habitation is fixed for the term of the license and is the person's usual place of return. A person can have only one (1) primary residence.**

***Short-term rental* means any residential dwelling unit offered, provided, or operated as lodging accommodations to guests in exchange for remuneration for a period of less than thirty (30) consecutive days. "Dwelling unit" has the meaning set forth in the Aurora Zoning Code.**

**Section 26-219.** ~~Internet Sales of Lodging~~ **Short-term rentals unlawful acts.**

(a) It shall be unlawful for any person to advertise **a short-term rental** ~~lodging in private residences~~ without:

(1) Having a general business license and lodger's license issued by the City; and

(2) Including their City ~~lodger's~~ business license number in their advertisement; and

(b) The exception to the advertising requirement, in subsection (a)(2) above, is for the person who uses a a~~n internet-based platform~~ **booking service provider** to advertise their lodging, and that ~~platform~~ booking service **provider** has an agreement with the city for the collection of lodger's tax as required by chapter 130, and the ~~platform~~ booking service **provider** provides the ~~guest~~ **short-term rental's** r~~egistration~~ **license, address, and contact** information to the city for inspection upon request, ~~as required by this chapter~~ **and requires the licensee to provide a license number to the booking service provider prior to listing the property for rental**.

(c) **Utilizing the residence as the person's primary residence.**

(d) **It shall be unlawful to permit bookings by more than one person for a short-term rental at one time.**

(e) **It shall be unlawful to operate a short-term rental of an entire dwelling for longer than 180 days in any 365-day period.**

**(1) Subsection 26-219(c) shall not apply to accessory dwelling units when the property owner lives in the primary structure on the property.**

**(f) It shall be unlawful for any booking service provider to receive payment, directly or indirectly, for an unlicensed short-term rental located in the City of Aurora.**

**(g) It shall be unlawful for any booking service provider to receive payment, directly or indirectly for any short-term rental when it knows or should reasonably know that it is not being utilized as the short-term rental operator's primary residence.**

**(h) Penalty. In addition to the general penalty provided for in section 1-13, a booking service provider who violates subsection (d) or (e) of this section shall be subject to a civil penalty of one thousand dollars ($1,000.00) per violation per day.**

**Section 26-220. Short-term rental regulations.**

**(a) Any operator of a short-term rental shall make a good faith effort to prevent and quickly mitigate any deleterious impacts from the short-term rental operation on the neighborhood.**

**(b) Upon request of city enforcement to include the specific records, the short-term rental operation shall permit the inspection of the requested records demonstrating that they are in fact the primary resident of the short-term rental.**

Section 2. All ordinances, or parts of ordinances, of the City Code of the City of Aurora, Colorado, in conflict herewith are expressly repealed.

Section 3. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this ordinance shall be by reference, utilizing the ordinance title. Copies of this ordinance are available at the office of the city clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this ___ day of __________________, 2021.

PASSED AND ORDERED PUBLISHED BY REFERENCE this ___ day of __________________, 2021.

___________________________
MIKE COFFMAN, Mayor

ATTEST:

____________________________

KADEE RODRIGUEZ,
City Clerk

APPROVED AS TO FORM:

RLA

____________________________

HANOSKY HERNANDEZ,
Assistant City Attorney

# CITY OF AURORA

## Late Submission Approval for Agenda Item

**Item Title:** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING CHAPTER 26 RELATING TO THE SALES OF LODGING IN PRIVATE RESIDENCES

**Item Initiator:** Trevor Vaughn, Manager of Tax and Licensing

**Staff Source/Legal Source:** Trevor Vaughn / Hanosky Hernandez

**Outside Speaker:** Click here to type the name and title (e.x. Jane Smith, Executive Director) of outside speaker(s)

**Council Goal:** 2012: 6.0--Provide a well-managed and financially strong City

**CRITERIA - PLEASE CONSIDER ITEM FOR LATE SUBMISSION FOR THE FOLLOWING REASON:**

☒ There is a time-sensitive legal requirement that must be met and cannot be met by a future meeting date

☐ The delay will result in an adverse financial impact to the city

☐ The item is related to a disaster and must be addressed before the next available meeting

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**COUNCIL MEETING DATES FOR LATE SUBMISSION:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

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**EXPLANATION:** ***(Please provide a detailed explanation as to why the item falls into one or more of the above criteria and why it may not be set for a future meeting date.)***

Time sensitive

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I understand the agenda item will not be added to the agenda without submitting this completed form as an attachment in e-Scribe. The agenda item will not be added to the agenda if the workflow is not completed by the WORKFLOW COMPLETED date indicated on the agenda deadline calendar.

Trevor Vaughn
Agenda Item Initiator Name

Terri Velasquez
Late Submission Approver Name

Trevor Vaughn

| | | | |
|---|---|---|---|
| | | | 10/22/2021 |
| Agenda Item Initiator Signature | Date | Late Submission Approver Signature | Date |

10/22/21

# CITY OF AURORA
## Council Agenda Commentary

| |
|---|
| **Item Title:** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING ARTICLE II OF SECTION 130 OF THE CITY CODE RELATING TO SALES AND USE TAX CLARIFICATIONS |
| **Item Initiator:** Trevor Vaughn, Manager of Tax and Licensing |
| **Staff Source/Legal Source:** Trevor Vaughn / Hanosky Hernandez |
| **Outside Speaker:** n/a |
| **Council Goal:** 2012: 6.0--Provide a well-managed and financially strong City |

**COUNCIL MEETING DATES:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

**ITEM DETAILS:**

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated Presentation/discussion time

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING ARTICLE II OF SECTION 130 OF THE CITY CODE RELATING TO SALES AND USE TAX CLARIFICATIONS

Staff Source: Trevor Vaughn, Manager of Tax and Licensing
Legal: Hanosky Dened Hernandez Perez, Assistant City Attorney
Estimated Presentation / Discussion time 5/5 minutes.

**ACTIONS(S) PROPOSED** ***(Check all appropriate actions)***

☐ Approve Item and Move Forward to Study Session

☐ Approve Item as proposed at Study Session

☒ Approve Item and Move Forward to Regular Meeting

☐ Approve Item as proposed at Regular Meeting

☐ Information Only

☐ Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field.

## PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** Management & Finance

**Policy Committee Date:** 10/26/2021

**Action Taken/Follow-up:** ***(Check all that apply)***

| | |
|---|---|
| ☐ Recommends Approval | ☐ Does Not Recommend Approval |
| ☐ Forwarded Without Recommendation | ☐ Recommendation Report Attached |
| ☐ Minutes Attached | ☒ Minutes Not Available |

## HISTORY *(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)*

This item was reviewed with the Business Advisory Board on October 18th, 2021. The BAB did not raise any concerns regarding the item.

## ITEM SUMMARY *(Brief description of item, discussion, key points, recommendations, etc.)*

During administration and enforcement of the tax code, staff has identified areas of the code that could be improved in order to make the code clear with its original intent. This proposed ordinance includes a number of clarifications that will result in the ability to more clearly enforce the tax code without technical challenges and will result in a de-minimis revenue increase. Since the increase is de-minimis and there are no new taxes with the proposed ordinance, the proposed ordinance does not violate the TABOR amendment of the state constitution.

The proposed ordinance makes the following clarifications:

- The definition for unprocessed retail marijuana is amended to include marijuana that is transferred to another marijuana cultivation facility. This change clarifies that a marijuana cultivation cannot avoid the excise tax by transferring marijuana to another grow facility outside of Aurora prior to sale.

- The imposition upon telecommunication and pay television and entertainment services is amended to separate pay television and entertainment services into a separate imposition since these services are taxed separate from telecommunications. Also, the tax as applied to intrastate telecommunications is amended to a more modern description of how these services are billed. This language was copied from the Denver tax code.

- A new section 130-156.5 is added to incorporate sourcing rules that were incorporated by the State in house bill 19-1240 are also incorporated into the city's code to ensure consistency and clarity across jurisdictional boundaries.

- In section 130-166 credit sales and leases are clarified that a sales tax refund is not provided for bad debt if there is a secured interest in the property even if it has not yet been repossessed.

- When the city adopted the standard definitions in 2017 the term manufacturing included an exclusion for certain types of production. This exclusion was not adopted by the committee that created the standard definition. As a result, this exclusion was moved from the definition into the exemption from sales tax for purchases of tangible personal property. However, this exclusion was errantly not included in the exemption for manufacturing equipment nor the exemptions from use tax for the supplies and equipment.

- In section 130-198 the exemptions from use tax for items either temporarily in the city or brought into the city were very vague and difficult to apply consistently. This ordinance removes the exemption for temporarily in the city as this exemption is not common and also more clearly defines the exemption for items brought into the city. The language is copied from the city of Thornton and is more common among cities in that it provides some definition of what constitutes use. Also, the exemption is clarified that it does not apply to construction equipment, tools and machinery. Historically this exemption was not allowed for these items as they are administered through section 130-202 separately and most cities exclude these items from this exemption specifically. An experienced tax lawyer attempted to argue that the city's exclusion of this phrase should have resulted in an exemption from section 130-202 to this type of equipment.

- Section 130-202 is amended to make it clear that this section does not receive the exemption is section 130-198 for the reasons stated in the bullet above.
- In Section 130-431 the same statute of limitations that is used in the sales and use tax section for audits is copied into the occupational privilege tax section. This provides consistency as these taxes are usually audited together.

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**QUESTIONS FOR COUNCIL**

Does the council approve of moving the item forward for formal consideration?

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**LEGAL COMMENTS**

Pursuant to the city's home rule authority granted to the City of Aurora under the Colorado Constitution, the City has the power of taxation for local municipal purposes. (Colo. Const. Article XX, Section 6). This ordinance clarifies the enforcement section of the tax code, is not imposing a new tax and is compliant with the Colorado Constitution. City Council shall act only by ordinance, resolution or motion. All legislative enactments must be in the form of an ordinance; all actions, except as herein provided, may be in the form of Resolutions or motions. (Aurora City Charter Article 5-1). (Hernandez)

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**PUBLIC FINANCIAL IMPACT**

☐ YES ☒ NO

**If yes, explain:** De minimis impacts.

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**PRIVATE FISCAL IMPACT**

☐ Not Applicable ☐ Significant ☒ Nominal

**If Significant or Nominal, explain:** De minimis impacts.

ORDINANCE NO. 2021-____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING ARTICLE II OF SECTION 130 OF THE CITY CODE RELATING TO CLARIFICATIONS ON SALES AND USE TAX

WHEREAS, the City of Aurora, Colorado, (the "City"), is a home rule municipality, organized and existing under and by virtue of Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, under Article XX, Section 6 the Colorado Constitution, the City has authority over local taxation matters; and

WHEREAS, the City intends to improve administration of the tax code and increase clarity within the ordinance language.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. Section 130-31 of the City Code of the City of Aurora, Colorado, is hereby amended, which shall read as follows:

Sec. 130-31. Definitions.

*Unprocessed retail marijuana* means marijuana at the time of the first transfer or sale from a retail marijuana cultivation facility to a retail marijuana product manufacturing facility, **another marijuana cultivation facility**, or a retail marijuana store.

Section 2. Section 130-156 subsection (3) of the City Code of the City of Aurora, Colorado, is hereby amended, and a new subsection (15) is added which shall read as follows:

Sec. 130-156. Taxable items.

(3) Upon telecommunication~~ and pay television and entertainment~~ services, whether furnished by public or private corporations or enterprises for all ~~intrastate~~ telecommunication ~~and pay television and entertainment~~ services originating from or received on telecommunication ~~and pay television and entertainment~~ equipment in this city if the charge for the service is billed to a person in this city or billed to an affiliate or division of such person in any state on behalf of a person in this city. **Excepting, however, monthly or other periodic usage charges that represent varying amounts billed to accounts for a subscriber's actual use of interstate services provided by a long-distance telecommunications company and charged to the subscriber by or on behalf of a long-distance telecommunications company.**

**(15) Upon pay television and entertainment services.**

Section 3. Division 4 of Article II City Code of the City of Aurora, Colorado, is hereby amended to add a new subsection 130-156.5, which shall read as follows:

**Sec. 130-156.5 Sourcing**

**(1) For purposes of determing where a sale of tangible personal property, commodities, or services is made, the following rules apply:**

**a. If tangible personal property, commodities, or services are received by the purchaser at a business location of the seller, the sale is sourced to that business location;**

**b. If tangible personal property, commodities, or services are not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser occurs, including the location indicated by instructions for delivery to the purchaser, if that location is known to the seller;**

**c. If subsections (1)(a) and (1)(b) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business, when use of this address does not constitute bad faith; or**

**d. If subsections (1)(a), (1)(b), and (1)(c) of this section do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including, if no other address is available, the address of a purchaser's payment instrument, when use of this address does not constitute bad faith**

Section 4. Section 130-166 of the City Code of the City of Aurora, Colorado, is hereby amended, which shall read as follows:

Sec. 130-166. Credit sales and leases.

(a) Whenever tangible personal property is sold, including that sold in conjunction with a sale of business under a conditional sales contract whereby the seller retains title as security for all or part of the purchase price, the total sales tax based on the total purchase price, including finance and insurance charges which are not separately stated at the time of sale, shall become immediately due and payable. The finance director may authorize a retailer doing business wholly or partly on a credit basis to make returns on the basis of cash actually received or to collect the entire tax due at the time of the sale without regard to any deferred payment or whether or not the title passes to the purchaser; provided, however, that in any event, the entire tax due on a purchase or lease made on a revolving charge account shall be due and payable immediately. No refund or credit shall be allowed to either party to the transaction in case of repossession, **or if there is a secured interest in the property.**

Section 5. Section 130-157 subsection (28) of the City Code of the City of Aurora, Colorado, is hereby amended, which shall read as follows:

Sec. 130-157. Items exempt from taxation.

(28) All sales of machinery or machine tools, or parts thereof, in excess of $500.00 to be used in the city directly and predominantly in manufacturing tangible personal property, for sale or profit. For purposes of this subsection:

a.A parent corporation and all closely held subsidiary corporations shall be considered one person and, as a group, shall be subject to the provisions of this subsection.

b. Direct use in manufacturing is deemed to begin for items normally manufactured from inventoried raw material at the point at which raw material is moved from plant inventory on a contiguous plant site and to end at a point at which manufacturing has altered the raw material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process is deemed to be directly used in manufacturing.

c. In order to qualify for the exemption provided in this subsection, a sale must be of such nature that it would have qualified for the investment tax credit against federal income tax as was provided by section 38 of the Internal Revenue Code of 1954, as amended.

d. An exemption may not be claimed under this subsection for municipal sales tax paid in another state that is credited against city sales tax or use tax or both.

e. To receive an exemption under this subsection, a declaration of entitlement must be filed by the purchaser with the retailer of the machinery or machine tools or parts thereof and with the finance director.

**The term "manufacturing" shall not include, without limitation, the preparation, baking, and cooking of food and beverages; the generation and distribution of electricity; or the extraction of raw materials from the earth through mining, quarrying, the sinking of wells, or any other process.**

Section 6. Section 130-198 subsections (6) and (27) of the City Code of the City of Aurora, Colorado, is hereby amended, which shall read as follows:

Sec. 130-198. Items exempt from taxation.

(6) The storage, use or consumption of tangible personal property by a person engaged in manufacturing or compounding for profit or sale, which tangible personal property meets all the following conditions:

a. Is actually and factually transformed by the process of manufacturing;

b. Becomes, by the manufacturing processes, a necessary and recognizable ingredient component and constituent part of the finished product; and

c. Is, by its physical presence in the finished product, essential to the use thereof in the hands of the ultimate consumer.

**The term "manufacturing" shall not include, without limitation, the preparation, baking, and cooking of food and beverages; the generation and distribution of electricity; or the extraction of raw materials from the earth through mining, quarrying, the sinking of wells, or any other process.**

Such personal property, when not sold for resale, shall be deemed to have been sold at wholesale and shall be exempt from taxation under this division.

(27) The storage, use, or consumption of machinery or machine tools, or parts thereof, in excess of $500.00 to be used in the city directly and predominantly in manufacturing tangible personal property, for sale or profit. For purposes of this subsection:

a. A parent corporation and all closely held subsidiary corporations shall be considered one person and, as a group, shall be subject to the provisions of this subsection.

b. Direct use in manufacturing is deemed to begin for items normally manufactured from inventoried raw material at the point at which raw material is moved from plant inventory on a contiguous plant site and to end at a point at which manufacturing has altered the raw material to its completed form, including packaging, if required. Machinery used during the manufacturing process to move material from one direct production step to another in a continuous flow and machinery used in testing during the manufacturing process is deemed to be directly used in manufacturing.

c. In order to qualify for the exemption provided in this subsection, a sale must be of such nature that it would have qualified for the investment tax credit against federal income tax as was provided by section 38 of the Internal Revenue Code of 1954, as amended.

d. An exemption may not be claimed under this subsection for municipal sales tax paid in another state that is credited against city sales tax or use tax or both.

e. To receive an exemption under this subsection, a declaration of entitlement must be filed by the purchaser with the retailer of the machinery or machine tools or parts thereof and with the finance director.

**The term "manufacturing" shall not include, without limitation, the preparation, baking, and cooking of food and beverages; the generation and distribution of electricity; or the extraction of raw materials from the earth through mining, quarrying, the sinking of wells, or any other process.**

Section 7. Section 130-198 subsections (4) and (12) of the City Code of the City of Aurora, Colorado, is hereby amended, which shall read as follows:

Sec. 130-198. Exemptions.

~~(4) The storage, use or consumption of tangible personal property brought into this city by a nonresident thereof for his or her own storage, use or consumption while temporarily within the city.~~

(12) ~~The storage, use, distribution or consumption in the city of tangible personal property by a resident if such personal property was purchased for use outside of the city prior to such person's becoming a resident.~~ **The use, storage, distribution or consumption of tangible personal property of a resident, if such personal property was purchased and used for a longer duration than one-third of its depreciable life, using the straight line depreciation method, prior to the time the property was brought into the city, and if such property was used for the primary purpose for which it was acquired prior to the time it was brought into the city. This exemption does not apply to construction equipment, tools and machinery.**

Section 8. Section 130-202 of the City Code of the City of Aurora, Colorado, is hereby amended to add a new subsection, to be lettered (f), which subsection shall read as follows:

Sec. 130-202. Proration as applied to certain construction equipment.

**(f) Exemptions in section 130-198 shall not apply to this section.**

Section 9. Section 130-431 of the City Code of the City of Aurora, Colorado, is hereby amended, which shall read as follows:

(a)

(1) Except as provided in this section~~, and unless such time is extended by waiver~~, the amount of any tax imposed by this article, and penalty and interest applicable thereto, shall be assessed within three years after the filing of a return, whether or not such return was filed on or after the date prescribed, and no assessment shall be made or credit taken, and no notice of lien shall be filed, nor distraint warrant issued, nor suit for collection instituted, nor any other action to collect the same commenced after the expiration of such period.

(2) A written proposed adjustment of the tax liability by the finance director issued prior to the expiration of such period shall extend the limitation of subsection (a)(1) of this subsection for one year after a final determination or assessment is made.

(b)

(1) Except as provided in this section, no lien imposed by this article shall continue beyond three years after the filing of a return.

(2) For taxes assessed before the expiration of such three-year period, notice of l ien with respect to which has been filed prior to the expiration of such period, and for taxes on which written notice of any proposed adjustment of the tax liability has been sent to the taxpayer during such three-year period, such lien shall continue for one year after the expiration of such period**. In the event of an appeal by the taxpayer of a notice of assessment, such lien shall continue for one year after the issuance of a final determination of such appeal.** ~~or after the issuance of a final determination or assessment based on the proposed adjustment issued prior to the expiration of the three-year period.~~

(c) For purposes of this section, a return filed before the last day prescribed by this article for the filing thereof shall be considered filed on such last day.

(d) In the case of a failure to file a return or the filing of a false or fraudulent return with intent to evade tax, the tax imposed by this article, together with interest and penalties thereon, may be assessed and collected at any time.

(e) ~~Where, before the expiration of the time prescribed in this section for the assessment of tax, both the taxpayer and the finance director have consented in writing to an assessment after such time, the tax imposed by this article may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing.~~

**The issuance of a notice of audit by the finance director to the taxpayer prior to the expiration of the three-year limitation period prescribed in subsection (a) of this section shall extend such period with respect to the designated audit period until such time as the audit is completed and a notice of final determination or assessment is issued. For purposes of this subsection (e), "designated audit period" includes all reporting periods with due dates that fall within the three-year period preceding the date of the notice of audit. If a notice of assessment issued as a result of such audit, the limitation period shall be further extended as provided in subsection (b) of this section.**

Section 10. Section 130-493 of the City Code of the City of Aurora, Colorado, is hereby amended, which shall read as follows:

**The provisions set forth in section 130-431 which govern the statute of limitations for employee occupational privilege tax shall also apply to the employer occupational privilege tax except to the extent they conflict with the provisions of this article.**

~~(1) Except as provided in this section, and unless such time is extended by waiver, the amount of any tax imposed by this article, and penalty and interest applicable thereto,~~

~~shall be assessed within three years after the filing of a return, whether or not such return was filed on or after the date prescribed, and no assessment shall be made or~~

~~credit taken, and no notice of lien shall be filed, nor distraint warrant issued, nor suit for collection instituted, nor any other action to collect the same commenced after the expiration of such period.~~

~~(2) A written proposed adjustment of the tax liability by the finance director issued prior to the expiration of such period shall extend the limitation of subsection (a)(1) of this subsection for one year after a final determination or assessment is made.~~

~~(b)~~

~~(1) Except as provided in this section, no lien imposed by this article shall continue beyond three years after the filing of a return.~~

~~(2) For taxes assessed before the expiration of such three-year period, notice of lien with respect to which has been filed prior to the expiration of such period, and for taxes on which written notice of any proposed adjustment of the tax liability has been sent to the taxpayer during such three-year period, such lien shall continue for one year after the expiration of such period or after the issuance of a final determination or assessment based on the proposed adjustment issued prior to the expiration of the three-year period.~~

~~(c) For purposes of this section, a return filed before the last day prescribed by this article for the filing thereof shall be considered filed on such last day.~~

~~(d) In the case of a failure to file a return or the filing of a false or fraudulent return with intent to evade tax, the tax imposed by this article, together with interest and penalties thereon, may be assessed and collected at any time.~~

~~(e) Where, before the expiration of the time prescribed in this section for the assessment of tax, both the taxpayer and the finance director have consented in writing to an assessment after such time, the tax imposed by this article may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing.~~

Section 11. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 12. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

Section 13. Notwithstanding any provision of the Charter or the City Code of the City of Aurora, Colorado, to the contrary, this ordinance shall become effective on the first day of the month which is at least thirty days after the date of adoption

Section 14. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

INTRODUCED, READ AND ORDERED PUBLISHED this _________ day of __________________, 2021.

PASSED AND ORDERED PUBLISHED BY REFERENCE this ________ day of _________________, 2021.

______________________________
MIKE COFFMAN, Mayor

ATTEST:

______________________________
KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

RLA

______________________________
HANOSKY HERNANDEZ,
Assistant City Attorney

# CITY OF AURORA
## Late Submission Approval for Agenda Item

| | |
|---|---|
| **Item Title:** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING ARTICLE II OF SECTION 130 OF THE CITY CODE RELATING TO SALES AND USE TAX CLARIFICATIONS | |
| **Item Initiator:** Trevor Vaughn, Manager of Tax and Licensing | |
| **Staff Source/Legal Source:** Trevor Vaughn / Hanosky Hernandez | |
| **Outside Speaker:** Click here to type the name and title (e.x. Jane Smith, Executive Director) of outside speaker(s) | |
| **Council Goal:** 2012: 6.0--Provide a well-managed and financially strong City | |

**CRITERIA - PLEASE CONSIDER ITEM FOR LATE SUBMISSION FOR THE FOLLOWING REASON:**

☒ There is a time-sensitive legal requirement that must be met and cannot be met by a future meeting date

☐ The delay will result in an adverse financial impact to the city

☐ The item is related to a disaster and must be addressed before the next available meeting

**COUNCIL MEETING DATES FOR LATE SUBMISSION:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

**EXPLANATION:** ***(Please provide a detailed explanation as to why the item falls into one or more of the above criteria and why it may not be set for a future meeting date.)***

Time sensitive

I understand the agenda item will not be added to the agenda without submitting this completed form as an attachment in e-Scribe. The agenda item will not be added to the agenda if the workflow is not completed by the WORKFLOW COMPLETED date indicated on the agenda deadline calendar.

Trevor Vaughn
Agenda Item Initiator Name

Terri Velasquez
Late Submission Approver Name

Trevor Vaughn

Agenda Item Initiator Signature Date

Terri Velasquez 10/22/2021

Late Submission Approver Signature Date

Roberto Venegas 10/22/21

# CITY OF AURORA
## Council Agenda Commentary

| |
|---|
| **Item Title:** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AUTHORIZING A DEFINED BENEFIT PLAN OPTION AND RELATED CHANGES TO IMPLEMENT SUCH OPTION |
| **Item Initiator:** Terri Velasquez |
| **Staff Source/Legal Source:** Terri Velasquez, Finance Director/Hanosky Hernandez, Assistant City Attorney |
| **Outside Speaker:** Cindy Birley, Esq. Partner, Davis Graham & Stubbs LLP |
| **Council Goal:** 2012: 6.0--Provide a well-managed and financially strong City |

**COUNCIL MEETING DATES:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

**ITEM DETAILS:**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AUTHORIZING A DEFINED BENEFIT PLAN OPTION AND RELATED CHANGES TO IMPLEMENT SUCH OPTION

Terri Velasquez, Finance Director/Hans Hernandez-Perez, Assistant City Attorney

Outside Speaker: Cindy Birley, Esq. Partner, Davis Graham & Stubbs LLP

Estimated Presentation/Discusion Time: 20 minutes

**ACTIONS(S) PROPOSED** ***(Check all appropriate actions)***

☐ Approve Item and Move Forward to Study Session

☐ Approve Item as proposed at Study Session

☒ Approve Item and Move Forward to Regular Meeting

☒ Approve Item as proposed at Regular Meeting

☐ Information Only

☐ Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field.

## PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

**Action Taken/Follow-up:** ***(Check all that apply)***

☐ Recommends Approval ☐ Does Not Recommend Approval

☐ Forwarded Without Recommendation ☐ Recommendation Report Attached

☐ Minutes Attached ☐ Minutes Not Available

## HISTORY ***(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)***

On February 8, 2020, at the Winter Workshop, an update was provided on the progress of the development of a hybrid defined benefit option. City Council directed staff to draft the plan document and to continue the 12% employee and 12% employer contribution in an ongoing manner. This was incorporated into the 2021 budget.

At the July 28, 2020 Management and Finance Policy Committee meeting, Cindy Birley, Esq. Partner, Davis Graham Stubbs, LLP presented the draft Police Hybrid Pension Plan document in detail to the Committee and provided an update regarding the timeline for implementation of the plan.

At the January 26, 2021 Winter Workshop, an update was provided on the progress of the development of a hybrid defined benefit option. The updated timeline was reviewed along with the steps to implement the Police Defined Benefit Plan option.

## ITEM SUMMARY ***(Brief description of item, discussion, key points, recommendations, etc.)***

This item provides for a resolution authorizing the Police defined benefit plan option and the related changes and documents to implement this plan on January 1, 2022. In addition to the resolution the attached documents include:

1. Aurora Police Money Purchase Pension Plan (the "MPPP") As Amended and Restated 2021;

2. Summary of Changes for the MPPP;

3. Aurora Police DB Plan ("DB Plan");

4. Aurora Police MOU with FPPA; and

5. Aurora Police Hybrid Plan Timeline.

## QUESTIONS FOR COUNCIL

Does Council approve the resolution and the accompanying documents listed above in the Item Summary in substantially the form as attached to this Resolution as Exhibit A to implement the Police Defined Benefit Plan option?

## LEGAL COMMENTS

The City of Aurora has established a local Money Purchase Plan (MPP) as authorized by 31-31-601 et. seq., C.R.S., as part of the benefits provided to the Aurora Police Department uniformed members. The statute does not prohibit the city from creating a defined benefit option for the Aurora Police Department Uniformed Members. Staff is presenting to council all the documents related to the creation of the defined benefit option for council's evaluation and approval. City Council shall act only by ordinance, resolution or motion. All legislative enactments must be in the form of an ordinance; all actions, except as herein provided, may be in the form of Resolutions or motions. Section 5-1 Aurora City Charter.

The plan and related trust agreement will be submitted to the IRS to request a determination letter that the plan and related trust agreement meet the qualification requirements under the Internal Revenue Code. (Hernandez)

**PUBLIC FINANCIAL IMPACT**

☒ YES ☐ NO

**If yes, explain:** In 2020, $290,000 was appropriated to fund the Police Hybrid plan design. As discussed in January, it is anticipated that $368,500 additional funds will be required to complete the implementation process of the Police Hybrid option as outlined in the timeline. Forfeiture funds of the Aurora Police Money Purchase Pension Plan will reduce the employer contribution from the City, and will be indirectly available to help offset these costs. These cost will be part of a future supplemental appropriation. In addition, seed money for the defined benefit option is estimated at $6 million and will be funded over multiple years starting in 2022.

**PRIVATE FISCAL IMPACT**

☒ Not Applicable ☐ Significant ☐ Nominal

**If Significant or Nominal, explain:** N/A

RESOLUTION NO. R2021-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AUTHORIZING A DEFINED BENEFIT PLAN OPTION AND RELATED CHANGES TO IMPLEMENT SUCH OPTION

WHEREAS, the City of Aurora, Colorado, (the "City"), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution and as such the City has authority to legislate and regulate its local affairs; and

WHEREAS, the City has previously established the Money Purchase Pension Plan and Trust Agreement of the Police Department of the City of Aurora (the "Plan") as authorized by Sec. 31-31-601 *et seq.* C.R.S.; and

WHEREAS, the City wishes to expand the retirement plan options for the members of the Aurora Police Department ("APD") by creating a hybrid pension plan which provides a defined contribution and defined benefit option (the "DB Option"); and

WHEREAS, the Fire and Police Pension Association of Colorado (the "FPPA") has reviewed the proposed addition of the DB Option to the current Plan and has no objections to the proposed changes to the Plan, and to that effect has agreed to sign a Memorandum of Understanding regarding the changes to the Plan and the continued coverage of the eligible police officers under the FPPA disability and survivor statutes; and

WHEREAS, the current members of the board for the Plan have reviewed the proposed changes to the Plan and voted to approve the creation of a DB Option; and

WHEREAS, the employees who are participants of the Plan have been given an opportunity to vote on the changes to the Plan in a duly held and certified election and the changes have been approved; and

WHEREAS, the City now wishes to take formal action to amend the Plan and create the DB Option in substantially the form of the Retirement Plan and Trust Agreement of the Police Department of the City of Aurora (Effective January 1, 2022) ("Retirement Plan") and not inconsistent with this Resolution; and

WHEREAS, the Retirement Plan uses the nomenclature of member, but for purposes of this Resolution the term participant may also be used to reference a member in the Retirement Plan; and

WHEREAS, the City intends that participant mandatory contributions to the Plan and Retirement Plan be picked up by the City and thus be treated as employer contributions pursuant to a valid pick up under Section 414(h)(2) of the Internal Revenue Code of 1986, as amended (the "Code") that are not gross income, for federal tax purposes, of a participant until such contributions are distributed to the participant and that do not constitute wages for purposes of Code Section 3401(a); and

WHEREAS, pursuant to Internal Revenue Service Revenue Ruling 2006-43, participant mandatory contributions to the Plan and Retirement Plan are treated as employer contributions pursuant to a valid pick-up under Code Section 414(h)(2) if, *inter alia*, by formal action, the employer specifies that contributions on behalf of a specific class of employees of the employer, although designated as employee contributions, will be paid by the employer in lieu of employee contributions; and

WHEREAS, the City previously increased the picked-up contributions to the Plan to an amount equal to twelve percent (12%) of each participant's "Compensation" (as defined for purposes of the Plan) for such pay periods in which he or she is a participant;

WHEREAS, the City previously increased the employer contributions to the Plan such that the City would contribute to the Plan for each pay period on behalf of each participant who is eligible to share in employer contributions for that pay period an amount that, together with any forfeitures which are reallocated during such pay period under the provisions of the Plan, equals twelve percent (12%) of each such participant's Compensation (as defined for purposes of the Plan); and

WHEREAS, the City wishes that effective for the first pay period pursuant to the City's payroll calendar for the year 2022 and subsequent pay periods thereafter, the picked-up contributions to the Plan, or to the Plan and the Retirement Plan in the case of an employee who elects to participate in the Retirement Plan, shall be, in aggregate, an amount equal to twelve percent (12%) of the participant's (or member's) "Compensation" (as defined for purposes of each of the Plan and the Retirement Plan) for each such pay period; and

WHEREAS, the City wishes that commencing with a Member's DB Plan Effective Date (as defined in the Retirement Plan) for the first pay period and subsequent pay periods thereafter, the City will contribute on behalf of each participant in the Plan, an amount that together with any forfeitures which are reallocated during such pay period under the provisions of the Plan, equals three and three-quarters percent (3.75%) of such participant's "Compensation" (as defined in the Plan) and such amount as is required by Section 4.1 of the Retirement Plan which is generally, eight and one-quarter percent (8.25%) of the member's "Compensation" (as defined in the Retirement Plan), in each case for each such pay period and subsequent pay periods thereafter.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The City Council hereby authorizes the addition of a defined benefit option to the Plan and approves and authorizes the Retirement Plan and Trust Agreement of the Police Department of the City of Aurora (Effective January 1, 2022), (the "Retirement Plan") in substantially the form as attached to this Resolution as Exhibit A and not inconsistent with this Resolution, and it has been presented at this meeting.

Section 2. The Mayor is hereby authorized to sign the Memorandum of Understanding between the City and the FPPA and any other required document not inconsistent with this Resolution including, but not limited to, amendments to the Plan and the Retirement Plan, from time to time, and any actions previously taken by the Mayor in connection with the establishment or implementation of the Retirement Plan and amendments to the Plan are hereby authorized, approved, and ratified.

Section 3. The City Manager, or his or her designee, are hereby authorized to take any actions necessary to establish and maintain the Retirement Plan, including but not limited to submit the Retirement Plan to the Internal Revenue Service in support of a request for a letter of determination that the Retirement Plan meets the requirements of Code Sections 401(a) and 501(a), and to sign any initial documents that are necessary and proper to establish or implement the Retirement Plan, and to assign the agreements and contracts entered hereunder to the Plan Administration Committee of the Retirement Plan, with the additions, deletions, and exclusions deemed necessary by the City Attorney, and not inconsistent with this Resolution, and any actions previously taken or to be taken by the City Manager, or his or her designees in connection with the establishment or implementation of the Retirement Plan and amendments to the Plan, including but not limited to request the Internal Revenue Service to issue a private letter ruling, are hereby authorized, approved, and ratified.

Section 4. All future mandatory contributions of employees of the City who participate in the Plan, or in the Plan and the Retirement Plan, for services rendered after this Resolution is passed, shall be:

a. picked up by the City and paid by the City to the Plan, or the Plan and the Retirement Plan, as applicable, in lieu of employee contributions;

b. treated as employer contributions pursuant to a valid pick up under Code Section 414(h)(2); and,

c. be treated as employer contributions to the maximum extent permitted by the Code.

Section 5. Participants in the Plan, or in the Plan and the Retirement Plan, shall not be permitted to opt out of the pickup or to receive the contributed amounts directly instead of having them paid by the City to the Plan, or the Plan and the Retirement Plan, as applicable.

Section 6. This Resolution is intended to provide that participant mandatory contributions to the Plan and the mandatory member contributions to the Retirement Plan are to be treated as employer contributions pursuant to a valid pick up under Code Section 414(h)(2), Internal Revenue Service Revenue Ruling 2006-43, and any final income tax regulations or other guidance from the Internal Revenue Service or the Department of the Treasury with respect to Code Section 414(h)(2), and this Resolution shall be interpreted in accordance with such intention, and to the maximum extent permitted, this Resolution shall be deemed modified to the extent necessary to comply with such guidance.

Section 7. Effective for the first pay period pursuant to the City's payroll calendar for the year 2022 and subsequent pay periods thereafter, each participant in the Plan (who is not also a member of the Retirement Plan) shall be required to contribute an amount equal to twelve percent (12%) of the participant's "Compensation" (as defined for purposes of the Plan) for each such pay period, which amount shall be picked up each pay period by the City on behalf of each participant.

Section 8. Effective for the first pay period pursuant to the City's payroll calendar for the year 2022 and subsequent pay periods thereafter, the City will contribute on behalf of each participant in the Plan (who is not also a member of the Retirement Plan) who is eligible to share in employer contributions for that pay period an amount that, together with any forfeitures that are reallocated during such pay period under the provisions of the Plan, equals twelve percent (12%) of such participant's "Compensation" (as defined for purposes of the Plan) for such pay period and subsequent pay periods thereafter.

Section 9. Effective commencing with a Member's DB Plan Effective Date (as defined in the Retirement Plan) for the first pay period and subsequent pay periods thereafter, each participant in the Plan who is also a member in the Retirement Plan shall be required to contribute an amount equal to three and three-quarters percent (3.75%) of the participant's "Compensation" (as defined for purposes of the Plan) to the Plan and an amount equal to eight and one-quarter percent (8.25%) of the member's "Compensation" (as defined for purposes of the Retirement Plan) to the Retirement Plan, in each case for each such pay period, which amounts shall be picked up each pay period by the City on behalf of each participant in the Plan and member of the Retirement Plan.

Section 10. Effective commencing with a Member's DB Plan Effective Date (as defined in the Retirement Plan) for the first pay period and subsequent pay periods thereafter, the City will contribute on behalf of each participant in the Plan who is also a member of the Retirement Plan an amount that, together with any forfeitures that are reallocated during such pay period under the provisions of the Plan, equals three and three-quarters percent (3.75%) of the participant's "Compensation" (as defined for purposes of the Plan) to the Plan and such amount as is required by Section 4.1 of the Retirement Plan, which is, generally, eight and one-quarter percent (8.25%) of the member's "Compensation" (as defined for purposes of the Retirement Plan) to the Retirement Plan, in each case for each such pay period and subsequent pay periods thereafter.

Section 11. All resolutions or parts of resolutions of the City of Aurora, Colorado, in conflict herewith are hereby rescinded.

Section 12. This Resolution shall take effect immediately and any reconsideration of this Resolution by the City Council of the City is hereby waived.

RESOLVED AND PASSED this _______ day of ______________________, 2021.

______________________________
MIKE COFFMAN, Mayor

ATTEST:

________________________________
KADEE RODRIGUEZ,
City Clerk

APPROVED AS TO FORM:

________________________________
HANOSKY HERNANDEZ,
Assistant City Attorney

# MONEY PURCHASE PENSION PLAN AND TRUST AGREEMENT

# OF THE POLICE DEPARTMENT OF THE CITY OF AURORA

## (As Amended and Restated Effective November 30, 2021)

# Money Purchase Pension Plan and Trust Agreement of The Police Department of the City of Aurora

## Table of Contents

**MONEY PURCHASE PENSION PLAN**
**AND TRUST AGREEMENT OF**
**THE POLICE DEPARTMENT OF THE CITY OF AURORA**

CITY OF AURORA, a Colorado municipality, makes this Agreement as the Employer with the Trustees hereunder.

**WITNESSETH:**

CITY OF AURORA continues, within this Trust Agreement, a Plan for the administration and distribution of contributions made by the Employer and its eligible Employees for the purpose of providing retirement benefits for its eligible Employees. The original Plan was established effective as of January 1, 1988 and has been subsequently amended and restated for the principal purpose of complying with the tax qualification requirements of the Internal Revenue Code of 1986, as amended ("Code"). This amended and restated Plan is effective as of November 30, 2021, except as otherwise provided herein, and is intended to reflect the requirements contained in the 2014 Cumulative List of Changes in Plan Qualification Requirements, as issued by the Internal Revenue Service in Notice 2014-77, the 2015 Cumulative List of Changes in Plan Qualification Requirements, as issued by the Internal Revenue Service in Notice 2015-84, and the prior Cumulative Lists of Changes in Plan Qualification Requirements, as issued by the Internal Revenue Service. The Plan also is intended to reflect the applicable provisions of the Pension Protection Act of 2006, the Heroes Earnings Assistance and Relief Tax Act of 2008, and the Worker, Retiree and Employer Recovery Act of 2008.

The provisions of this Plan, as amended and restated, shall apply solely to an Employee whose employment with the Employer terminates on or after the amended and restated Effective Date of the Plan, unless otherwise provided herein. If an Employee's employment with the Employer terminates prior to the restated Effective Date, that Employee shall be entitled to benefits under the Plan as the Plan existed on the date of the Employee's termination of employment.

Now, therefore, in consideration of their mutual covenants, the Employer and the Trustees agree as follows:

## ARTICLE 1.
## DEFINITIONS

1.1 ***Account*** shall mean the separate account(s) which the Plan Administration Committee or the Trustee shall maintain (a) for a Participant or a Beneficiary, if applicable, under the Plan, (b) to hold Forfeitures and (c) funds to be used for Plan fees and expenses.

1.2 ***Accounting Date*** shall be the last day of the Plan Year.

1.3 ***Accrued Benefit*** shall mean the amount held in a Participant's Employer Contributions Account, Participant Mandatory Contributions Account, Participant Voluntary Contributions Account and Participant Rollover Contributions Account as of any date.

1.4 ***Authorized Leave of Absence*** shall mean any absence authorized by the Employer under the Employer's standard personnel practices, and supplemented by the labor agreement between the Employer and the Aurora Police Association, as may from time to time be in effect. An absence due to military service described in CRS Section 28-3-601, et seq. (or other applicable law), including annual, extended and emergency military leave, shall be governed by CRS Section 28-3-601, et seq. and shall be considered an Authorized Leave of Absence hereunder, provided that the absence meets the requirements set forth in CRS Section 28-3-601, et seq.

1.5 ***Beneficiary*** shall mean the person designated by a Participant who is or may become entitled to a benefit under the Plan. A Beneficiary who becomes entitled to a benefit under the Plan shall remain a Beneficiary under the Plan until the Trustee has fully distributed his or her benefit to him or her. A Beneficiary's right to (and the Plan Administrator's, the Plan Administration Committee's or the Trustee's duty to provide to the Beneficiary) information or data concerning the Plan shall not arise until he or she first becomes entitled to receive a benefit under the Plan.

1.6 ***Code*** shall mean the Internal Revenue Code of 1986, as amended.

1.7 ***Compensation*** shall mean the total base salary set forth in the Employer's Compensation Ordinance and/or pertinent City Council resolutions, as from time to time in effect, for the rank and grade held by the Participant concerned and paid by the Employer to the Participant for services rendered by such Participant as an Employee, including longevity pay (where eligible therefor) and other compensation as detailed in the Employee Manual (effective January 1, 2021), but excluding bonuses, commissions, overtime pay, holiday pay, other taxable income, and other forms of extra pay, received for services performed as an Employee for the portion of the Plan Year during which the Employee was a Participant. However, the term "Compensation" shall not be reduced by the Participant's mandatory contributions which are picked up by the Employer pursuant to Article 4, nor shall "Compensation" be reduced by any Elective Contributions, as defined in Section 1.14.

Any reference in this Plan to Compensation is a reference to the definition in this Section 1.7, unless the Plan reference specifies a modification to this definition. The Plan Administration Committee will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A

Compensation payment includes Compensation by the Employer through another person under the common paymaster provisions in Code Sections 3121 and 3306.

For any Plan Year beginning after December 31, 2001, the Trustee in allocating Employer Contributions and Participant Mandatory Contributions shall not take into account more than $200,000 (as may be adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B)) of any Participant's "Annual Compensation." "Annual Compensation" means a Participant's Compensation for the applicable "Determination Period." "Determination Period" means the Plan Year. The cost-of-living adjustment in effect for a calendar year applies to Annual Compensation for the Determination Period that begins with or within such calendar year.

Compensation shall also include regular Compensation (as defined above which excludes leave cashouts) for services, paid by the later of 2½ months after a Participant's severance from employment with the Employer or the end of the Plan Year that includes the date of the Participant's severance from employment, if it is a payment that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer.

Any payments not described above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the Plan Year that includes the date of severance from employment.

1.8 ***CRS*** shall mean Colorado Revised Statutes, as amended.

1.9 ***DB Plan*** means the Retirement Plan and Trust Agreement of the Police Department of the City of Aurora, as amended from time to time.

1.10 ***DB Plan Participant*** means a Participant who has made an irrevocable election to participate in the DB Plan pursuant to Section 2.3 hereof.

1.11 ***DB Plan Participant Effective Date*** means the date, as specified in the participation election made by a DB Plan Participant pursuant to Section 2.3 hereof, on which the DB Plan Participant commences participation in the DB Plan. The DB Plan Participant Effective Date must commence with the first day of the first complete payroll period ending in the calendar month immediately following the date the election is made.

1.12 ***Disability*** shall mean when a Participant is determined by the Board of Directors of the Colorado Fire and Police Pension Association to be eligible for disability benefits as a result of such Participant's becoming disabled, whether occupational or total, and whether on-duty or whether not on-duty, as provided under and defined in CRS, Title 31, Article 31, Part 8, and specifically in CRS Sections 31-31-801, 31-31-803 and 31-31-806.5, or any successor provision thereto.

1.13 ***Effective Date*** of this Plan as amended and restated shall be effective November 30, 2021, except as specifically provided to the contrary in this Plan.

1.14 ***Elective Contributions*** shall mean amounts excludible from the Employee's gross income under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(2), 403(b), 408(p), or 457, and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code Section 457 plan. Notwithstanding the preceding sentence, amounts described in Code Section 132(f)(4) are not Elective Contributions until Plan Years beginning on or after January 1, 2001, unless the Trustee operationally has included such amounts effective as of an earlier Plan Year beginning no earlier than January 1, 1998.

1.15 ***Employee*** shall mean any person:

(a) who is employed by the Employer in the Civil Service;

(b) whose most recent employment with the Employer commenced on or after April 8, 1978, or whose employment commenced prior to that date and who subsequently elected to be covered by the Prior Plan pursuant to CRS Section 31-30.5-103(2)(b);

(c) who is paid by the Employer on a full-time salary basis;

(d) whose duties are directly involved with the provision of police protection; and

(e) who can normally be expected to be credited with at least one thousand six hundred (1,600) Hours of Service each Plan Year.

The term "Employee" shall not mean or include clerical or other personnel whose services for the Employer are auxiliary to actual police protection services. Leased Employees, as defined in Code Section 414(n), shall be treated as Employees hereunder. However, see the exclusion in Section 2.1.

The Employer shall, under its current employment policy, make the determination of whether a person employed by it meets the definition of "Employee" as set forth in this Section 1.15.

1.16 ***Employer*** shall mean the City of Aurora.

1.17 ***Employer Contributions*** shall mean the amount contributed by the Employer under Section 3.1, excluding Participant Mandatory Contributions, Participant Voluntary Contributions, Participant Rollover Contributions, and Forfeitures.

1.18 ***Employer Contributions Account*** means the account maintained by the Plan Administration Committee in the name of a Participant to record the Participant's interest in the Trust represented by (a) the amount (if any) credited to such account under Section 9.15 representing the total contributions made by the Employer on such Participant's behalf to the Prior Plan and the net earnings of the Prior Plan allocable thereto, (b) such Participant's share of Employer Contributions, and (c) the increase or decrease in the net worth of the Trust allocable thereto.

1.19 ***ERISA*** shall mean the Employee Retirement Income Security Act of 1974, as amended.

1.20 ***Forfeiture*** means that portion of a Participant's Accrued Benefit which is forfeited in accordance with Sections 5.4 or 9.14.

1.21 ***Former Participant*** means an individual who has ceased to be a Participant because of the Participant's Separation from Service for any reason and who has an undistributed Account.

1.22 ***FPPA*** shall mean the Colorado Fire and Police Pension Association established pursuant to CRS, Title 31, Article 31, Part 2.

1.23 ***Highly Compensated Employee*** means an Employee who during the preceding Plan Year had Compensation in excess of $80,000 (as adjusted by the Commissioner of Internal Revenue for the relevant year) and, if the Employer makes the *top-paid group election*, was part of the top-paid 20% group of Employees (based on Compensation for the preceding Plan Year).

For purposes of this Section 1.23 "Compensation" means Compensation as defined in Section 1.7, except any exclusions from Compensation set forth in Section 1.7 do not apply, and Compensation specifically includes Elective Contributions, as defined in Section 1.14. The Trustee shall make the determination of who is a Highly Compensated Employee, including the determinations of the number and identity of the top-paid 20% group, consistent with Code Section 414(q) and regulations issued thereunder. For purposes of this Section 1.23, if the current Plan Year is the first year of the Plan, then the term "preceding Plan Year" means the 12-consecutive month period immediately preceding the current Plan Year.

Anything contained in this Section 1.23 or any other provision of the Plan to the contrary notwithstanding, the provisions of this Section 1.23 shall only apply to the Plan if so required under the Code, including, but not limited to Code Section 414(q).

1.24 ***Hour of Service*** shall mean:

(a) Each hour for which the Employer pays an Employee, or for which the Employee is entitled to payment, for the performance of duties. The Plan Administration Committee credits Hours of Service under this subsection (a) to the Employee for the computation period in which the Employee performs the duties, irrespective of when paid.

(b) Each hour for back pay, irrespective of mitigation of damages, to which the Employer has agreed or for which the Employee has received an award. The Trustee shall credit Hours of Service under this subsection (b) to the Employee for the computation period(s) to which the award or the agreement pertains rather than for the computation period in which the award, agreement or payment is made.

(c) Each hour for which the Employer pays an Employee, or for which the Employee is entitled to payment, pursuant to the terms of the labor agreement between the Employer and the Aurora Police Association from time to time in effect, (irrespective of whether the employment relationship is terminated), for reasons other than for the performance of duties during a computation period, such as Authorized Leave of Absence, vacation, holiday, sick leave, jury duty or military duty. Except as otherwise required by applicable law, the Plan Administration Committee shall credit no more than five hundred one (501) Hours of Service under this subsection (c) to an Employee on account of any single continuous period during which the Employee does not perform any duties (whether or not such period occurs during a single computation period). An hour for which an Employee is paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the Employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workmen's compensation, or unemployment compensation or disability insurance laws. Hours of Service are not required to be credited for a payment which solely reimburses an Employee for medical or medically related expenses incurred by the Employee. The Plan Administration Committee credits Hours of Service under this subsection (c) in accordance with the rules of paragraphs (b) and (c) of Labor Reg. Section 2530.200b-2, which the Plan, by this reference, specifically incorporates in full within this subsection (c).

(d) Hours of Service shall also include any Service which the Plan must credit for contributions and benefits in order to satisfy the crediting of Service requirements of Code Section 414(u). The provisions of this subsection (d) shall apply beginning December 12, 1994.

For purposes of this Section 1.24, a payment shall be deemed made by the Employer regardless of whether such payment is made by the Employer directly, or indirectly through, among others, a trust fund, or insurer, to which the Employer contributes or pays premiums and regardless of whether contributions made or due to the trust fund, insurer or other entity are for the benefit of particular Employees or are on behalf of a group of Employees in the aggregate.

The Plan Administration Committee shall not credit an Hour of Service under more than one of the above subsections. For example, an Employee who receives a back pay award following a determination that such Employee was paid at an unlawful rate for Hours of Service previously credited will not be entitled to additional credit for the same Hours of Service. Crediting of Hours of Service for back pay awarded or agreed to with respect to periods described in subsection (c) shall be subject to the limitations set forth in such subsection. For example, no more than 501 Hours of Service are required to be credited for payments of back pay, to the extent that such back pay is agreed to or awarded for a period of time during which an Employee did not or would not have performed duties.

A computation period for purposes of this Section 1.24 is the Plan Year in which the Plan Administration Committee is measuring an Employee's Hours of Service.

The Employer shall credit every Employee with Hours of Service on the basis of the "actual" method. For purposes of the Plan, "actual" method means the determination of Hours of Service from records of hours worked and hours for which the Employer makes payment or for which payment is due from the Employer.

1.25 ***In-Service Distribution*** shall have the meaning assigned to it in Section 6.7(a) of the Plan.

1.26 ***Leased Employee*** shall mean an individual (who otherwise is not an Employee of the Employer) who, pursuant to an agreement between the Employer and any other person, has performed services for the Employer (or for the Employer and any persons related to the Employer within the meaning of Code Section 144(a)(3)) on a substantially full time basis for at least one year and who performs such services under primary direction or control of the Employer within the meaning of Code Section 414(n)(2). Except as otherwise provided in this Section 1.26 a Leased Employee is an Employee for purposes of the Plan. If a Leased Employee is treated as an Employee by reason of this Section 1.26, "Compensation" includes compensation from the leasing organization which is attributable to services performed for the Employer.

Notwithstanding anything contained in this Section 1.26 or any other provision of the Plan to the contrary, the provisions of this Section 1.26 shall only apply to the Plan if so required under the Code.

1.27 ***Nonforfeitable*** shall mean a Participant's or Beneficiary's unconditional claim, legally enforceable against the Plan, to the Participant's Accrued Benefit.

1.28 ***Nontransferable Annuity*** shall mean an annuity which by its terms provides that it may not be sold, assigned, discounted, pledged as collateral for a loan or security for the performance of an obligation or for any purpose to any person other than the insurance company. If the Trustee distributes an annuity contract, the contract must be a Nontransferable Annuity.

1.29 ***Normal Retirement Age*** shall mean the later of age 50 or the 5$^{th}$ anniversary of the date the Participant is first credited with an Hour of Service as an Employee, but not to exceed age 65.

The provisions of this Section 1.29 and the term Normal Retirement Age shall have no application to a Participant's vesting in his or her Employer Contributions credited to his or her Employer Contributions Account under the Plan, which vesting shall be controlled solely by the provisions in Section 5.2 of the Plan and vesting schedule set forth in Section 5.3 of the Plan. Except as specifically provided in this Plan, the provisions of this Section 1.29 and the term Normal Retirement Age are expressly intended, and are expressly to be construed and interpreted, to have no legal application whatsoever upon the Employer's general employment policies, rules, ordinances or laws. Therefore, except as specifically provided in this Plan, the provisions of this Section 1.29 and the term Normal Retirement Age shall in no manner give or entitle, or be in any manner construed or interpreted to give or entitle, any Employee, Employee-Participant or any Beneficiary any additional legal right or equitable right against the Employer which any such Employee, Employee-Participant or any Beneficiary does not otherwise possess or to which he or she is already entitled.

A Participant who remains in the employ of the Employer after attaining Normal Retirement Age shall continue to participate in the Plan.

1.30 ***Participant*** shall mean an Employee who is eligible to be and becomes a Participant in accordance with the provisions of Section 2.1.

1.31 ***Participant Mandatory Contributions*** shall mean the contributions made under Section 4.1 by a Participant, excluding Employer Contributions, Participant Voluntary Contributions, Participant Rollover Contributions, and Forfeitures.

1.32 ***Participant Mandatory Contributions Account*** shall mean the account maintained by the Plan Administration Committee in the name of a Participant to record such Participant's interest in the Trust represented by (a) the amount (if any) credited to such account under Section 9.15 representing the total mandatory contributions made by such Participant on such Participant's own behalf to the Prior Plan and the net earnings of the Prior Plan allocable thereto, (b) such Participant's Mandatory Contributions, and (c) the increase or decrease in the net worth of the Trust allocable thereto.

1.33 ***Participant Rollover Contributions*** shall mean the contributions made under Section 4.3, excluding Employer Contributions, Participant Mandatory Contributions, Participant Voluntary Contributions, and Forfeitures,

1.34 ***Participant Rollover Contributions Account*** shall mean the account maintained by the Plan Administration Committee in the name of a Participant or Former Participant to record such Participant's interest in the Trust represented by such Participant's or Former Participant's Participant Rollover Contributions (if any) and the increase or decrease in the net worth of the Trust allocable thereto.

1.35 ***Participant Voluntary Contributions*** shall mean the contributions made under Section 4.2, excluding Employer Contributions, Participant Mandatory Contributions, Participant Rollover Contributions, and Forfeitures.

1.36 ***Participant Voluntary Contributions Account*** shall mean the account maintained by the Plan Administration Committee in the name of a Participant to record such Participant's interest in the Trust represented by such Participant's Voluntary Contributions and the increase or decrease in the net worth of the Trust allocable thereto.

1.37 ***Plan*** shall mean the retirement plan established and continued by the Employer in the form of this Plan and Trust Agreement, designated as the Money Purchase Pension Plan of the Police Department of the City of Aurora.

1.38 ***Plan Administration Committee*** shall mean the Plan Administration Committee as from time to time constituted pursuant to the terms of Article 9.

1.39 ***Plan Administrator*** shall mean the Plan Administration Committee unless the Plan Administration Committee designates another person to hold the position of Plan Administrator. In addition to its other duties, the Plan Administrator shall have full responsibility for compliance with the reporting and disclosure rules under applicable law as respects this Plan.

1.40 ***Plan Year*** shall mean the fiscal year of the Plan, a twelve (12) consecutive month period ending every December 31.

1.41 ***Prior Plan*** means the employee benefit plan maintained by FPPA under CRS Section 31-31-403 (f/k/a CRS Section 31-30-1006), for the benefit of those

Employees who were participating thereunder prior to the original effective date of this Plan, January 1, 1988, and which was replaced and superseded in its entirety by the substitution of this Plan for such plan.

1.42 ***Qualified Health Insurance Premiums*** shall mean premiums for coverage for a Participant, the Participant's spouse and dependents (as defined in Code Section 152) by an accident or health plan or qualified long-term care insurance contract (as defined in Code Section 7702B(b)).

1.43 ***Related Group/Related Employers*** shall mean a controlled group of corporations (as defined in Code Section 414(b)), trades or businesses (whether or not incorporated) which are under common control (as defined in Code Section 414(c)) or an affiliated service group (as defined in Code Section 414(m)) or an arrangement otherwise described in Code Section 414(o). Each Employer/member of the Related Group is a Related Employer. The term "Employer" includes every Related Employer for purposes of crediting Service, Hours of Service and Vesting Years of Service, applying the definitions of Employee, Highly Compensated Employee, Compensation and Leased Employee, determining Separation from Service, and for any other purpose required by the Code or by a Plan provision. However, an Employer may contribute to the Plan only by being a signatory to the Plan or to a Participation Agreement to the Plan. If a Related Employer executes a Participation Agreement to the Plan, such Related Employer is a Participating Employer. A Participating Employer is an Employer for all purposes of the Plan.

Notwithstanding anything contained in this Section 1.43 or any other provision of the Plan to the contrary, the provisions of this Section 1.43 shall only apply to the Plan if so required under the Code.

1.44 ***Separation from Service*** shall mean the date the Employee no longer has an employment relationship with the Employer maintaining this Plan.

1.45 ***Service*** shall mean any period of time the Employee is in the employ of the Employer.

1.46 ***Trust*** shall mean the separate Trust created under the Plan.

1.47 ***Trust Agreement*** shall mean the agreement set forth herein between the Employer and the Trustee providing for the administration of the Trust Fund, as the same may be amended from time to time, which forms a part of the Plan.

1.48 ***Trustee(s)*** shall mean the person or persons who are named on the last page hereof and referred to as such and who have executed this Agreement as trustee; and any person or persons who become successor trustees pursuant to the terms of the Plan. Each Trustee shall be a member of the Plan Administration Committee.

1.49 ***Trust Fund*** shall mean all property of every kind held or acquired by the Trustee under the Agreement.

1.50 ***Vesting Years of Service*** shall mean the first consecutive twelve (12) month period measured from the Employee's Employment Commencement Date (as defined below). The Plan measures subsequent vesting computation periods beginning with each anniversary of an Employee's Employment Commencement Date. "Employment Commencement Date" means the date on which the Employee first is credited with an Hour of Service as an Employee. A re-employed Employee under Section 2.2 establishes a new Employment Commencement Date on the date he or she is re-employed by the Employer as an Employee and is first credited with an Hour of Service as a re-employed Employee.

A Participant shall be credited with one Vesting Year of Service for each vesting computation period during which he or she is credited with not less than one thousand (1,000) Hours of Service, including Vesting Years of Service prior to the Effective Date of the Plan.

** * * * End of Article 1 * * * **

# ARTICLE 2.
# ELIGIBILITY AND PARTICIPATION

2.1 **ELIGIBILITY**. An Employee shall be eligible to become a Participant and shall begin participation in the Plan on the date he or she is first credited with an Hour of Service as an Employee. However, each Employee who has satisfied the above requirement on the Effective Date shall become a Participant on the Effective Date, provided he or she is an Employee on the Effective Date. Anything contained in this Plan and Trust Agreement to the contrary notwithstanding, Leased Employees shall not be eligible to become Participants in the Plan.

2.2 **PARTICIPATION UPON RE-EMPLOYMENT**. If the Service of an Employee terminates and he or she is re-employed as an Employee, such re-employed Employee will be eligible to become a Participant and shall begin participation in the Plan on the date he or she is re-employed by the Employer as an Employee and is first credited with an Hour of Service as a re-employed Employee.

2.3 **MANDATORY PARTICIPATION IN PLAN**.

(a) ***In General***. Except as provided in this Section 2.3, all Employees who are eligible to participate in the Plan must participate in the Plan as a condition of their employment, and no current Participant may elect to discontinue his or her participation in the Plan.

(b) ***Irrevocable Elections to Participate in the DB Plan***.

(1) ***Election by Active Employees as of January 1, 2022***. In accordance with procedures as are established by the Plan Administration Committee and pursuant to the terms of the DB Plan, a Participant who is an active Employee as of January 1, 2022, may make an irrevocable election to participate in this Plan and the DB Plan; provided, however, that the DB Plan Participant Effective Date must be on or after January 1, 2022, and on or before June 30, 2023.

(2) ***Election by New Hires after January 1, 2022***. In accordance with procedures as are established by the Plan Administration Committee and pursuant to the terms of the DB Plan, a Participant who is not an active Employee as of January 1, 2022, may, upon being employed or reemployed by the Employer after January 1, 2022, make an irrevocable election to participate in this Plan and the DB Plan; provided, however, that the DB Plan Participant Effective Date must be within thirty-six (36) months of such employment (or reemployment) by the Employer.

(3) Notwithstanding Sections 2.3(b)(1) and (2) above, the Plan Administration Committee may establish appropriate rules with respect to an Employee who performs or performed qualified military service that extends such election deadlines applicable to such Employee by up to the length of such Employee's leave for qualified military service.

** * * * End of Article 2 * * * **

# ARTICLE 3.
# EMPLOYER CONTRIBUTIONS AND FORFEITURES

3.1 **EMPLOYER CONTRIBUTIONS**.

(a) Subject to the provisions of subsection (b), the Employer will make contributions to the Trust on behalf of Participants as follows.

(1) For the payroll periods of the Employer beginning with the first payroll period beginning on or after January 1, 1998, and ending with the last payroll period prior to the first payroll period of the Employer beginning on or after January 1, 1999, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are to be reallocated during such pay period under the provisions of Section 3.3, equals nine and seven tenths percent (9.7%) of each Participant's Compensation for such pay period.

(2) For the first payroll period of the Employer beginning on or after January 1, 1999, and ending with the last payroll period prior to the first payroll period of the Employer beginning on or after December 22, 2007, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are reallocated during such pay period under the provisions of Section 3.3, equals ten percent (10%) of each Participant's Compensation for such pay period.

(3) For the first payroll period of the Employer beginning on or after December 22, 2007, and ending with the last payroll period prior to the first payroll period beginning on or after December 22, 2018, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are reallocated during such pay period under the provisions of Section 3.3, equals ten and one half percent (10.5%) of each Participant's Compensation for such pay period.

(4) For the first payroll period of the Employer beginning on or after December 22, 2018, and ending with the last payroll period prior to the first payroll period beginning on or after December 21, 2019, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are reallocated during such pay period under the provisions of Section 3.3, equals eleven percent (11%) of each Participant's Compensation for such pay period.

(5) For the first payroll period of the Employer beginning on or after December 21, 2019, and ending with the last payroll period prior to

the first payroll period beginning on or after January 1, 2022, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are reallocated during such pay period under the provisions of Section 3.3, equals twelve percent (12%) of each Participant's Compensation for such pay period.

(6) For the first payroll period of the Employer beginning on or after January 1, 2022, and for each payroll period thereafter, the Employer will contribute to the Trust on behalf of each Participant who is eligible to share in Employer Contributions for that pay period an amount, which, together with any Forfeitures which are reallocated during such pay period under the provisions of Section 3.3, equals twelve percent (12%) of each Participant's Compensation for such pay period; provided, however, that, in the case of a DB Plan Participant, the percentage shall be reduced to three and three-quarters percent (3.75%) beginning on the DB Plan Participant Effective Date applicable to such DB Plan Participant.

(b) Anything contained in this Section 3.1 to the contrary notwithstanding, the Employer's obligation for any Plan Year to contribute to the Trust on behalf of each Participant any amount in excess of nine percent (9%) of each such Participant's Compensation, as provided in subsection (a), is contingent upon (1) the reasonable determination by the City Council of the Employer that such annual Employer Contributions in excess of nine percent (9%) are permitted under Section 20 of Article X of the Colorado Constitution (hereinafter "Amendment 1"), and (2) an annual appropriation. The determination made by the City Council of the Employer after interpretation and application of Amendment 1 shall be determinative of the Employer Contribution percentage under this Section 3.1 for such Plan Year, and such determination by the City Council of the Employer shall be final. In the event the determination of the City Council of the Employer is that the Employer is not permitted under Amendment 1 to make an annual contribution to the Trust in excess of nine percent (9%) of each Participant's Compensation, then the Employer's contribution percentage under the provisions of this Section 3.1 for such Plan Year shall be reduced to nine percent (9%) of each Participant's Compensation for such Plan Year.

(c) The percentage contributions of the Employer provided for in this Section 3.1 may be modified hereafter by the applicable terms of any subsequent binding agreement between the Employer and the Plan Administration Committee, provided such terms make specific reference to such percentage contribution and provided any such amendment is approved in accordance with the provisions of Section 13.2. Any and all such amendments shall be affixed hereto, and the terms and provisions of this Plan and Trust Agreement relating to such percentage contributions shall be deemed modified as of and in accordance with the terms of such binding agreement.

(d) Except as provided in subsection (e), Employer Contributions made to the Trust for any Plan Year shall be paid to the Trustee, such payments shall be made on a basis during the Plan Year concerned that coincides with the Employer's then current payroll period for the Participants, and pending allocation under Sections 3.2 and 3.3, shall be invested by the Trustee.

(e) Anything contained in this Agreement to the contrary notwithstanding, the Employer, by mutual agreement with the Trustee, shall make a payment to the Trust prior to the first day of the first payroll period beginning on or after January 1, 1997, in the amount of Sixty-Eight Thousand Seven Hundred Thirty-Nine and No/100 Dollars ($68,739.00), pursuant to Section 15-88.5 of Chapter 15 of the City Code of the City of Aurora, Colorado (hereinafter referred to as the "Employer Payment"). The Plan Administration Committee shall allocate the Employer Payment in accordance with the provisions of Section 3.2(b).

3.2 **CONTRIBUTION ALLOCATION**.

(a) Except as provided in subsection (b), the Plan Administration Committee shall allocate and credit to each Participant's Account each Employer Contribution to this Trust upon the same basis as the Employer makes its contributions under Section 3.1; that is, the Plan Administration Committee shall credit each Participant's Account with that portion of the Employer Contribution which is equal to the percentage, as set forth in the applicable provision of Section 3.1, of the Participant's Compensation upon which the Employer based its Employer Contribution during such pay period.

(b) Anything contained in this Agreement to the contrary notwithstanding, the Employer Payment shall be allocated and credited to a reserve account under the Trust (hereinafter referred to as the "***Employer Payment Account***"). Commencing as of the first payroll period of the Employer beginning on or after January 1, 1997, and thereafter, the Plan Administration Committee shall allocate and credit principal from the Employer Payment Account, as an Employer Contribution, to each Participant's Account in an amount which is equal to the percentage, as set forth in Section 3.1(a), of the Participant's Compensation upon which the Employer is required to base its Employer Contribution during such pay period. In the event that at any time the amount of principal in the Employer Payment Account is insufficient to fully fund the Employer Contribution obligation for a current payroll period of the Employer, as set forth in Section 3.1(a) of the Plan, the Employer shall contribute to the Trust such amount as is required to meet the Employer's Employer Contribution obligation for such payroll period, as set forth in Section 3.1(a). Nothing contained in this subsection (b) shall be construed as relieving the Employer of its Employer Contribution obligation as set forth in Section 3.1, whether such Employer Contribution is made with regular Employer Contributions for the Employer's current payroll period payable pursuant to Section 3.1(d), or through allocation of principal from the Employer Payment Account payable pursuant to this subsection (b). Any net income, gain or loss incurred by the Employer Payment Account shall be used to pay fees and expenses of the Plan pursuant to Section 10.5(a).

3.3 **FORFEITURE ALLOCATION**. The amount of a Participant's Accrued Benefit forfeited under the Plan is a Forfeiture. Subject only to any restoration allocation required under Section 9.14, the Plan Administration Committee will use, allocate and credit the Forfeiture, as directed by the Employer in its discretion, in accordance with Section 3.2 to reduce the Employer Contribution for the Plan Year in which the Forfeiture occurs and any subsequent Plan Year if required. Amounts forfeited under Section 5.4, after the date of such Forfeiture under the provisions of Section 5.4, shall be treated as Employer Contributions and allocated as Employer Contributions in accordance with this Section 3.3.

The Plan Administration Committee will continue to hold the undistributed, non-vested portion of a terminated Participant's Accrued Benefit in his or her Account solely for his or her benefit until a Forfeiture occurs at the time specified in Section 5.4. A Participant will not share in the allocation of a Forfeiture of any portion of his or her Accrued Benefit.

3.4 **LIMITATIONS ON ALLOCATIONS TO PARTICIPANTS' ACCOUNTS**. The limitations and provisions of Code Section 415 and any regulations (including the preamble of the final Code Section 415 regulations), rulings or guidance issued thereunder are hereby incorporated by reference.

** * * * End of Article 3 * * * **

## ARTICLE 4.
## PARTICIPANT CONTRIBUTIONS

4.1 **PARTICIPANT MANDATORY CONTRIBUTIONS**.

(a) Each Participant shall be required to make contributions to the Trust as follows.

(1) For the payroll periods of the Employer beginning with the first payroll period beginning on or after January 1, 1997, and ending with the last payroll period prior to the first payroll period of the Employer beginning on or after January 1, 1998, each Participant shall be required to contribute an amount equal to nine and five tenths percent (9.5%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be picked up each pay period by the Employer on behalf of each Participant.

(2) For the first payroll period of the Employer beginning on or after January 1, 1998, and ending with the last payroll period prior to the first payroll period of the Employer beginning on or after December 22, 2007, each Participant shall be required to contribute an amount equal to ten percent (10%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be picked up each pay period by the Employer on behalf of each Participant.

(3) For the first payroll period of the Employer beginning on or after December 22, 2007, and ending with the last payroll period prior to the first payroll period beginning on or after December 22, 2018, each Participant shall be required to contribute an amount equal to ten and one-half percent (10.5%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be picked up each pay period by the Employer on behalf of each Participant.

(4) For the first payroll period of the Employer beginning on or after December 22, 2018, and ending with the last payroll period prior to the first payroll period beginning on or after December 21, 2019, each Participant shall be required to contribute an amount equal to eleven percent (11%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be picked up each pay period by the Employer on behalf of each Participant.

(5) For the first payroll period of the Employer beginning on or after December 21, 2019, and ending with the last payroll period prior to the first payroll period beginning on or after January 1, 2022, each Participant shall be required to contribute an amount equal to twelve percent (12%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be

picked up each pay period by the Employer on behalf of each Participant.

(6) For the first payroll period of the Employer beginning on or after January 1, 2022, and for each payroll period thereafter, each Participant shall be required to contribute an amount equal to twelve percent (12%) of his or her Compensation to the Trust for each such pay period in which he or she is a Participant, which amount shall be picked up each pay period by the Employer on behalf of each Participant; provided, however, that, in the case of a DB Plan Participant, the percentage shall be reduced to three and three-quarters percent (3.75%) beginning on the DB Plan Participant Effective Date applicable to such DB Plan Participant.

(b) The percentage contributions set forth in subsection (a) may be modified hereafter by the applicable terms of any subsequent binding agreement between the Employer and the Plan Administration Committee, provided such terms make specific reference to such percentage contribution and provided any such amendment is approved in accordance with the provisions of Section 13.2. Any and all such amendments shall be affixed hereto, and the terms and provisions of this Plan and Trust Agreement relating to such percentage contribution shall be deemed modified, as of and in accordance with, the terms of such binding agreement

(c) It is understood that the amounts set forth in subsection (a) shall be paid by the Employer to the Trust in lieu of such contributions being paid directly by each Participant. No Participant shall have the option of choosing to have the Employer pay him or her directly the Participant Mandatory Contribution required under this section instead of having such Participant Mandatory Contribution picked up and paid over to the Trust by the Employer. Although the Participant Mandatory Contribution under this section is otherwise designated and treated herein as the contribution of such Participant, it is intended that such contribution shall be treated, for federal income tax purposes, as an Employer Contribution under Code Section 414(h)(2).

(d) For purposes of determining the amount of the percentage contributions set forth in this section, Compensation, as defined in Section 1.7, shall be used. However, for federal income tax purposes, the amount of a Participant's taxable income and wages for withholding tax purposes shall not include the Participant Mandatory Contribution picked up by the Employer under this section.

(e) The Participant Mandatory Contributions required pursuant to the provisions of this Section 4.1 shall be paid by the Employer to the Trustee on a basis during the Plan Year concerned that coincides with the Employer's then current payroll period for Participants.

4.2 **<u>PARTICIPANT VOLUNTARY CONTRIBUTIONS</u>**.

(a) ***Participant Voluntary Contributions After December 31, 1991***. From and after January 1, 1992, Participant Voluntary Contributions shall no longer be permitted under the Plan.

(b) ***Participant Voluntary Contributions Prior to January 1, 1992***. Any Participant may make voluntary contributions to the Trust for his or her own benefit, subject to the Code Section 415 limitations for voluntary contributions. A Participant must make a voluntary contribution for a particular Plan Year not later than thirty (30) days after the Accounting Date of that Plan Year. The Plan Administration Committee will allocate and credit a voluntary contribution made for a particular Plan Year to the contributing Participant's Account as of the Accounting Date of that Plan Year. The Plan Administration Committee may establish whatever procedures it deems necessary to facilitate Participant Voluntary Contributions.

4.3 **<u>PARTICIPANT ROLLOVER CONTRIBUTIONS</u>**. The Trustee may, but shall not be obligated to, accept from a Participant or a Former Participant who has not yet attained age 70½:

(a) Participant Rollover Contributions of an eligible rollover distribution from:

(1) a qualified plan described in Code Section 401(a), excluding voluntary after-tax contributions and other non-taxable funds;

(2) an annuity contract described in Code Section 403(b), excluding voluntary after-tax contributions and other non-taxable funds;

(3) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state, excluding non-taxable funds; and/or

(4) a traditional individual retirement account or annuity described in Code Section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includable in gross income; and/or

(b) Participant Rollover Contributions made as a direct rollover of an eligible rollover distribution from:

(1) a qualified plan described in Code Section 401(a), including voluntary after-tax contributions but excluding other non-taxable funds;

(2) an annuity contract described in Code Section 403(b), including voluntary after-tax contributions but excluding other non-taxable funds; and/or

(3) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality

of a state or political subdivision of a state, excluding non-taxable funds.

Notwithstanding the preceding, the Plan shall not accept any Roth funds made as a Participant Rollover Contribution or otherwise. The Plan shall separately account for the Participant Rollover Contribution and separately account for any voluntary after-tax contributions or other non-taxable funds, which are directly rolled over as part of Participant Rollover Contributions under the Participant's or Former Participant's Participant Rollover Contributions Account. Before accepting a rollover contribution, the Trustee may, in accordance with I.R.S. Revenue Ruling 2014-9, require an Employee, Participant, or Former Participant to furnish satisfactory evidence that the proposed transfer is in fact a "rollover contribution" which the Code permits an employee to make to a qualified plan and which complies with any procedures established by the Trustees. Additionally, before accepting a rollover contribution, the Trustee may require the Employer's written consent, and the Participant's, Former Participant's, or Employee's filing with the Trustee any forms prescribed by them for such purpose. The Trustee may also require that if property other than cash is to be contributed to the Trust as a rollover contribution, such property must be liquidated into cash prior to its contribution to the Trust. A rollover contribution is not an annual addition under Code Section 415 or a Participant Voluntary Contribution.

The Trustee, in its sole discretion, may invest the rollover contribution either in a segregated investment account for the Participant's sole benefit or as part of the Trust Fund. As of the Accounting Date (or other valuation date) for each Plan Year, the Trustee shall allocate and credit the net income (or net loss) from a Participant's segregated Account, any expenses allocable thereto and the increase or decrease in the fair market value of the assets of a segregated Account solely to that Account as provided in Section 9.11.

An Employee, prior to satisfying the Plan's eligibility conditions, may make a rollover contribution to the Trust to the same extent and in the same manner as a Participant. If an Employee makes a rollover contribution to the Trust prior to satisfying the Plan's eligibility conditions, the Trustee shall treat the Employee as a Participant for all purposes of the Plan except the Employee is not a Participant for purposes of sharing in Employer Contributions or Forfeitures under the Plan nor may the Employee make Participant contributions under Article 4 until he or she actually becomes a Participant in the Plan. If the Employee has a Separation from Service prior to becoming a Participant, the Trustee shall distribute the Participant Rollover Contribution Account to the Participant as if it were an Employer Contribution Account.

4.4 **PARTICIPANT CONTRIBUTION – ACCRUED BENEFIT**. The Plan Administration Committee shall maintain, or shall direct the Trustee to maintain, a separate Account(s) in the name of each Participant to reflect the Participant's Accrued Benefit under the Plan derived from his or her Participant contributions under this Article 4. A Participant's Accrued Benefit derived from his or her Participant contributions as of any applicable date is the balance of his or her separate Participant contribution Account(s).

***** * * * * End of Article 4 * * * * ***

## ARTICLE 5.
## VESTING

5.1 **GENERAL**. A Participant, Former Participant or Beneficiary shall acquire a Nonforfeitable interest in the Accounts standing in his or her name only as provided in this Article 5. After a Participant acquires a Nonforfeitable interest under the provisions of this Article 5, such Nonforfeitable interest shall carry over and continue after the Participant becomes a Former Participant or a Beneficiary designation with respect thereto becomes applicable, subject to charges, deductions, distributions and Forfeitures under the Plan. A Participant's interest in the Trust Fund is not an interest in any specific assets of the Trust Fund, but rather a right to receive his or her Nonforfeitable interest, as determined by the Plan Administration Committee, in cash or in kind from the Trustee at the time and in the manner described in this Article 5.

5.2 **NORMAL RETIREMENT AGE; DEATH**. If a Participant reaches Normal Retirement Age while employed by the Employer or if a Participant's employment with the Employer terminates as a result of death (or as required by Code Section 414(u), death of the Participant while performing qualified military service), the Participant's Accrued Benefit derived from Employer Contributions will be 100% Nonforfeitable.

5.3 **VESTING**. A Participant's Accrued Benefit is, at all times, one hundred percent (100%) Nonforfeitable to the extent the value of his or her Accrued Benefit is derived from Participant Mandatory Contributions, Participant Voluntary Contributions and Participant Rollover Contributions, or is derived from the excess of the value of his or her Employer Contributions Account over the forfeitable percentage (if any) of the aggregate amount of all actual Employer Contributions then credited to such Participant's Employer Contributions Account.

Except as provided in Sections 5.1 and 5.2, for each Vesting Year of Service, a Participant's Nonforfeitable percentage in the aggregate amount of all actual Employer Contributions then credited to such Participant's Employer Contributions Account equals the percentage in the following vesting schedule:

| Vesting Years of Service With the Employer | Percent of Nonforfeitable Accrued Benefit |
|---|---|
| Less than 5 | 0% |
| 5 or more | 100% |

5.4 **FORFEITURE OCCURS**. Except for a Forfeiture under Section 9.14, a Forfeiture, if any, of a Participant's Accrued Benefit derived from Employer Contributions occurs under the Plan as of the earlier of (a) the date the Participant receives a cash out distribution, as such term is defined in the following sentence, and (b) the last day of the calendar quarter immediately following the calendar quarter in which such Participant terminates employment as an Employee with the Employer. A "cash out distribution" is a distribution of a Participant's entire Nonforfeitable Accrued Benefit under the Plan.

If the Trustee forfeits a lost Participant's Accrued Benefit under Section 9.14(b), such Forfeiture occurs as of the date the Trustee makes the Forfeiture as provided in Section 9.14.

The Trustee shall determine the percentage of a Participant's Forfeiture, if any, under this Section 5.4 solely by reference to the vesting schedule of Section 5.3. A Participant will not forfeit any portion of his or her Accrued Benefit for any other reason or cause except as expressly provided by this Section 5.4 or as provided under Section 9.14.

** * * * End of Article 5 * * * **

## ARTICLE 6.
## DISTRIBUTIONS

6.1 **TIMING OF DISTRIBUTIONS**. The Plan Administration Committee shall direct the Trustee to make distribution of a Participant's Nonforfeitable Accrued Benefit in accordance with this Section 6.1. For all purposes of this Article 6, the term "annuity starting date" means the first day of the first period for which the Plan distributes an amount as an annuity or in any other form, but in no event shall the "annuity starting date" be earlier than (a) a Participant's Separation of Service, (b) a Participant's Disability, or (c) a Participant's In-Service Distribution, whichever is applicable. A "distribution date" under this Article 6 is the earliest administratively feasible date following the earlier to occur of the Participant's Separation from Service or the Participant's Disability.

Anything contained herein to the contrary notwithstanding, any distribution of a Participant's Nonforfeitable Accrued Benefit is subject to the applicable provisions of Section 6.9.

6.2 **WITHDRAWALS OF PARTICIPANT VOLUNTARY OR ROLLOVER CONTRIBUTIONS**. A Participant, by giving prior written notice to the Trustee, may withdraw all or any part of the value of his or her Accrued Benefit derived from his or her Participant Voluntary Contributions or Participant Rollover Contributions. A distribution of a Participant's Accrued Benefit derived from his or her Participant Voluntary Contributions or Participant Rollover Contributions must comply with the qualified joint and survivor and pre-retirement survivor annuity provisions of Code Sections 401(a)(11) and 417 if applicable. Furthermore, a Participant may not exercise his or her right to withdraw the value of his or her Accrued Benefit derived from Participant Voluntary Contributions or Participant Rollover Contributions more than once during any Plan Year. The Trustee, in accordance with the direction of the Plan Administration Committee, shall distribute a Participant's unwithdrawn Accrued Benefit attributable to his or her Participant Voluntary Contributions and Participant Rollover Contributions at the same time the Trustee distributes the Participant's Accrued Benefit attributable to Employer Contributions and Participant Mandatory Contributions.

6.3 **DISTRIBUTION UPON SEPARATION FROM SERVICE OF A PARTICIPANT FOR A REASON OTHER THAN DEATH**. Except as otherwise provided to the contrary in Section 6.5 regarding the Disability of a Participant, in the event a Participant's Separation from Service is for any reason other than his or her death, the Plan Administration Committee shall direct the Trustee to distribute such Participant's Nonforfeitable Accrued Benefit in a form elected by such Participant pursuant to this Article 6. If such Participant fails to make such an election within six (6) months after his or her receipt of the written notice required under Section 6.10, then the Plan Administration Committee may direct the Trustee to distribute to such Participant his or her Nonforfeitable Accrued Benefit in the form of a lump sum distribution, except as otherwise provided to the contrary in Section 6.6, on any distribution date the Plan Administration Committee, in its discretion, may select.

6.4 **DISTRIBUTION UPON DEATH OF A PARTICIPANT**. In the event a Participant's Separation from Service is on account of his or her death, the Plan Administration Committee shall direct the Trustee to distribute such Participant's Nonforfeitable

Accrued Benefit to such Participant's designated Beneficiary, in accordance with this section.

The Plan Administration Committee shall direct the Trustee to distribute such deceased Participant's Nonforfeitable Accrued Benefit in the form elected by such Participant or, if applicable, by such Participant's Beneficiary, as permitted under this Article 6. In the absence of such election, the Plan Administration Committee may direct the Trustee to distribute to the deceased Participant's designated Beneficiary such Participant's Nonforfeitable Accrued Benefit in the form of a lump sum distribution, except as otherwise provided to the contrary in Section 6.6, on any distribution date as soon as administratively practicable following the death of the Participant, or, if later, on any distribution date as soon as administratively practicable following the date the Plan Administration Committee receives notification of, or otherwise confirms, the Participant's death.

6.5 **DISTRIBUTION UPON FPPA ON-DUTY TOTAL DISABILITY OR ON-DUTY PERMANENT OCCUPATIONAL DISABILITY**. In the event FPPA determines that a Participant has an "on-duty" Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5 (as the same may be amended), then the Plan Administration Committee shall direct the Trustee to distribute such disabled Participant's Nonforfeitable Accrued Benefit to such Participant, in accordance with this Section 6.5, regardless of whether such disabled Participant has incurred a Separation from Service.

(a) ***Distribution of Participant's Lump Sum Plan Offset Amount***. If **all** of the following circumstances occur:

(1) A Participant is determined by FPPA to have an on-duty Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended;

(2) Such Participant is, therefore, found by FPPA to be entitled to either a total disability or a permanent occupational disability benefit pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended (hereinafter referred to as the "FPPA On-Duty Disability Benefit");

(3) Such disabled Participant's FPPA On-Duty Disability Benefit is excludible from such disabled Participant's gross income for federal income tax purposes under the provisions of Code Section 104(a)(1), which excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment;

(4) Pursuant to the provisions of CRS Section 31-31-804(2), as the same may be amended, such disabled Participant's FPPA On-Duty Disability Benefit that would otherwise be payable under CRS Section 31-31-806.5 is reduced by FPPA in an amount that is the actuarial equivalent of the lump sum value of Participant's Non-

forfeitable Accrued Benefit under the Plan as of a date selected by FPPA and effective November 1, 2012, as adjusted by FPPA based on CRS Section 31-31-804(2), as the same may be amended ("Lump Sum Plan Offset Amount"); and

(5) The Plan Administration Committee and the Trustee make a good faith determination that pursuant to applicable federal tax law, regulations and rulings that such Participant's Lump Sum Plan Offset Amount is also exempt from federal income taxation under the provisions of Code Section 104(a)(1) as an on-duty workmen's compensation type of benefit,

**then** the Plan Administration Committee shall direct the Trustee to distribute to the disabled Participant that portion of his or her Nonforfeitable Accrued Benefit equal to the Participant's Lump Sum Plan Offset Amount (or all of his or her Nonforfeitable Accrued Benefit if it is equal to or less than the Participant's Lump Sum Plan Offset Amount) in the form of a lump sum distribution on any distribution date as soon as administratively practicable coincident with or following the date of the determination by FPPA that the Participant has an on-duty Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended.

(b) ***Distribution of Remaining Balance of Participant's Nonforfeitable Accrued Benefit***. If pursuant to the provisions of subsection (a), a disabled Participant's Lump Sum Plan Offset Amount is distributed to him or her in the form of a lump sum distribution, and if after such lump sum distribution is made there is any remaining balance in the disabled Participant's Nonforfeitable Accrued Benefit (hereinafter referred to as the "Remaining Balance"), then the Plan Administration Committee shall direct the Trustee to distribute to the disabled Participant the entire Remaining Balance of his or her Nonforfeitable Accrued Benefit in the form of a lump sum distribution after his or her receipt of the written notice required under Section 6.10, except as otherwise provided to the contrary in Section 6.6, on any distribution date the Plan Administration Committee, in its discretion, may select.

(c) ***Tax Treatment of Disability Distributions***.

(1) Lump Sum Plan Offset Amount. Any lump sum distribution of the disabled Participant's Lump Sum Plan Offset Amount made pursuant to subsection (a) shall be treated by the Plan Administration Committee, the Trustee and the disabled Participant as a distribution that is excludible from the disabled Participant's gross income for federal income tax purposes under the provisions of Code Section 104(a)(1), which excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment; and the lump sum distribution

of the disabled Participant's Lump Sum Plan Offset Amount shall not be treated as a distribution from a Code Section 401(a) qualified plan which would otherwise be subject to the rules of federal income taxation under the provisions of Code Sections 402(a) and 72, and the lump sum distribution of the disabled Participant's Lump Sum Plan Offset Amount shall not be subject to the provisions of Sections 6.6, 6.10 and 6.12.

(2) Remaining Balance. Any lump sum distribution of the Remaining Balance in the disabled Participant's Nonforfeitable Accrued Benefit made pursuant to subsection (b) shall be treated by the Plan Administration Committee, the Trustee and the disabled Participant as a lump sum distribution from a Code Section 401(a) qualified plan which is subject to the rules of federal income taxation under the provisions of Code Sections 402(a) and 72, and the lump sum distribution of the Remaining Balance shall be subject to the applicable provisions of Sections 6.6, 6.10 and 6.12.

(d) ***Distribution Upon FPPA Disability Which Is Other Than FPPA On-Duty Total Disability or On-Duty Permanent Occupational Disability***. In the event FPPA determines that a Participant has a Disability, which is neither an "on-duty" total disability nor an "on-duty" permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended, then, regardless of whether the Participant has incurred a Separation from Service, after the date of the determination by FPPA that such Participant has such a Disability, the Plan Administration Committee shall direct the Trustee to distribute to the disabled Participant his or her entire Nonforfeitable Accrued Benefit in the form of a lump sum distribution, after his or her receipt of the written notice required under Section 6.10, except as otherwise provided to the contrary in Section 6.6, on any distribution date the Plan Administration Committee, in its discretion, may select.

6.6 **MANDATORY DISTRIBUTIONS GREATER THAN $1,000**. Except as otherwise expressly provided to the contrary pursuant to the provisions of Section 6.5(c)(1), anything contained herein to the contrary notwithstanding, the following provisions shall apply:

(a) In the event the Plan Administration Committee directs the Trustee to distribute a Participant's Nonforfeitable Accrued Benefit in the form of a lump sum distribution as a result of the failure of the Participant to make a distribution election within the six (6) month period described in Section 6.3 and if such Participant's Nonforfeitable Accrued Benefit exceeds $1,000.00, then the Plan Administration Committee shall instead direct the Trustee to distribute the Participant's Nonforfeitable Accrued Benefit in the form of a direct rollover distribution to an individual retirement account as may be designated by the Plan Administration Committee in the name of the Participant.

(b) In the event the Plan Administration Committee directs the Trustee to distribute a deceased Participant's Nonforfeitable Accrued Benefit in the form of a lump sum distribution to such deceased Participant's designated Beneficiary as a result of the absence of a distribution election by such deceased Participant or his or her designated Beneficiary as described in Section 6.4, and if such deceased Participant's Nonforfeitable Accrued Benefit under the Plan exceeds $1,000.00, then the Plan Administration Committee shall instead direct the Trustee to distribute the deceased Participant's Nonforfeitable Accrued Benefit in the form of a direct rollover distribution to an individual retirement account as may be designated by the Plan Administration Committee in the name of the deceased Participant's designated Beneficiary and effective January 1, 2010, in accordance with Code Section 402(c)(11).

(c) In the event the Plan Administration Committee directs the Trustee to distribute to a disabled Participant the entire Remaining Balance of his or her Nonforfeitable Accrued Benefit in excess of his or her Lump Sum Plan Offset Amount in the form of a lump sum distribution as described in Section 6.5(b), and if the entire Remaining Balance of the disabled Participant's Nonforfeitable Accrued Benefit in excess of his or her Lump Sum Plan Offset Amount exceeds $1,000.00, then the Plan Administration Committee shall instead direct the Trustee to distribute the entire Remaining Balance of the disabled Participant's Nonforfeitable Accrued Benefit in excess of his or her Lump Sum Plan Offset Amount in the form of a direct rollover distribution to an individual retirement account as may be designated by the Plan Administration Committee in the name of the disabled Participant.

(d) In the event the Plan Administration Committee directs the Trustee to distribute a disabled Participant's Nonforfeitable Accrued Benefit in the form of a lump sum distribution to the disabled Participant as described in Section 6.5(d), and if the disabled Participant's Nonforfeitable Accrued Benefit exceeds $1,000.00, then the Plan Administration Committee shall instead direct the Trustee to distribute the disabled Participant's Nonforfeitable Accrued Benefit in the form of a direct rollover distribution to an individual retirement account as may be designated by the Plan Administration Committee in the name of the disabled Participant.

6.7 **IN-SERVICE DISTRIBUTION**.

(a) Prior to incurring a Separation from Service or a Disability, a Participant who has attained Normal Retirement Age may elect to receive a distribution from the Plan of all or any portion of his or her Nonforfeitable Accrued Benefit (an "In-Service Distribution").

(b) In order to receive an In-Service Distribution, a Participant shall make an election under this Section 6.7 on a written form prescribed by the Plan Administration Committee at any time during the Plan Year for which his or her election is to be effective and, in such written election form, the Participant shall specify the percentage or dollar amount of his or her Nonforfeitable Accrued Benefit that he or she wishes the Plan Administration

Committee to direct the Trustee to distribute to him or her for the Plan Year for which the election is to be effective.

Notwithstanding any other provisions of this Section 6.7, a Participant's election to receive an In-Service Distribution shall not be effective unless the Participant obtains the written consent of the legal spouse of the Participant on a written form prescribed by the Plan Administration Committee. The spousal consent shall acknowledge in writing the effect of the In-Service Distribution on the benefit and the potential benefit to the Participant's spouse. Spousal consent must be witnessed by a notary public and shall be irrevocable when made. This spousal consent will not be required if it is established to the satisfaction of the Plan Administration Committee that consent cannot be obtained because the Participant has no spouse, the Participant's spouse cannot be located, or the Participant's spouse is incapacitated.

(c) An In-Service Distribution shall only be payable and distributed in a single lump sum cash payment, and any such single lump sum cash payment shall be distributed to the Participant as soon as administratively practicable after the Plan Administration Committee approves the Participant's written election, together with the spousal consent. The Plan Administration Committee shall distribute the balance of the Participant's Nonforfeitable Accrued Benefit not distributed pursuant to his or her election(s) under this Section 6.7 in accordance with the other applicable distribution provisions of the Plan.

(d) The provisions of this Section 6.7 shall only apply to Participants whose most recent employment commencement date is on or before December 31, 2021, and Participants whose most recent employment commencement date is after December 31, 2021, shall not be eligible to elect to receive an In-Service Distribution under this Section 6.7.

6.8 **PAYMENT OF QUALIFIED HEALTH INSURANCE PREMIUMS**. Effective October 1, 2010, a Participant who, by reason of Disability or reaching Normal Retirement Age, separates from service with the Employer as a public safety officer, as defined under Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968, is eligible to elect to have distributions for which he or she otherwise is eligible to receive (but has not yet received) and that are otherwise subject to inclusion in the Participant's gross income pursuant to Code Section 72, to be paid directly from the Plan for Qualified Health Insurance Premiums, provided, that:

(a) The payment for Qualified Health Insurance Premiums on behalf of the Participant must be made directly to the provider of the accident or health plan or qualified long-term care insurance contract (as defined in Code Section 7702B(b)) by deduction from the Participant's distributions from the Plan.

(b) The payment of Qualified Health Insurance Premiums shall be limited per Participant to the lesser of (1) the amount paid by the Participant for such premiums during the Participant's taxable year or (2) $3,000 during the Participant's taxable year. Such payment shall be paid from the Participant's distributions in an amount that shall not vary from month-to-month during the Plan Year and that shall not exceed $250 per month.

(c) The direct payment from the Plan of Qualified Health Insurance Premiums shall terminate immediately upon the Participant's death.

(d) The payee of Qualified Health Insurance Premiums must be approved by the Plan Administrator prior to its receipt of Qualified Health Insurance Premiums on behalf of any Participant.

(e) An eligible Participant pursuant to this Section 6.8 can elect the payment of Qualified Health Insurance Premiums from his or her unpaid distributable Accrued Benefit once per Plan Year and can terminate such election once per Plan Year. The Participant's affirmative election of payment of Qualified Health Insurance Premiums must be made no later than thirty (30) days prior to the date for which the premiums will be paid directly from the Plan on his or her behalf, and the payment will terminate automatically at the end of the Plan Year. The Participant's affirmative termination of payment of Qualified Health Insurance Premiums during the Plan Year must be made no later than thirty (30) days prior to the date on which such termination is effective.

(f) A Participant otherwise eligible to make an election under this Section 6.8 shall not be eligible for the election for any Plan Year for which Qualified Health Insurance Premiums are being made on his or her behalf from any other governmental plan (including a governmental plan other than the Plan of which the Employer sponsors) that is defined as an eligible retirement plan under Code Section 402(l)(4)(A).

6.9 **REQUIRED MINIMUM DISTRIBUTIONS**.

(a) ***Precedence***. All distributions required under this section shall be determined and made in accordance with Code Section 401(a)(9) and Regulation Sections 1.401(a)(9)-2 through -9, including the incidental benefit rules of Code Section 401(a)(9)(G). The requirements of this section shall take precedence over any provisions of the Plan that are inconsistent with Code Section 401(a)(9) and the regulations thereunder.

(b) ***TEFRA Section 242(b)(2) Elections***. Notwithstanding anything to the contrary herein, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to TEFRA Section 242(b)(2).

(c) ***Definitions***.

(1) "Designated beneficiary" means the individual who is designated as the Beneficiary under the Plan and is the designated beneficiary as defined under Treasury Regulation Section 1.401(a)(9)-1, Q&A-4.

(2) "Distribution calendar year" means a calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year that contains the Participant's required beginning date. For distributions beginning

after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection (e)(2). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

(3) "Life expectancy" means the life expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.

(4) "Required beginning date" means the April 1 following the close of the calendar year in which the Participant reaches age 70½ or, if later, incurs a Separation from Service. The Participant's pre-1997 required beginning date (if applicable) is the April 1 following the close of the calendar year in which the Participant attains age 70½.

(d) ***Required Distributions During Participant's Lifetime***. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(1) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or

(2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Accrued Benefit by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.

Required minimum distributions will be determined under this subsection (d) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

(e) ***Required Distributions After Participant's Death***.

(1) Death On or After Date Distributions Begin. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Accrued Benefit by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

(A) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(B) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(C) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

If the Participant dies on or after the date distributions begin and there is **no** designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Accrued Benefit by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(2) Death Before Date Required Distributions Begin. If the Participant dies before required distributions begin, the Participant's Accrued Benefit will be distributed, or begin to be distributed, no later than as follows:

(A) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year during which the Participant died, or, if later, by December 31 of the calendar year during which the Participant would have attained age 70½.

(B) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

(C) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's Accrued Benefit will be distributed by

December 31 of the calendar year containing the $5^{th}$ anniversary of the Participant's death.

(D) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection (2), other than subsection (A), will apply as if the surviving spouse were the Participant.

Distributions are considered to begin on the Participant's required beginning date, provided that if subsection (D) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection (A). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection (A)), the date distributions are considered to begin is the date distributions actually commence.

(3) Minimum Amount Distributed.

(A) If the Participant dies before the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Accrued Benefit by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in subsection (1); provided, however, that distribution of the Participant's Accrued Benefit may be completed by December 31 of the calendar year containing the $5^{th}$ anniversary of the Participant's death if so elected by the Participant or designated Beneficiary pursuant to procedures established by the Plan Administrator.

(B) If the Participant dies before the date distributions begin and there is **no** designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's Accrued Benefit will be completed by December 31 of the calendar year containing the $5^{th}$ anniversary of the Participant's death.

(f) ***Waiver of 2009 Required Minimum Distributions – Continuation of Required Minimum Distributions for Participants receiving scheduled payments (unless otherwise elected by Participant); Suspension of Required Minimum Distributions for all other Participants (unless otherwise elected)***. Notwithstanding the provisions of Section 6.9, a Participant or Beneficiary who would have been required to receive required minimum distributions for 2009 but for the enactment of Code Section 401(a)(9)(H) ("2009 RMDs"), and who would have satisfied that requirement by receiving distributions that are (1) equal to the 2009 RMDs or (2) one or more payments in a series of substantially equal distributions (that include 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant's Designated Beneficiary, or for a period of at least 10 years ("Extended 2009 RMDs"), will receive those distributions for 2009 if the payment is a scheduled payment unless the Participant or Beneficiary chooses not to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect not to receive the distributions described in the preceding sentence. For all other Participants and Beneficiaries, the requirement to receive the 2009 RMD shall be suspended in accordance with Code Section 401(a)(9)(H), unless otherwise elected by the Participant or Beneficiary.

(g) ***Reasonable and Good Faith Interpretation***. Effective September 8, 2009, notwithstanding anything herein to the contrary, the Plan, which is a governmental plan (within the meaning of Code Section 414(d)) is treated as having complied with Code Section 401(a)(9) for all years to which Code Section 401(a)(9) applies to the Plan if the Plan complies with a reasonable and good faith interpretation of Code Section 401(a)(9).

6.10 NOTICE, ELECTION AND METHOD OF DISTRIBUTION.

(a) ***Distribution Notice***. Except as otherwise expressly provided herein to the contrary, effective for years beginning after December 31, 2006, not earlier than one hundred eighty (180) days, but not later than thirty (30) days, before the Participant's annuity starting date, the Plan Administration Committee must provide a written notice (or a summary notice as permitted under Treasury regulations) to a Participant who is eligible for a distribution of his or her Nonforfeitable Accrued Benefit under the Plan ("distribution notice"). The distribution notice must include information required by the Code or applicable Treasury regulations, such as an explanation of the optional forms of benefit in the Plan, the material features and relative values of those options, the Participant's right to defer distribution and consequences for failing to defer as may be permitted in the Plan, the provisions under which the Participant may have a distribution directly transferred to another eligible retirement plan, and the provisions which require the withholding of tax on the distribution if it is not directly transferred to another eligible retirement plan.

Except as otherwise expressly provided herein to the contrary, a Participant may elect any method of payment of the Participant's Nonforfeitable Accrued Benefit that is otherwise permitted under the provisions of this Article 6, which payment(s) commence as of any administratively practicable time (as determined in the sole discretion of the Plan Administration Committee) which is earlier than thirty (30) days following such Participant's receipt of the distribution notice, by such Participant executing a waiver in writing of the remainder of such thirty (30) day period and delivering such written waiver to the Plan Administration Committee.

(b) ***Right of Election***. Except as otherwise expressly provided herein to the contrary, the Participant (or his or her Beneficiary in the case of the Participant's death, or his or her legal representative in the case of the

Participant's Disability) shall have the sole right and discretion to elect the method of payment of the Participant's Nonforfeitable Accrued Benefit, as long as the method of payment selected is one of the methods described in subsection (c), and otherwise complies with the provisions and requirements of Section 6.1 and any other applicable provisions of the Plan. With respect to the election of a method of payment authorized under subsection (c)(5), the Participant (or his or Beneficiary in the case of the Participant's death, or his or her legal representative in the case of the Participant's Disability) shall have the right and discretion to elect such a method of payment, but any such method of payment so elected must be approved by the Plan Administration Committee and must otherwise comply with the provisions and requirements of Section 6.1 and any other applicable provisions of the Plan. In granting or denying its approval of any such method of payment so elected under the provisions of subsection (c)(5), the Plan Administration Committee shall not unreasonably withhold its approval and shall act in a non-discriminatory manner.

(c) ***Methods of Distribution***. Subject to the provisions of subsection (b), the Plan Administration Committee after consultation with the Participant, (or his or Beneficiary in the event of the Participant's death, or his or her legal representative in the event of the Participant's Disability), shall direct the Trustee to distribute the balance of the Participant's Nonforfeitable Accrued Benefit to the recipient thereof under one of the following methods:

(1) By payment in a lump sum.

(2) By payment in monthly, quarterly or annual installments over a fixed reasonable period of time, not exceeding the life expectancy of the Participant, or the joint life and last survivor expectancy of the Participant and the Participant's designated Beneficiary.

(3) A straight life annuity, payable no less frequently than annually, with payment of the Participant's Nonforfeitable Accrued Benefit ending on the Participant's death.

(4) A life annuity, payable no less frequently than annually, with a term certain guaranteed. The term certain cannot exceed the Participant's life expectancy, or the joint life and last survivor expectancy of the Participant and his or her designated Beneficiary. If a Participant dies before the Trustee has made the guaranteed number of payments, the Plan Administration Committee shall direct the Trustee to continue the balance of the payments to the Participant's designated Beneficiary.

(5) Any other form of payment of the Participant's Nonforfeitable Accrued Benefit which the Plan Administration Committee may approve. However, such form of payment cannot extend beyond the Participant's life, the life of the Participant and his or her designated Beneficiary, the Participant's life expectancy or the joint life and last survivor expectancy of the Participant and his or her designated Beneficiary.

(d) ***Plan Administration Committee's Right to Modify Method of Distribution***. The Plan Administration Committee may at any time modify the method of payment elected pursuant to the provisions of subsection (c) to the extent there is still an adjusted balance in the Accounts concerned from which payments are to be made and so long as (1) the new method of payment is consented to in writing by the Participant concerned (or his or her Beneficiary in the event of such Participant's death, or his or her legal representative in the event of such Participant's Disability), (2) the new method of payment is one available under the Plan, and (3) the new method of payment otherwise complies with the provisions and requirements of this Section 6.10, Section 6.1 and any other applicable provisions of the Plan.

(e) ***Participant's Right to Modify Method of Distribution***. A Participant may reconsider his or her distribution election under subsection (c) at any time prior to his or her annuity starting date and make a different distribution election as of any other distribution date permitted under the Plan provided that such different distribution election and method of payment otherwise comply with the provisions and requirements of this Section 6.10, Section 6.1 and any other applicable provisions of the Plan.

(f) ***Segregated Investment Account***. To facilitate installment payments under this Article 6, the Plan Administration Committee may segregate all or any part of the Participant's Nonforfeitable Accrued Benefit in a segregated investment Account as provided under Section 9.11(d).

(g) ***Nontransferable Annuity***. Anything contained herein to the contrary notwithstanding, if an annuity method of payment of a Participant's Nonforfeitable Accrued Benefit is the method of payment selected as provided under the provisions of this Section 6.10, the Plan Administration Committee, in its sole discretion, may effectuate said annuity payment by purchasing a Nontransferable Annuity from an insurance company with the value of the Nonforfeitable Accrued Benefit of such Participant, provided that such Nontransferable Annuity satisfies the distribution requirements of Section 6.1.

(h) ***Exceptions***. Anything contained in this Section 6.10 to the contrary notwithstanding, a Participant (or his or Beneficiary or legal representative) shall not have the right to select the method of payment as provided for above in this Section 6.10 in the case of distributions to a disabled Participant of his or her Nonforfeitable Accrued Benefit made pursuant to the provisions of Sections 6.5(a), 6.5(b) and 6.5(d) since all such distributions shall be made in the form of a lump sum distribution; provided, however, that distributions to a disabled Participant of his or her Nonforfeitable Accrued Benefit made pursuant to the provisions of Section 6.5(b) or 6.5(d) shall be subject to the provisions of Sections 6.6, 6.10 and 6.12, and further provided, however, that distributions to a disabled Participant of his or her Lump Sum Plan Offset Amount made pursuant to the provisions of Sections 6.5(a) shall not be subject to the provisions of Sections 6.6, 6.10 and 6.12.

6.11 **<u>DISTRIBUTIONS UNDER DOMESTIC RELATIONS ORDERS</u>**. This Plan is generally not subject to Code Section 414(p) and corollary provisions of ERISA relating to qualified domestic relations orders (as defined in Code Section 414(q)). However, the following provisions shall apply:

(a) Effective for all dissolution of marriage, legal separation and declaration of invalidity of marriage actions in which the court, prior to January 1, 1997, entered a final property division order concerning the division of a Participant's Accrued Benefit, the Plan Administration Committee shall be permitted to comply with the provisions of such property division order if, and only if, such order is an assignment for child support purposes only, as allowed by and provided for under <u>Section 8.5</u>.

(b) Effective for causes of action for dissolution of marriage, legal separation or declaration of invalidity of marriage filed on or after January 1, 1997, and for all dissolution of marriage, legal separation or declaration of invalidity of marriage actions filed prior to January 1, 1997, in which the court did not enter a final property division order concerning the division of a Participant's Accrued Benefit prior to January 1, 1997, the Plan Administration Committee shall comply with a properly executed court order approving a written agreement entered into pursuant to CRS Section 14-10-113(6), concerning the division of a Participant's Accrued Benefit under the Plan, all in accordance with and to the extent required under the provisions of CRS Section 14-10-113(6). In accordance with the provisions of CRS Section 14-10-113(6), the Plan Administration Committee may adopt, modify and revoke from time to time rules or procedures governing the implementation of this subsection. Any such rules or procedures implementing this subsection may include, but are not limited to: (1) a requirement that, in order for the parties' agreement concerning the division of a Participant's Accrued Benefit under the Plan to be effective, a standardized form adopted by the Plan Administration Committee must be used by the parties and the court; (2) the timing and method of payment to the alternate payee under such court order of a Participant's Accrued Benefit under the Plan; and (3) any other provisions that are consistent with the provisions of CRS Section 14-10-113(6).

(c) To the extent the provisions relating to domestic relations orders described in this <u>Section 6.11</u> are modified or repealed by applicable Colorado law, then the provisions of this <u>Section 6.11</u> shall be deemed modified or repealed in accordance therewith.

6.12 **<u>DIRECT ROLLOVER</u>**.

(a) ***Election***. This <u>Section 6.12</u> applies to distributions made on or after January 1, 1993. Notwithstanding any other provision of the Plan to the contrary that would otherwise limit a distributee's election under this <u>Article 6</u>, a distributee may elect, at the time and in the manner prescribed by the Plan Administration Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

Not earlier than one hundred eighty (180) days, but not later than thirty (30) days, before the Plan Administration Committee directs the Trustee's distribution of an eligible rollover distribution, the Plan Administration Committee must provide a written notice (or a summary notice as permitted under Treasury regulations) to a distributee the rollover option ("rollover notice"). The rollover notice must explain, among other information required by the applicable provisions of the Code and regulations, the rollover option, the optional forms of benefit in the Plan, including the material features and relative values of those options, the provisions under which the distributee may have a distribution directly transferred to another eligible retirement plan, and the provisions which require the withholding of tax on the distribution if it is not directly transferred to another eligible retirement plan.

A distributee may also elect to receive distribution as of any administratively practicable time (as determined in the sole discretion of the Plan Administration Committee) which is earlier than thirty (30) days following such distributee's receipt of the rollover notice by such distributee executing a waiver in writing of the remainder of such thirty (30) day period and delivering such written waiver to the Plan Administration Committee.

(b) ***Definitions***. For purposes of this <u>Section 6.12</u>, the following definitions shall apply:

(1) <u>Eligible Rollover Distribution</u>. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include (A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more, (B) any distribution to the extent such distribution is required under Code Section 401(a)(9), or (C) any amount that is distributed on account of hardship. For purposes of the direct rollover provisions in this <u>Section 6.12</u>, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Participant contributions or any other distribution which are not includible in gross income; provided, however, such portion may be paid only to an individual retirement account or annuity described in Code Sections 408(a) or 408(b), or effective on or after January 1, 2007, in a direct trustee-to-trustee transfer, to a qualified trust or an annuity contract described in Code Section 403(b), and such trust or annuity contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. Furthermore, effective for distributions after December 31, 2007, such after-tax portion may also be directly transferred to a Roth IRA described in Code Section 408A, subject to any limitations described in Code Section 408A(c).

Notwithstanding the foregoing, effective January 1, 2009, if all or any portion of a distribution during 2009 is treated as an eligible rollover distribution pursuant to Code Section 402(c)(4) but would not be so treated if the minimum distribution requirements under Code Section 401(a)(9) had applied during 2009, such distribution shall not be treated as an eligible rollover distribution for purposes of Code Section 401(a)(31), Code Section 3405(c) or Code Section 402(f).

(2) Eligible Retirement Plan. An eligible retirement plan is (A) an individual retirement account described in Code Section 408(a); (B) an individual retirement annuity described in Code Section 408(b); (C) effective for distributions after December 31, 2007, a Roth IRA described in Code Section 408A subject to any limitations under Code Section 408A(c); (D) an annuity plan described in Code Section 403(a); (E) a qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution; (F) an annuity contract described in Code Section 403(b); and (G) an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Code Section 414(p). For distributees who are non-spouse Beneficiaries, an eligible retirement plan means only an arrangement described in subsections (A), (B) and (C) that is treated as an inherited IRA pursuant to Code Section 402(c)(11).

(3) Distributee. A distributee includes a Participant or former Participant. In addition, the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p) or applicable provisions of the CRS, are distributees with regard to the interest of the spouse or former spouse. Effective for distributions made on or after January 1, 2010, distributee also includes a non-spouse Beneficiary of a Participant or former Participant.

(4) Direct Rollover. A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

(5) Default Rollover. The Trustee in the case of a distributee who does not respond timely to the notice described in subsection (a) may make a direct rollover of the Participant's Nonforfeitable Accrued Benefit to which the distributee is entitled (in the manner and subject to the procedures of Revenue Ruling 2000-36 or in any successor law or

guidance) in lieu of distributing such Nonforfeitable Accrued Benefit to the distributee.

(c) ***Distribution to Nonspouse Designated Beneficiary***. Effective for Plan Years beginning after December 31, 2009, a distribution with respect to a nonspouse designated Beneficiary shall be subject to Code Sections 401(a)(31), 402(f), and 3405(c).

(d) ***Allocation of After-tax Amounts***. Effective for distributions on or after January 1, 2015, for purposes of determining the portion of a disbursement of benefits from the Plan to a distributee that is not includible in gross income under Code Section 72, the guidance under I.R.S. Notice 2014-54 shall be followed.

**** * * * End of Article 6 * * * ****

## ARTICLE 7.
## EMPLOYER ADMINISTRATIVE PROVISIONS

7.1 **<u>INFORMATION TO COMMITTEE</u>**. The Employer will make available current information to the Plan Administration Committee as to the name, date of birth, date of employment, annual compensation, Leaves of Absence, Vesting Years of Service and date of termination of employment of each Employee who is, or who will be eligible to become, a Participant under the Plan, together with any other information which the Plan Administration Committee reasonably considers necessary. The Employer's records as to the current information the Employer makes available to the Plan Administration Committee shall be conclusive as to all persons.

7.2 **<u>INDEMNITY OF COMMITTEE AND TRUSTEE</u>**. Subject to any limitations under applicable law, the Plan and Trust indemnify and save harmless the Trustee, the Plan Administrator and the members of the Plan Administration Committee, and each of them, from and against any and all loss resulting from liability to which the Trustee, the Plan Administrator and the Plan Administration Committee, or the members of the Plan Administration Committee, may be subjected by reason of any act or conduct (except willful misconduct or gross negligence) in their official capacities in the administration of this Trust or Plan or both, including all expenses reasonably incurred in their defense. The indemnification provisions of this <u>Section 7.2</u> shall not relieve the Trustee, the Plan Administrator or any Plan Administration Committee member from any liability they may have for breach of a fiduciary duty.

** * * * End of Article 7 * * * **

## ARTICLE 8.
## PARTICIPANT ADMINISTRATIVE PROVISIONS

8.1 **BENEFICIARY DESIGNATION**. Any Participant may from time to time designate, in writing, any person or persons, including a trust or other entity, contingently or successively, to whom the Trustee shall pay his or her Nonforfeitable Accrued Benefit (including any life insurance proceeds payable to the Participant's Account) on event of his or her death. The Plan Administration Committee shall prescribe the form for the written designation of Beneficiary and, upon the Participant's filing the form with the Plan Administration Committee, it effectively shall revoke all designations filed prior to that date by the same Participant.

8.2 **NO BENEFICIARY DESIGNATION**. If a Participant fails to name a Beneficiary in accordance with Section 8.1, or if the Beneficiary named by a Participant predeceases the Participant, then the Trustee shall pay the Participant's Nonforfeitable Accrued Benefit in accordance with Article 6 in the following order of priority to:

(a) the Participant's surviving spouse or partner in a civil union under the Colorado Civil Union Act;

(b) the Participant's surviving children, including adopted children, in equal shares;

(c) the Participant's surviving parents, in equal shares; or

(d) the Participant's estate.

If the Beneficiary does not predecease the Participant, but dies prior to distribution of the Participant's entire Nonforfeitable Accrued Benefit, the Trustee shall pay the remaining Nonforfeitable Accrued Benefit to the Beneficiary's estate unless the Participant's Beneficiary designation provides otherwise.

The Plan Administration Committee shall direct the Trustee as to the method and to whom the Trustee shall make payment under this Section 8.2.

8.3 **PERSONAL DATA TO COMMITTEE**. Each Participant and each Beneficiary of a deceased Participant must furnish to the Plan Administration Committee such evidence, data or information as the Plan Administration Committee considers necessary or desirable for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant will furnish promptly full, true and complete evidence, data and information when requested by the Plan Administration Committee, provided the Plan Administration Committee shall advise each Participant of the effect of his or her failure to comply with its request.

8.4 **ADDRESS FOR NOTIFICATION**. Each Participant and each Beneficiary of a deceased Participant shall file with the Plan Administration Committee from time to time, in writing, his or her post office address and any change of post office address. Any communication, statement or notice addressed to a Participant, or Beneficiary, at his or her last post office address filed with the Plan Administration Committee, or as shown on the records of the Employer, shall bind the Participant, or Beneficiary, for all purposes of this Plan.

8.5 **ASSIGNMENT OR ALIENATION**. Except for (a) assignments for child support purposes as provided for in CRS Sections 14-10-118(1) and 14-14-107, as they existed prior to July 1, 1996, (b) income assignments for child support purposes pursuant to CRS Section 14-14-111.5, (c) writs of garnishment which are the result of a judgment taken for arrearages for child support or for child support debt, and (d) payments made in compliance with a properly executed court order approving a written agreement entered into pursuant to CRS Section 14-10-113(6), as set forth in Section 6.11 of the Plan, neither a Participant nor a Beneficiary shall anticipate, assign or alienate (either at law or in equity) any benefit provided under the Plan, and no part of the Trust Fund, or any benefit hereunder, either before or after any order for distribution thereof to a Participant, a Beneficiary, a Participant's surviving spouse or parent, or a guardian or personal representative of a minor child of a deceased Participant, shall be held, seized, taken, subjected to, detained, or levied on, whether by virtue of any attachment, execution, protest or proceeding of any nature whatsoever, issued out of or by any court in the State of Colorado or any other jurisdiction, for payment or satisfaction, in whole or in part, of any debt, damages, claim, demand, judgment, fine or amercement of such Participant, Beneficiary, surviving spouse, parent, or minor child. The Trust Fund shall be kept, secured and distributed only for the purposes of pensioning and protecting Participants and their Beneficiaries and for no other purposes whatsoever.

To the extent the provisions relating to anticipation, assignment, or alienation of benefits under the Plan described in this Section 8.5 are modified or repealed by applicable Colorado law, then the provisions of this Section 8.5 shall be deemed modified or repealed in accordance therewith.

8.6 **NOTICE OF CHANGE IN TERMS**. The Plan Administrator, within a reasonable time, shall furnish all Participants and Beneficiaries a summary description of any material amendment to the Plan.

8.7 **LITIGATION AGAINST THE TRUST**. A court of competent jurisdiction may authorize any appropriate equitable relief to redress violations of applicable law as respects this Plan or its administration or to enforce any provisions of such law or the terms of the Plan. A fiduciary may receive reimbursement of expenses properly and actually incurred in the performance of his or her duties with the Plan.

8.8 **INFORMATION AVAILABLE**. Any Participant in the Plan or any Beneficiary may examine copies of the Plan description, latest financial reports, this Plan and Trust, contract or any other instrument under which the Plan was established or is operated. The Plan Administrator will maintain all of the items listed in this Section 8.8 in its office, or in such other place or places as the Plan Administrator may designate from time to time for examination during reasonable business hours. Upon the written request of a Participant or Beneficiary the Plan Administrator shall furnish him or her with a copy of any item listed in this Section 8.8. The Plan Administrator may make a reasonable charge to the requesting person for the copy so furnished.

8.9 **APPEAL PROCEDURE FOR DENIAL OF BENEFITS**. A Participant or a Beneficiary ("Claimant") may file with the Plan Administration Committee a written claim for benefits, if the Participant or Beneficiary determines the distribution procedures of the Plan have not provided him or her his or her proper Nonforfeitable Accrued Benefit. The Plan Administration Committee must render a decision on the claim within 60 days of the Claimant's written claim for benefits. The Plan Administration Committee must provide adequate notice in writing to any Claimant whose claim for benefits under the Plan the Plan Administration Committee has denied. The Plan Administration Committee's notice to the Claimant shall set forth:

(a) the specific reason for the denial;

(b) specific references to pertinent Plan provisions on which the Plan Administration Committee based its denial;

(c) a description of any additional material and information needed for the Claimant to perfect his or her claim and an explanation of why the material or information is needed; and

(d) that any appeal the Claimant wishes to make of the adverse determination must be in writing to the Plan Administration Committee within seventy-five (75) days after receipt of the Plan Administration Committee's notice of denial of benefits. The Plan Administration Committee's notice must further advise the Claimant that his or her failure to appeal the action to the Plan Administration Committee in writing within the seventy-five (75) day period will render the Plan Administration Committee's determination final, binding and conclusive.

Appeals from Plan Administration Committee determinations shall be in accordance with procedures adopted from time to time by the Plan Administration Committee. The Plan Administration Committee may, in its sole discretion, appoint a hearing officer to conduct any necessary evidentiary hearing into the facts of the appeal and to make recommendations the Plan Administration Committee.

The Plan Administration Committee's notice of denial of benefits shall identify the name of each member of the Plan Administration Committee and the name and address of the Plan Administration Committee member to whom the Claimant may forward his or her appeal.

The provisions of this Section 8.9 shall not be in conflict with any constitutional and due process rights of any affected Participant or Beneficiary, and to the extent of any such conflict, the provisions of this Section 8.9 shall be amended or superseded to avoid such conflict.

8.10 **PARTICIPANT DIRECTION OF INVESTMENT**. A Participant's direction of the investment of his or her Account is subject to the provisions of this Section 8.10. For purposes of this Section 8.10, a "Participant" (as used in this Section 8.10) shall also include a Beneficiary if the Beneficiary has succeeded to the Participant's Account, and if the Plan or the Plan Administration Committee, in its discretion, afford the Beneficiary the same self-direction as the Participant.

(a) ***Plan Administration Committee Authorization and Procedures***. A Participant has the right to direct the Plan Administration Committee with respect to the investment or re-investment of the assets comprising the

Participant's individual Account(s) only if the Plan Administration Committee consents in writing to permit such direction. If the Plan Administration Committee consents to Participant direction of investment, the Plan Administration Committee will only accept direction from each Participant on a written direction of investment form the Plan Administration Committee or the Plan service provider provides for this purpose. The Plan Administration Committee, or with the Plan Administration Committee's consent, the Plan service provider, may establish written procedures relating to Participant direction of investment under this Section 8.10, including procedures or conditions for electronic transfers or for changes in investments by Participants. The Plan Administration Committee will maintain, or direct the Plan service provider to maintain, appropriate individual investment Account(s) to the extent the Participant's Account(s) are subject to Participant self-direction.

(b) ***Fiduciary Exculpation***. To the fullest extent permitted by applicable law, no Plan fiduciary (including the Employer, Plan Administration Committee and Trustee) is liable for any loss or for any breach resulting from a Participant's direction of the investment of any part of his or her self-directed Account(s) to the extent the Participant's exercise of his or her right to direct the investment of his or her Account(s) satisfies the requirements of applicable law.

**** * * * End of Article 8 * * * ****

**ARTICLE 9.**
**PLAN ADMINISTRATION COMMITTEE**

9.1 **PLAN ADMINISTRATION COMMITTEE**. The following provisions shall apply with respect to the Plan Administration Committee.

(a) ***Plan Administrator***. The Plan Administration Committee shall be the Plan Administrator.

(b) ***Membership***. The Plan Administration Committee shall be made up of five (5) individual members who shall be: four (4) current Participants and one (1) person who is not a Participant and who has business and/or investment experience within the local community. The Finance Director for the City ("Finance Director") and a Deputy Manager of the City appointed by the City Manager ("Deputy City Manager") shall be ex officio members of the Plan Administration Committee.

(c) ***Election***. The member of the Plan Administration Committee who is not a Participant shall be elected by majority vote of the other members of the Plan Administration Committee. The four (4) members of the Plan Administration Committee who are Participants shall be elected by plurality vote of the current Participants.

(d) ***Resignation***. Any member of the Plan Administration Committee may resign by delivering his or her written resignation to the Employer and the other members of the Plan Administration Committee. Any resignation of a member of the Plan Administration Committee shall be effective thirty (30) days after written notice has been delivered, unless otherwise agreed to by the other members of the Plan Administration Committee.

(e) ***Removal***. Members of the Plan Administration Committee who are Participants may be removed, with or without cause, by majority vote of the current Participants. The member of the Plan Administration Committee who is not a Participant may be removed, with or without cause, by the majority vote of the other members of the Plan Administration Committee. Written notice of any such removal shall be delivered to any such removed member, to the other members of the Plan Administration Committee and to the Employer. Any removal of any member of the Plan Administration Committee shall be effective thirty (30) days after written notice has been delivered.

(f) ***Vacancies***. Any vacancy on the Plan Administration Committee arising as a result of the resignation, removal, death or otherwise of a member who was a Participant shall be filled by plurality vote of the current Participants. Any other vacancy on the Plan Administration Committee shall be filled by majority vote of the other members of the Plan Administration Committee.

(g) ***Trustee***. Each member of the Plan Administration Committee shall also be a Trustee.

(h) ***Compensation and Expenses***. The members of the Plan Administration Committee shall serve without compensation for services rendered as a Plan Administration Committee member, unless authorized by majority vote of the members of the Plan Administration Committee. Any compensation for services is to be made from the Trust Fund. Each Plan Administration Committee member shall be reimbursed by the Trustee from the Trust Fund for any expenses he or she may properly incur in connection with the performance of his or her duties as a member of the Plan Administration Committee.

(i) ***Bond***. Every member of the Plan Administration Committee shall be bonded if required by applicable law, or as they deem appropriate, and the costs of such bond will be paid by the Trustee from the Trust Fund.

9.2 **TERM**. Except as provided in this Section 9.2, each member of the Plan Administration Committee who is elected by the current Participants shall serve for staggered three (3) calendar year terms or until the appointment of his or her successor. Under the staggering of the terms of such members elected by the current Participants, one such member shall be elected in one year, one such member shall be elected in the following year, and two such members shall be elected in the next following year. Anything contained in this Section 9.2 to the contrary notwithstanding, the staggering of the terms of the members of the Plan Administration Committee elected by the current Participants shall begin as of January 1, 1992, so that the initial term of one such member shall be for one (1) year, the initial term for one such member shall be for two (2) years and the initial term for two such members shall be for three (3) years. The Plan Administration Committee shall determine which such members shall have the initial terms of one year, two years or three years.

The other member of the Plan Administration Committee who is appointed by the majority vote of the other members of the Plan Administration Committee shall serve for a term designated by the Plan Administration Committee or until the appointment of his or her successor.

9.3 **POWERS**. In case of a vacancy in the membership of the Plan Administration Committee, the remaining members of the Plan Administration Committee may exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administration Committee pending the filling of the vacancy.

9.4 **GENERAL**. The Plan Administration Committee shall have the following powers and duties:

(a) To select a President, Secretary and other officers, who need not be members of the Plan Administration Committee;

(b) To determine the rights of eligibility of an Employee to participate in the Plan and the value of a Participant's Accrued Benefit;

(c) To adopt by-laws, rules of procedure and regulations necessary for the proper and efficient administration of the Plan provided the rules are not inconsistent with the terms of this Agreement;

(d) To construe and enforce the terms of the Plan and the by-laws, rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation;

(e) To direct the Trustee as respects the crediting and distribution of the Trust;

(f) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan;

(g) To furnish the Employer with information which the Employer may require for tax or other purposes;

(h) To engage the service of agents whom it may deem advisable to assist it with the performance of its duties;

(i) To engage the services of an Investment Manager or Managers (as defined in ERISA Section 3(38)), each of whom shall have full power and authority to manage, acquire or dispose (or direct the Trustee with respect to acquisition or disposition) of any Plan asset under its control; and

(j) To establish and maintain a funding standard account and to make credits and charges to the account to the extent required by and in accordance with the provisions of the Code.

(k) To develop such procedures and require such information from the distributing plan as it deems necessary to reasonably conclude that a potential rollover contribution is a valid rollover contribution under Section 1.401(a)(31)-1, Q&A-14(b)(2), of the Income Tax Regulations.

The Plan Administration Committee shall exercise all of its powers, duties and discretion under the Plan in a uniform and nondiscriminatory manner.

9.5 **FUNDING POLICY**. The Plan Administration Committee shall review, not less often than annually, all pertinent Employee information and Plan data in order to establish the funding policy of the Plan and to determine the appropriate methods of carrying out the Plan's objectives. The Plan Administration Committee shall communicate periodically, as it deems appropriate, to the Trustee and to any Investment Manager the Plan's short-term and long-term financial needs so the investment policy can be coordinated with Plan financial requirements.

9.6 **MANNER OF ACTION**. Any action or decision of the Plan Administration Committee shall be decided by majority vote of the members of the Plan Administration Committee then appointed and qualified.

9.7 **AUTHORIZED REPRESENTATIVE**. The Plan Administration Committee may authorize any one of its members, or its President or Secretary, to sign on its behalf any notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents. The Plan Administration Committee must evidence this authority by an instrument signed by all members.

9.8 **INTERESTED MEMBER**. No member of the Plan Administration Committee may decide or determine any matter concerning the distribution, nature or method of settlement of his or her own benefits under the Plan, except in exercising an election available to that member in his or her capacity as a Participant.

9.9 **INDIVIDUAL ACCOUNTS**. The Plan Administration Committee will establish and maintain an individual Account or multiple Accounts in the name of each Participant as of the date a contribution is first made to the Trust Fund on his or her behalf to reflect the Participant's Accrued Benefit under the Plan. An Employer Contributions Account will be so established and maintained for each Participant to record his or her interest in the Trust Fund attributable to his or her share of Employer Contributions and Forfeitures. A Participant Mandatory Contributions Account will be so established and maintained for each Employee to record his or her interest in the Trust Fund attributable to his or her Participant Mandatory Contributions made to the Trust Fund pursuant to Section 4.1. A Participant Voluntary Contributions Account will be so established and maintained for each Employee to record his or her interest in the Trust Fund attributable to his or her Participant Voluntary Contributions made to the Trust Fund pursuant to Section 4.2. A Participant Rollover Contributions account will be so established and maintained for each Employee to record his or her interest in the Trust Fund attributable to his or her Participant Rollover Contributions made to the Trust Fund pursuant to Section 4.3. The Trustee will not be required, however, to segregate Trust Fund assets because of the maintenance of separate Accounts, unless required or permitted under another provision of the Plan.

The Plan Administration Committee will make its allocations, or request the Trustee to make its allocations, to the Accounts of the Participants in accordance with the provisions of Section 9.11. The Plan Administration Committee may direct the Trustee to maintain a temporary segregated investment Account in the name of a Participant to prevent a distortion of income, gain or loss allocations under Section 9.11. The Plan Administration Committee shall maintain records of its activities.

9.10 **VALUE OF PARTICIPANT'S ACCRUED BENEFIT**. If any or all Plan investment accounts are pooled, each Participant's Account(s) has an undivided interest in the assets comprising the pooled account. In a pooled account, the value of each Participant's Accrued Benefit consists of that proportion of the net worth (at fair market value) of the Trust Fund which the net credit balance in his or her Account(s) (exclusive of the cash value of incidental benefit insurance contracts) bears to the total net credit balance in the Accounts (exclusive of the cash value of the incidental benefit insurance contracts) of all Participants, plus the cash surrender value of any incidental benefit insurance contracts held by the Trustee on the Participant's life.

If any or all Plan investment accounts are Participant directed, the directing Participant's Accrued Benefit is comprised of the assets held within such Participant's Account(s) and the value of such Participant's Account(s) is the fair market value of such assets.

For purposes of a distribution under the Plan, the value of a Participant's Accrued Benefit is its value as of the valuation date immediately preceding the date of the distribution.

9.11 **ALLOCATION AND DISTRIBUTION OF NET INCOME GAIN OR LOSS**. This Section 9.11 applies solely to the allocation of net income, gain or loss of the Trust Fund. The

Plan Administration Committee will allocate Participant Mandatory, Voluntary and Rollover Contributions in accordance with the applicable provisions of Article 4 and Employer Contributions and Forfeitures in accordance with the applicable provisions of Article 3.

(a) ***Valuation Date***. A "valuation date" under this Plan is each Accounting Date and any other valuation date the Plan Administration Committee elects. The Plan Administration Committee may elect alternative valuation dates for the different Account types which the Plan Administration Committee maintains under the Plan. As of each valuation date, the Plan Administration Committee must adjust Accounts to reflect net income, gain or loss since the last valuation date. The valuation period is the period beginning on the day after the last valuation date and ending on the current valuation date.

(b) ***Methods of Allocation***. The Plan Administration Committee will allocate net income, gain or loss to the Accounts in accordance with the daily valuation method, balance forward method, weighted average method, or other method the Plan Administration Committee elects from time to time. The Plan Administration Committee may elect alternative methods of allocation under which the Plan Administration Committee will allocate the net income, gain or loss to the different Account types which the Plan Administration Committee maintain under the Plan. If the Plan Administration Committee elects to apply a weighted average allocation method, the Plan Administration Committee will treat a weighted portion of the applicable contributions as if includible in the Account as of the beginning of the valuation period. The weighted portion is a fraction, the numerator of which is the number of months in the valuation period, excluding each month in the valuation period which begins prior to the contribution date of the applicable contributions, and the denominator of which is the number of months in the valuation period. The Plan Administration Committee may elect to substitute a weighting period other than months for purposes of this weighted average allocation. If the Plan Administration Committee elects to apply the daily valuation method, the Plan Administration Committee will allocate the net income, gain or loss on each day of the Plan Year for which Plan assets are valued on an established market. If the Plan Administration Committee elects to apply the balance forward method, the Plan Administration Committee first will adjust the Accounts, as those Accounts stood at the beginning of the current valuation period, by reducing the Accounts for any Forfeitures arising under the Plan, for amounts charged during the valuation period to the Accounts in accordance with Section 9.13 (relating to distributions) and for insurance premiums and for the cash value of incidental benefit insurance contracts, if applicable to the Accounts. The Plan Administration Committee then, subject to the restoration allocation requirements of the Plan, will allocate the net income, gain or loss pro rata to the adjusted Accounts. The allocable net income, gain or loss is the net income (or net loss), including the increase or decrease in the fair market value of assets, since the last valuation date.

(c) ***Trust Fund (Pooled) Investment Accounts***. A pooled investment account is an account which is not a segregated investment Account or an individual investment account.

(d) ***Segregated Investment Accounts***. A segregated investment Account receives all income it earns and bears all expense or loss it incurs. The Plan Administration Committee may establish a segregated investment Account(s) to prevent a distortion of Plan income, gain or loss allocations or for such other purposes as the Plan Administration Committee may direct. The Plan Administration Committee will invest the assets of a segregated investment Account(s) consistent with such purposes. As of each valuation date, the Plan Administration Committee must reduce a segregated Participant Account(s) for any Forfeiture arising under Section 5.4 after the Plan Administration Committee has made all other allocations, changes or adjustments to the Account(s) for the valuation period.

(e) ***Individual (Directed) Investment Accounts***. An individual investment Account is an Account which is subject to Participant or (if permitted) Beneficiary self-direction under Section 8.10. An individual investment Account receives all income it earns and bears all expense or loss it incurs. As of each valuation date, the Plan Administration Committee must reduce an individual Account for any Forfeiture arising from Section 5.4 after the Plan Administration Committee has made all other allocations, changes or adjustment to the Account for the valuation period.

(f) ***Code Section 415 Excess Amounts***. If there is a Code Section 415 an excess amount, such amount does not share in the allocation of net income, gain or loss described in this Section 9.11.

9.12 **INDIVIDUAL STATEMENT**. As soon as practicable after the Accounting Date of each Plan Year, the Plan Administrator will deliver to each Participant (and to each Beneficiary) a statement reflecting the condition of his or her Accrued Benefit in the Trust as of that date and such other information the Plan Administrator deems appropriate. No Participant, except a member of the Plan Administration Committee, shall have the right to inspect the records reflecting the Account of any other Participant. The Plan Administration Committee may, but shall not be required to, provide Participants with the statement referred to in this Section 9.12 more frequently than annually.

9.13 **ACCOUNT CHARGED**. The Plan Administration Committee shall charge a Participant's Account(s) for all distributions made from that Account to the Participant or to his or her Beneficiary. The Plan Administration Committee also will charge a Participant's Account(s) for any administration expenses incurred by the Plan or Trust directly related to that Account.

9.14 **LOST PARTICIPANTS**. If the Plan Administration Committee is unable to locate any Participant or Beneficiary whose Account becomes distributable under Article 6 (a "lost Participant"), the Plan Administration Committee will apply the provisions of this Section 9.14.

(a) ***Attempt to Locate***. The Plan Administration Committee will use one or more of the following methods to attempt to locate a lost Participant: (1) provide a distribution notice to the lost Participant at his or her last known address by certified or registered mail; (2) until August 30, 2012, use the IRS letter forwarding program under Revenue Procedure 94-22 (or similar or successor guideline); (3) use a commercial locator service, the internet or other general search method; or (4) use the Social Security Administration search program.

(b) ***Failure to Locate***. If a lost Participant remains unlocated for one year following the date of the Plan Administration Committee's first attempts to locate the lost Participant using one or more of the methods described in subsection (a), the Plan Administration Committee may forfeit the lost Participant's Account at any time after the one year period. If the Plan Administration Committee so forfeits the lost Participant's Account, the Forfeiture occurs as of the date the Plan Administration Committee makes such Forfeiture, and the Plan Administration Committee will allocate the Forfeiture in accordance with Section 3.3. If a lost Participant whose Account was forfeited thereafter at any time, but before the Plan has been terminated, makes a claim for his or her forfeited Account, the Plan Administration Committee will restore the forfeited Account to the same dollar amount as the amount forfeited, unadjusted for net income, gains or losses occurring subsequent to the Forfeiture. The Plan Administration Committee will make the restoration in the Plan Year in which the lost Participant makes the claim, first from the amount, if any, of Participant Forfeitures the Plan Administration Committee otherwise would allocate for the Plan Year, then from the amount or additional amount the Employer contributes to the Plan for the Plan Year. The Plan Administration Committee will distribute the restored Account to the lost Participant not later than sixty (60) days after the close of the Plan Year in which the Plan Administration Committee restores the forfeited Account. If the Plan Administration Committee forfeits a lost Participant's Account under this subsection (b), such Forfeiture will be of the entire Account of the lost Participant, including any and all Participant contributions.

(c) ***Nonexclusivity and Uniformity***. The provisions of this Section 9.14 are intended to provide permissible, but not exclusive, means for the Plan Administration Committee to administer the Accounts of lost Participants. The Plan Administration Committee may utilize any other reasonable method to locate lost Participants and to administer the Accounts of lost Participants, including the default rollover under Section 6.5(b) and such other methods as the Internal Revenue Service or the U.S. Department of Labor ("DOL") may in the future specify. The Plan Administration Committee will apply this Section 9.14 in a reasonable, uniform and nondiscriminatory manner, but may in determining a specific course of action as to a particular Account, reasonably take into account differing circumstances such as the amount of a lost Participant's Account, the expense in attempting to locate a lost Participant, the Plan Administration Committee's ability to establish and the expense of establishing a rollover IRA, and other factors deemed relevant under the circumstances of each case. The Plan Administration Committee may charge to the Account of a lost Participant the reasonable expenses incurred by the Trust Fund under this Section 9.14 and which are associated with the lost Participant's Account.

9.15 **PRIOR PLAN ACCOUNTS**.

(a) ***General***. Application was made by the Employer to the Board of Directors of the FPPA for its approval of the withdrawal of the Employer and the Employees from the Prior Plan and the establishment of this Plan as an alternative pension plan under CRS Section 31-31-403, as amended. Upon receiving such approval, FPPA refunded to the Employer all Employer and Participant Contributions which were made to the Prior Plan and were in the custody of FPPA and which were made for Employees of the Employer who had participated in the Prior Plan and who were Participants in this Plan on the original effective date of January 1, 1988, together with the net earnings thereof, in the manner provided by CRS Section 31-31-601 (f/k/a Section 31-30-1003(2)(b)), and prepared and provided a final accounting, described in this subsection (a), with respect to the Employees participation in the Prior Plan.

Such final accounting provided a separate accounting for each Employee of the Employer who participated in the Prior Plan and who was a Participant in this Plan on the original effective date (January 1, 1988), which separate accounting showed the total contributions made by each such Employee on his or her own behalf to the Prior Plan.

The total amount so refunded by FPPA, representing the sum of all Employer and Participant Contributions which were made to the Prior Plan that were in the custody of FPPA and that were made for Employees of the Employer who had participated in the Prior Plan and who were Participants in this Plan on the original effective date (January 1, 1988), plus the net earnings thereof (the term "net earnings" as used hereafter in this Section 9.15 shall have the meaning as defined in CRS Section 31-31-601 (f/k/a Section 31-30-1003(2)(b)) and shall be the amount representing the same which was actually refunded by FPPA hereunder), shall be allocated and credited, as of the original effective date (January 1, 1988), to the Participant Mandatory Contributions Accounts and the Employer Contributions Accounts of those Participants who were Participants in this Plan on the original effective date (January 1, 1988), in the manner provided in this Section 9.15. The total amount so refunded by FPPA which is described in the preceding sentence shall be referred to in this Section 9.15 as the "Total FPPA Refund."

(b) ***Allocation of Employee and Employer Contributions and Net Earnings for Participants While Employed by the Employer***. With respect to each Participant who was a Participant in this Plan on the original effective date (January 1, 1988), and who had participated in the Prior Plan while employed by the Employer, the total contributions made by each such Participant to the Prior Plan during the period he or she was employed by the Employer, and the total contributions made by the Employer on behalf of each such Participant to the Prior Plan during the period he or she was employed by the Employer, plus his or her share of the net earnings allocable thereto, shall be determined, transferred and credited to each such Participant's Mandatory

Contributions Account and to his or her Employer Contributions Account under this Plan as of the original effective date (January 1, 1988) in the manner and pursuant to the provisions set forth hereafter in this <u>subsection (b)</u>.

(1) The Plan Administration Committee shall determine from the available records of FPPA and of the Employer, the actual date that a Participant first became an Employee and participated in the Prior Plan while employed by the Employer, which date shall be referred to in this <u>Section 9.15</u> as such Participant's "participation commencement date";

(2) The Plan Administration Committee shall determine from the available records of FPPA and of the Employer the total contributions made by each such Participant to the Prior Plan for each calendar year that the Participant was employed by the Employer and participated in the Prior Plan, commencing with and including the calendar year during which such Participant's participation commencement date occurred, through and including the calendar year that such Participant last participated in the Prior Plan. The total contributions to the Prior Plan for each such Participant for each calendar year while he or she was employed by the Employer and participated in the Prior Plan, determined as provided in this <u>subsection (2)</u>, shall be referred to in this <u>subsection (b)</u> as each such Participant's "Annual Aggregate Employee Contributions" for the calendar year concerned.

(3) The Plan Administration Committee shall determine from the available records of FPPA the annual investment rate of return earned by FPPA on the investments of the Prior Plan for each calendar year since and including the calendar year of the Prior Plan's inception, through and including calendar year 1987. Such annual investment rate of return determined pursuant to the provisions of the preceding sentence for any calendar year shall be referred to as the "FPPA Rate of Return" for the calendar year concerned.

(4) The Plan Administration Committee shall multiply each Participant's Annual Aggregate Employee Contributions for the calendar year during which such Participant's participation commencement date occurred by one-half (½) of the FPPA Rate of Return for the calendar year during which such Participant's participation commencement date occurred. The amount determined pursuant to the provisions of the preceding sentence shall be deemed to be the value of such Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions as of January 1st of the second calendar year of such Participant's participation in the Prior Plan while he or she was employed by the Employer.

(5) The Plan Administration Committee shall multiply each Participant's Annual Aggregate Employee Contributions for the second calendar year (if any) of such Participant's participation in the Prior Plan while

he or she was employed by the Employer by one-half (½) of the FPPA Rate of Return for such second calendar year. The Plan Administration Committee shall also multiply the value of such Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions as of January 1st of such second calendar year (such value determined pursuant to the provisions of subsection (4)) by the FPPA Rate of Return for such calendar year. The amounts determined pursuant to the provisions of the two preceding sentences shall then be added together, and this sum shall be deemed to be the value of such Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions as of January 1st of the third year of such Participant's participation in the Prior Plan while he or she was employed by the Employer.

(6) For each calendar year (if any) of any Participant's participation in the Prior Plan while he or she was employed by the Employer after the initial and second such calendar year of participation, each such Participant's Annual Aggregate Employee Contributions for the calendar year concerned shall be multiplied by one-half (½) of the FPPA Rate of Return for such calendar year, the value of each such Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions as of January 1st of the calendar year concerned shall be multiplied by the FPPA Rate of Return for such calendar year, the amounts thereof shall be added together, and the resulting sum shall be deemed to be the value of each such Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions as of January 1st of the next succeeding calendar year.

(7) The Plan Administration Committee shall determine pursuant to the provisions of subsections (4), (5) and (6) (as may be applicable) the value, as of January 1, 1988, of each Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions. The Plan Administration Committee shall then add together the total of the values, as of January 1, 1988, of all Participants' accrued benefits under the Prior Plan attributable to their Annual Aggregate Employee Contributions.

(8) The Plan Administration Committee shall then subtract from the Total FPPA Refund the aggregate of the amounts which are required to be transferred and credited pursuant to the provisions of subsection (5) to the Participant Mandatory Contributions Accounts of those Participants who were Participants in this Plan on the original effective date (January 1, 1988), and who had participated in the Prior Plan while employed by an employer other than the Employer, which other employer also participated in the Prior Plan. The difference determined pursuant to the provisions of the preceding sentence shall be referred to in this Section 9.15 as the "Net Total FPPA Refund."

(9) After the Plan Administration Committee has determined (pursuant to the provisions of subsection (7), the sum of the total values, as of January 1, 1988, of all Participants' accrued benefits under the Prior Plan attributable to their Annual Aggregate Employee Contributions, said sum shall then be compared to one-half (½) of the Net Total FPPA Refund. In order to reflect and reconcile any shortfall or overage (as the case may be) between the one-half (½) of the Net Total FPPA Refund and the sum of the total values, as of January 1, 1988, of all Participants' accrued benefits under the Prior Plan attributable to their Annual Aggregate Employee Contributions, the Plan Administration Committee shall adjust (up or down, as the case may be) the FPPA Rate of Return for calendar year 1987, and such adjusted FPPA Rate of Return, instead of the actual FPPA Rate of Return for calendar year 1987, shall be used pursuant to the provisions of subsections (4), (5) and (6) (whichever may apply) to determine the value, as of January 1, 1988, of each Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions.

(10) The amount of the value, as of January 1, 1988, of each Participant's accrued benefit under the Prior Plan attributable to his or her Annual Aggregate Employee Contributions (determined pursuant to the provisions of subsections (4), (5) and (6), but as adjusted pursuant to the provisions of subsection (9)) shall then be transferred and credited to such Participant's Participant Mandatory Contributions Account under this Plan as of the original effective date (January 1, 1988). The same amount which is so transferred and credited to such Participant's Mandatory Contributions Account under this Plan as of the original effective date (Jan 1, 1988), pursuant to the provisions of the preceding sentence shall also be transferred and credited to such Participant's Employer Contributions Account under this Plan as of the original effective date (January 1, 1988), and shall represent and be treated as the value, as of January 1, 1988, of each such Participant's accrued benefit under the Prior Plan attributable to the total annual aggregate contributions made by the Employer on behalf of each such Participant for each of the calendar years that each such Participant was employed by the Employer and participated in the Prior Plan.

(c) ***Allocation of Employee Contributions and Net Earnings for a Participant Employed by Another Employer***. With respect to any Participant who was a Participant in this Plan on the original effective date (January 1, 1988), and who had participated in the Prior Plan while employed by an employer other than the Employer, which other employer also participated in the Prior Plan, then the total contributions made by each such Participant to the Prior Plan during the period he or she was employed by any such other participating employer, plus his or her share of the net earnings allocable thereto, shall be determined, transferred and credited to each such Participant's Mandatory Contributions Account under this Plan as of the original effective date

(January 1, 1988) in the manner and pursuant to the provisions set forth hereinafter in this subsection (c).

(1) The Plan Administration Committee shall determine the amount representing the total contributions made by each such affected Participant to the Prior Plan for all of his or her years of participation in the Prior Plan (which amount includes all contributions made to the Prior Plan by such affected Participant while he or she was employed by the Employer and while he or she was employed by any other employer participating in the Prior Plan) based on the final accounting prepared and provided by FPPA as described in subsection (a);

(2) Such affected Participant's Annual Aggregate Employee Contributions for all calendar years that such Participant was employed by the Employer and was participating in the Prior Plan shall be determined pursuant to the provisions of subsection (b)(2) and shall be totaled by the Plan Administration Committee;

(3) The Plan Administration Committee shall determine the excess of the amount representing the total contributions made by such affected Participant to the Prior Plan for all of his or her years of participation in the Prior Plan (determined as provided in subsection (1)) over the total of such affected Participant's Annual Aggregate Employee Contributions for all calendar years concerned (determined as provided in subsection (2)); such excess shall represent and shall be treated for purposes of this Section 9.15 as the total contributions made by such affected Participant to the Prior Plan during the period he or she participated in the Prior Plan while employed by another employer (other than the Employer) which participated in the Prior Plan; and such excess shall be referred to in this Section 9.15 as the "Prior Employer Aggregate Employee Contributions" of a Participant.

(4) To determine an affected Participant's share of the net earnings which are allocable to his or her Prior Employer Aggregate Employee Contributions, the Plan Administration Committee shall multiply each such affected Participant's Prior Employer Aggregate Employee Contributions by 53.85%. Said 53.85% is the percentage provided by FPPA to the Plan Administration Committee as representing the ratio of net earnings to the total of the Participant and Employer Contributions made to the Prior Plan, all of which comprise the Total FPPA Refund.

(5) The amount of each affected Participant's Prior Employer Aggregate Employee Contributions (determined as provided in subsection (3)) and the amount of each such affected Participant's share of the net earnings allocable thereto (determined as provided in subsection (4)) shall be transferred and credited to each such affected Participant's Mandatory Contributions Account under this Plan as of the original effective date (January 1, 1988).

(d) ***Allocation of Employer Contributions and Net Earnings for Participants While Employed by Another Employer***. If, as a result of any litigation or otherwise, FPPA refunds to the Employer or the Trustees subsequent to the original effective date (January 1, 1988), any amounts representing contributions made on behalf of a Participant to the Prior Plan by another employer (other than the Employer), which other employer also participated in the Prior Plan, and which contributions were made for a period during which such affected Participant was employed by such other employer and participated in the Prior Plan (hereinafter said contributions shall be referred to as "Prior Employer Contributions"), then said Prior Employer Contributions for any such affected Participant shall be transferred and credited to such affected Participant's Employer Contributions Account under this Plan as of the date said Prior Employer Contributions are so refunded. If any net earnings allocable to such Prior Employer Contributions are refunded by FPPA to the Employer or the Trustees, such net earnings shall also be allocated, transferred and credited to the affected Participant's Employer Contributions Accounts as of the date said net earnings are so refunded. The method used for any such allocation of net earnings so refunded shall be determined on a consistent and equitable basis by the Trustees. If any such Prior Employer Contributions or net earnings allocable thereto are so refunded by FPPA to the Employer, the Employer shall promptly transfer and deliver the same to the Trustees for allocation, transfer and crediting to the affected Participants' Employer Contributions Accounts as required under this subsection (d).

(e) ***Disposition of Employer Contributions and Net Earnings for Participants in Prior Plan Whose Employment Terminated Prior to the Effective Date***. The Employer shall not be liable to the Participants, the Trustees or the Beneficiaries for any deficiencies or alleged deficiencies of any amounts which are refunded, or which may later be required to be refunded, by FPPA to the Employer as a result of the Employer's withdrawal from the Prior Plan, including, but not limited to, any contributions made previously by the Employer to the Prior Plan on behalf of any Employee who was not participating in this Plan on the original effective date (Jan 1, 1988), or who was not a participant in the Prior Plan immediately prior to the original effective date (January 1, 1988), as well as any deficiencies related to the method used by FPPA in calculating the "net earnings" that are required to be refunded pursuant to CRS Section 31-31-601 (f/k/a Section 31-30-1003(2)(b)). The Employer hereby assigns, transfers, conveys, releases and subrogates to the Trustees for the sole benefit of the Participants, Beneficiaries, Former Participants and the Trust Fund any and all rights, causes of action or other claims that the Employer may have against FPPA for any such deficiencies or alleged deficiencies.

In the event any such deficiencies are received by the Trustees, to the extent such deficiencies are not required to be allocated, transferred and credited to the Accounts of any Participants under the provisions of subsections (b), (c) and (d), then such deficiencies shall be used (or set aside for use) to pay or reimburse the costs and expenses of establishing, administering, amending and operating the Plan and/or the

Trust, including, but not limited to, those costs and expenses described in Article 8, 9 or 10 hereof.

(f) ***Plan Administration Committee Determinations***. In making any determinations, calculations and allocations required pursuant to the provisions of this Section 9.15, the Plan Administration Committee may employ any actuarial, accounting and mathematical methods that it deems reasonable under the circumstances. In addition, the Plan Administration Committee may retain the services of professionals to assist it in making any such determinations, calculations and allocations, and the Trust Fund shall pay or reimburse the Plan Administration Committee for any fees or expenses therefor. Additionally, in making any such determinations, calculations and allocations, the Plan Administration Committee may rely upon records, information, data or publications provided or made available to it by FPPA, the Employer, an affected Participant or any other reliable source, and shall be held harmless as a result of any such reliance. The determinations, calculations and allocations made by the Plan Administration Committee as required and provided for under the provisions of this Section 9.15 shall be binding and conclusive upon all Participants, Former Participants and Beneficiaries, as well as the Trustees.

(g) ***Allocation of Employer Contributions and Net Earnings for Participants Whose Employment Was Reinstated***. Prior to the original effective date (January 1, 1988) of the Plan, the employment with the Employer of certain Employees who were participants in the Prior Plan was terminated, but later, as a result of litigation and administrative proceedings, was reinstated also prior to said original effective date (January 1, 1988) (hereinafter said Employees are referred to as the "Reinstated Participants"). However, during the period from the date said Reinstated Participants' employment with the Employer was terminated until the date their employment was reinstated, said Reinstated Participants had distributed to them from the Prior Plan their respective employee contributions, plus earnings, as provided under the provisions of CRS Section 31-31-404 (f/k/a Section 31-30-1011). The employment with the Employer of all of said Reinstated Participants was reinstated prior to the original effective date (January 1, 1988), and as a result thereof, said Reinstated Participants are deemed and are treated as Participants under this Plan as of the original effective date (January 1, 1988).

A dispute, however, arose between FPPA and the Reinstated Participants as a result of FPPA's unilateral decision to treat the contributions made by the Employer to the Prior Plan on behalf of the Reinstated Participants as Forfeitures, which FPPA refused to transfer and refund to this Plan upon the withdrawal of the Employer and the Employees from the Prior Plan. Prior to the actual refund of the Employer and Participant Contributions, plus net earnings thereof, to the Employer by FPPA pursuant to CRS Section 31-31-601 (f/k/a Section 31-30-1003(2)(b)), FPPA modified its decision so as to allow refund of the contributions made by the Employer to the Prior Plan on behalf of the Reinstated Participants, plus net earnings allocable thereto, to the extent of, and in proportion to, the recontribution by the Reinstated Participants of their respective employee contributions made to the Prior Plan (plus statutory interest thereon), which had been distributed to them from the Prior Plan as provided under the provisions of CRS Section 31-30-1011, after their employment with the Employer was allegedly wrongfully terminated. FPPA conditioned any such refunds of the Employer Contributions made to the Prior Plan on behalf of the Reinstated Participants on the recontribution of their respective previously distributed contributions to the Prior Plan (plus statutory interest thereon) being made no later than the actual date that FPPA refunded the Employer and Participant Contributions to the Prior Plan, plus net earnings thereof, pursuant to CRS Section 31-31-601 (f/k/a Section 31-30-1003(2)(b)).

Some of the Reinstated Participants were able to timely recontribute all amounts required by FPPA in order to have all of the Employer Contributions made to the Prior Plan on their behalf, plus net earnings allocable thereto, refunded, and therefore all of said Employer Contributions and allocable net earnings are being allocated, transferred and credited to the respective Employer Contributions Accounts of such Reinstated Participant in the manner and pursuant to the provisions set forth in subsection (b).

However, with respect to those Reinstated Participants who were not able to timely recontribute all amounts required under FPPA's directive (that is, in order to have FPPA refund all of the contributions which had been made to the Prior Plan by the Employer on behalf of any such Reinstated Participant, plus net earnings allocable thereto), to the extent FPPA refunded any pro rata portion of said Employer Contributions and allocable net earnings, said Employer Contributions and allocable net earnings so refunded shall be allocated, transferred and credited to the Employer Contributions Accounts of the affected Reinstated Participants in the manner and pursuant to the provisions set forth in subsection (b). Additionally, and notwithstanding any other provision of the Plan to the contrary (except for the provisions of the immediately following sentence), if FPPA subsequently refunds to the Employer or the Trustees any amounts representing the pro rata portion of the Employer Contributions made to the Prior Plan on behalf of any of said Reinstated Participants and net earnings allocable thereto which were not refunded to this Plan by FPPA as a result of the failure of any of said Reinstated Participants complying with FPPA's directive to timely recontribute the full amounts previously distributed to them from the Prior Plan, then any such amounts so refunded by FPPA shall also be allocated, transferred and credited to the respective Employer Contributions Accounts of the affected Reinstated Participants in the manner and pursuant to the provisions set forth in subsection (b). The provisions of the immediately preceding sentence shall not apply to any refund subsequently made by FPPA to the Employer or the Trustees, which refund represents amounts described in the immediately preceding sentence, to the extent that (by agreement or stipulation of the Employer and any affected Reinstated Participant or otherwise) similar amounts have been previously allocated, transferred and credited to the Employer Contributions Accounts of any affected Reinstated Participant for the purpose of making up the pro rata portion of the Employer Contributions made to the Prior Plan on behalf of any such affected Reinstated Participant and net earnings allocable thereto which were not so refunded to this Plan by FPPA as a result of any such Reinstated Participant's failure to comply with said directive of FPPA regarding timely recontribution of amounts previously distributed from the Prior Plan; and to the extent the immediately preceding provisions of this sentence apply to any such refund subsequently made by

FPPA to the Employer or the Trustees, such refund shall be subject to and shall be disposed of as provided in subsection (e).

Nothing herein shall be construed to prohibit any agreement or stipulation between the Employer and any Reinstated Participant for the purpose of or related to the settlement of any dispute involving the allegedly wrongful termination of the employment with the Employer of any of said Reinstated Participants and/or their participation in the Prior Plan or in this Plan, including, but not limited to, any agreement or stipulation regarding contributions by the Employer or by a Reinstated Participant to this Plan or to the Prior Plan; provided, however, that, to the extent any such agreement or stipulation affects or impacts this Plan, any such agreement or stipulation: (1) is agreed to in writing by the Trustees; (2) does not, in the good faith opinion of tax counsel to the Trustees or by determination of the Internal Revenue Service, jeopardize the qualification or continued qualification of the Plan or Trust under the Code; and (3) does not violate any other provision of applicable law.

9.16 **PLAN CORRECTION**. The Plan Administration Committee in conjunction with the Employer may undertake such correction of Plan errors as the Plan Administration Committee deems necessary, including correction to preserve tax qualification of the Plan under Code Section 401(a) or to correct a fiduciary breach under applicable law. Without limiting the Plan Administration Committee's authority under the prior sentence, the Plan Administration Committee, as it determines to be reasonable and appropriate, may undertake correction of Plan document, operational, demographic and Employer eligibility failures under a method described in the Plan or under the Employee Plans Compliance Resolution System ("EPCRS") or any successor program(s) to EPCRS. The Plan Administration Committee, as it determines to be reasonable and appropriate, also may undertake or assist the appropriate fiduciary or plan official in undertaking correction of a fiduciary breach, including correction under the Voluntary Fiduciary Correction Program ("VFC") or any successor program(s) to VFC. If the Plan includes a 401(k) arrangement, the Plan Administration Committee to correct an operational error, may require distributions from the Plan of elective deferrals or vested matching contributions, including earnings, where such amounts result from an operational error other than a failure of Code Section 415, Code Section 402(g), a failure of the ADP or ACP tests, or a failure of the multiple use limitation.

**** * * * End of Article 9 * * * ****

# ARTICLE 10.
# TRUSTEES, POWERS AND DUTIES

10.1 **ACCEPTANCE**. Each Trustee accepts the Trust created under the Plan and agrees to perform the obligations imposed. The Trustee shall provide bond for the faithful performance of his or her duties under the Trust to the extent required by applicable law or as the Trustee deems appropriate.

10.2 **RECEIPT OF CONTRIBUTIONS**. Each Trustee shall be accountable to the Employer for the funds contributed to the Trust by the Employer.

10.3 **INVESTMENT POWERS**.

(a) Except as provided in subsection (b), the Trustee shall have full discretion and authority with regard to the investment of the Trust Fund, except with respect to a Plan asset under the control or direction of a properly appointed Investment Manager (as defined in Section 9.4(i)) or with respect to a Plan asset subject to Employer or Participant direction of investment. The Trustee shall coordinate his or her investment policy with Plan financial needs as communicated by the Plan Administration Committee. Each Trustee is authorized and empowered, subject to the provisions of subsection (b), with the following powers, rights and duties:

(1) To invest any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds, repurchase agreements, United States retirement plan bonds, corporate and municipal bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes, U.S. Treasury bonds and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, as a prudent man would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Trustees in good faith shall be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;

(2) (A) To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest, including, if a bank is acting as Trustee, specific authority to invest in any type of deposit of the Trustee at a reasonable rate of interest or in a common trust fund (the provisions of which govern the investment of such assets and which the Plan incorporates by this reference) as described in Code Section 584 which the Trustee (or an affiliate of the Trustees, as defined in Code Section 1504) maintains exclusively for the collective investment of money

contributed by the bank (or the affiliate) in its capacity as trustee and which conforms to the rules of the Comptroller of the Currency;

(B) To invest any part of the money or property of the Trust Fund in a collective investment trust, a common trust fund or in a group trust qualifying under IRS Revenue Ruling 81-100, as further amended by IRS Revenue Ruling 2004-67, IRS Revenue Ruling 2008-40, and effective January 10, 2011, by IRS Revenue Ruling 2011-1, and as subsequently amended by future guidance. Each such collective investment trust, common trust fund or group trust is adopted, with respect to monies invested therein, as part of the Plan and its Trust and each declaration of trust or trust agreement and related adoption, participation, investment management, or other agreements, as amended from time to time, with respect to monies invested therein, are incorporated by reference into the Plan and its Trust upon approval by the Trustees.

(3) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustees shall decide;

(4) To credit and distribute the Trust as directed by the Plan Administration Committee. The Trustees shall not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustees shall be accountable only to the Plan Administration Committee for any payment or distribution made by it in good faith on the order or direction of the Plan Administration Committee;

(5) To extend mortgages;

(6) To compromise, contest, arbitrate or abandon claims and demands, in the discretion of the Trustees;

(7) To have with respect to the Trust all of the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights;

(8) To lease for oil, gas and other mineral purposes and to create mineral severance by grant or reservation; to pool or unitize interests in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders;

(9) To hold any securities or other property in the name of the Trustees or their nominee, with depositories or agent depositories or in another form as they may deem best, with or without disclosing the trust relationship;

(10) To perform any and all other acts in the judgment of the Trustees necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;

(11) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction;

(12) To file all tax returns required of the Trustees;

(13) To furnish to the Employer, (specifically the City Manager, Finance Director and City Attorney) the Plan Administrator and the Plan Administration Committee an annual statement (no later than July 1 of the succeeding year) of account showing the condition of the Trust Fund and all investments, receipts, disbursements, the source and amount of Forfeitures to the Employer and other transactions effected by the Trustees during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts shall be conclusive on all persons, including the Employer, the Plan Administrator and the Plan Administration Committee, except as to any act or transaction concerning which the Employer, the Plan Administrator or the Plan Administration Committee files with the Trustees written exceptions or objections within ninety (90) days after the receipt of the accounts or for which applicable law authorizes a longer period within which to object; and

(14) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Trustees shall not be obliged or required to do so unless indemnified to their satisfaction.

(15) To make available to the Finance Director of the Employer, no later than May 31 of each year, an estimate of the cumulative available Forfeiture amounts for the Plan. In addition, no later than November 30 of each year, the Trustees shall make available to the Finance Director of the Employer a copy of the most recent audit report of the Plan and Trust prepared through the means of an independent audit, which audit report shall include a statement of the available Forfeiture amount on an annual basis.

(b) Anything contained herein to the contrary notwithstanding, the following provisions shall apply:

(1) The provisions of this subsection (1) shall be effective prior to July 1, 1997. Anything contained herein to the contrary notwithstanding, the

Trust Fund shall be invested by the Trustees; provided that, subject to the limitations on investments described in the CRS Section 15-1-304, as amended, the Trustees may invest all or any part of the fund in the types of investments authorized by CRS Sections 15-1-304, 31-30-1012(5) and 31-30-1012(8), including, but not limited to, obligations of the United States Government and in obligations fully guaranteed as to principal and interest by the United States Government, in state or municipal bonds, in corporate notes, bonds, or debentures, convertible or otherwise, in railroad equipment trust certificates, in real property and in loans secured by first mortgages or deeds of trust on real property, in participation guarantee agreements with life insurance companies, in real estate limited partnerships, and in other types of investment agreements, and the foregoing investments may be made without limitation as to the percentage of the book value of the assets of the retirement fund so invested. Investments may also be made in either common or preferred corporate stocks, but the original cost of all investments in corporate stocks or corporate bonds, notes, or debentures which are convertible into stock, or in investment trust shares, shall not exceed sixty-five percent (65%) of the then book value of the assets of the Trust Fund. In no event shall any investment be made in the common or preferred stock, or both, of any single corporation in an amount in excess of five percent (5%) of the then book value of the assets of the Trust Fund nor shall more than seven percent (7%) of the outstanding stock or bonds of any single corporation be acquired for the Trust Fund, except that the Trustees may acquire up to one hundred percent (100%) of the outstanding stock of any corporation described in Code Sections 501(c)(2) and 501(c)(25).

In accordance with the provisions of CRS Section 31-30-1012(5), as used in this <u>subsection (1)</u>, unless the context otherwise requires, (A) "book value" means current market value, (B) "current market value" means the current exchange price of an asset that is publicly traded, and, for a nonpublicly traded asset, it means the current valuation as reflected in the books of the FPPA, and (C) "original cost" means the acquisition cost of an asset.

(2) The provisions of this <u>subsection (2)</u> shall be effective on and after July 1, 1997. Anything contained herein to the contrary notwithstanding, the Trust Fund shall be invested by the Trustees; provided that, the Trust Fund shall be managed and invested by the Trustees pursuant to the standard and other provisions for trustees set forth in the Colorado Uniform Prudent Investor Act, Article 1.1 of Title 15, CRS. Such investments shall be audited at least biennially.

To the extent the investment limitations described in this <u>subsection (2)</u> are modified or repealed by applicable Colorado law, then the provisions of this subsection shall be deemed modified or repealed in accordance therewith.

10.4 **<u>RECORDS AND STATEMENTS</u>**. The records of the Trustees pertaining to the Plan shall be open to the inspection of the Plan Administrator, Plan Administration Committee and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Administration Committee may specify in writing. The Trustees shall furnish the Plan Administration Committee or the Plan Administrator with whatever information relating to the Trust Fund the Plan Administration Committee or Plan Administrator considers necessary.

10.5 **FEES AND EXPENSES FROM FUND**.

(a) Each Trustee shall serve without compensation for services rendered as a Trustee, unless authorized by majority vote of the Trustees if payment is to be made from the Trust Fund. The Trustees shall pay all fees and expenses reasonably incurred by them in their administration of the Plan from the Trust Fund unless the Employer pays the fees and expenses.

(b) Anything contained in subsection (a) to the contrary notwithstanding, the Employer Payment, as defined in Section 3.1(e), shall, for purposes of this Section 10.5 and Section 15-88.5 of Chapter 15 of the City Code of the City of Aurora, Colorado, be treated as being used for the sole purpose of assisting in the payment of the costs and expenses described in this Section 10.5; provided, however, that the Employer Payment shall be allocated exclusively as provided in Section 3.2(b).

10.6 **PARTIES TO LITIGATION**. Except as otherwise provided by applicable law, only the Employer, the Plan Administrator, the Plan Administration Committee, and the Trustees shall be necessary parties to any court proceeding involving the Trustees or the Trust Fund. No Participant, or Beneficiary, shall be entitled to any notice of process unless required by applicable law. Any final judgment entered in any proceeding shall be conclusive upon the Employer, the Plan Administrator, the Plan Administration Committee, the Trustees, Participants and Beneficiaries.

10.7 **PROFESSIONAL AGENTS**. The Trustees may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustees as in their opinion may be necessary. The Trustees may delegate to any agent, attorney, accountant or other person selected by the Trustees any non-Trustee power or duty vested in the Trustees by the Plan, and the Trustees may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

10.8 **DISTRIBUTION OF CASH OR PROPERTY**. The Trustees may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustees. For purposes of a distribution to a Participant or to a Participant's designated Beneficiary or surviving spouse, "property" shall include a Nontransferable Annuity, provided the contract satisfies the distribution requirements under Article 6.

10.9 **DISTRIBUTION DIRECTIONS**. If no one claims a payment or distribution made from the Trust, the Trustees shall promptly notify the Plan Administration Committee and shall dispose of the payment in accordance with the subsequent direction of the Plan Administration Committee.

10.10 **THIRD PARTY**. No person dealing with the Trustees shall be obligated to see to the proper application of any money paid or property delivered to the Trustees, or to inquire whether the Trustees have acted pursuant to any of the terms of the Plan. Each person dealing with the Trustees may act upon any notice, request or representation in writing by the Trustees, or by the Trustees' duly authorized agent, and shall not be liable to any person whomsoever in so doing. The certificate of the Trustees that they are acting in accordance with the Plan shall be conclusive in favor of any person relying on the certificate.

10.11 **RESIGNATION**. A Trustee(s) may resign at any time as a Trustee of the Plan by giving thirty (30) days' written notice in advance to the Employer and to the Plan Administration Committee.

10.12 **REMOVAL**. A Trustee may be removed in the same manner as a member of the Plan Administration Committee, as set forth in Section 9.1(e). Vacancies in the Trustees shall be filled in the same manner as vacancies in the Plan Administration Committee, as set forth in Section 9.1(f).

10.13 **INTERIM DUTIES AND SUCCESSOR TRUSTEES**. Each successor Trustee shall succeed to the title to the Trust vested in his or her predecessor by accepting in writing his or her appointment as successor Trustee and filing the acceptance with the former Trustee and the Plan Administration Committee without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, shall execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee shall have and enjoy all of the powers, both discretionary and ministerial, conferred under this Agreement upon his or her predecessor. A successor Trustee shall not be personally liable for any act or failure to act of any predecessor Trustee. With the approval of the Employer and the Plan Administration Committee, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.

10.14 **VALUATION OF TRUST**. The Trustees shall value the Trust Fund as of each Accounting Date to determine the fair market value of each Participant's Accrued Benefit in the Trust, and the Trustees shall value the Trust Fund on such other date(s) as directed by the Plan Administration Committee.

10.15 **LIMITATION ON LIABILITY – IF INVESTMENT MANAGER APPOINTED**. The Trustees shall not be liable for the acts or omissions of any Investment Manager or Managers the Plan Administration Committee may appoint, nor shall the Trustees be under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed Investment Manager. The Plan Administration Committee, the Trustees and any properly appointed Investment Manager may execute a letter agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager with respect to any part of the Trust Fund under the control of the Investment Manager.

10.16 **INVESTMENT IN GROUP TRUST FUND**. The Trustees, for collective investment purposes and, except for the merger for collective investment purposes of this Trust with the Money Purchase Pension Trust of the Fire Department of the City of Aurora, with the permission of the Employer, may combine into one trust fund the Trust created under this Plan with the trust created under any other qualified retirement plan the Employer maintains.  However, the Trustees shall maintain separate records of account for the assets of each Trust in order to reflect properly each Participant's Accrued Benefit under the plan(s) in which he or she is a Participant.

10.17 **MANNER OF ACTION**.  Any action or decision of the Trustees shall be decided by majority vote of the Trustees then appointed and qualified.

**** * * * End of Article 10 * * * ****

# ARTICLE 11.
# INSURANCE

11.1 **INSURANCE BENEFIT**. To the extent permitted under applicable Colorado law, the Plan Administration Committee may elect to provide incidental life insurance benefits for insurable Participants who consent to life insurance benefits by signing the appropriate insurance company application form; provided however, that the aggregate of life insurance premiums paid for the benefit of a Participant, at all times, shall not exceed the following percentages of the aggregate of the Employer's contributions allocated to any Participant's Account: (a) forty-nine percent (49%) in the case of the purchase of ordinary life insurance contracts; or (b) twenty-five percent (25%) in the case of the purchase of term life insurance contracts. Furthermore, if the Trustees purchase a combination of ordinary life insurance contract(s) and term life insurance contract(s), or universal life insurance contract(s), then the sum of one-half (½) of the premiums paid for the ordinary life insurance contract(s) and the premiums paid for the term life insurance contracts) or the universal life insurance contract(s) shall not exceed twenty-five percent (25%) of the Employer Contributions allocated to any Participant's Account. The Trustees shall not purchase any incidental life insurance benefit for any Participant prior to the Accounting Date as of which the Plan Administration Committee first makes an Employer contribution allocation to the Participant's Account. At an insured Participant's written direction, the Trustees shall use all or any portion of the Participant's voluntary contributions to pay insurance premiums covering the Participant's life. The purchase of life insurance and the premiums payable therefore shall not lessen or diminish the Forfeiture derived from the nonvested component in the Employer Contributions Account allocated to the Employer pursuant to Sections 3.3 and 5.4.

The Plan Administration Committee may select the insurance company or companies and insurance agent(s) through which the Trustees are to purchase the insurance contracts, the amount of the coverage and the applicable dividend plan; provided, however, that no such agent shall be a Trustee, a member of the Plan Administration Committee, a Participant, a Beneficiary, an employee of the Employer, or anyone related to any of the above named persons. Each application for a policy, and the policies themselves, shall designate the Trustees as sole owner, with the right reserved to the Trustees to exercise any right or option contained in the policies, subject to the terms and provisions of this Agreement. The Trustees shall be the named beneficiary for the Account of the insured Participant. Proceeds of insurance contracts paid to the Participant's Account under this Article 11 shall be subject to the distribution requirements of Article 5 and Article 6. The Trustees shall not retain any such proceeds for the benefit of the Trust.

The Plan Administration Committee shall charge all amounts paid by the Trustees pursuant to this Section 11.1 for the premiums on any incidental benefit insurance contract(s) covering the life of a Participant to the Account of the Participant. The Trustees shall hold all incidental benefit insurance contracts issued under the Plan as assets of the Trust created under the Plan.

11.2 **LIMITATION ON LIFE INSURANCE PROTECTION**. The Plan Administration Committee shall direct the Trustees to not continue any life insurance protection for any Participant beyond his or her annuity starting date (as defined in Article 6).

If the Trustees hold any incidental benefit insurance contract(s) on the life of a Participant when he or she terminates his or her employment (other than by reason of death), the Plan Administration Committee must direct the Trustees to proceed as follows:

(a) If the entire cash value of the contract(s) is vested in the terminating Participant, or if the contract(s) will have no cash value at the end of the policy year in which termination of employment occurs, the Trustees will transfer the contract(s) the Participant endorsed so as to vest in the transferee all right, title and interest to the contract(s), free and clear of the Trust; subject however, to restrictions as to surrender or payment of benefits as the issuing insurance company may permit;

(b) If only part of the cash value of the contract(s) is vested in the terminating Participant, the Trustees, to the extent the Participant's interest in the cash value of the contract(s) is not vested, may adjust the Participants interest in the value of his or her Account attributable to Trust assets other than incidental benefit insurance contracts and proceed as in (a), or the Trustees must effect a loan from the issuing insurance company on the sole security of the contract(s) for an amount equal to the difference between the cash value of the contract(s) at the end of the policy year in which termination of employment occurs and the amount of the cash value that is vested in the terminating Participant, and the Trustees must transfer the contract(s) endorsed so as to vest in the transferee all right, title and interest to the contract(s), free and clear of the Trust; subject however, to the restrictions as to surrender or payment of benefits as the issuing insurance company may permit;

(c) If no part of the cash value of the contract(s) is vested in the terminating Participant, the Trustees must surrender the contract(s) for cash proceeds as may be available.

The Plan Administration Committee will direct the Trustees to make any transfer of contract(s) under this Section 11.2 on the Participant's annuity starting date (or as soon as administratively feasible after that date). The Plan Administration Committee shall direct the Trustees to not transfer any contract under this Section 11.2 which contains a method of payment not specifically authorized by Article 6. In this regard, the Trustees either shall convert such a contract to cash and distribute the cash instead of the contract, or before making the transfer, require the issuing company to delete the unauthorized method of payment option from the contract.

11.3 **DEFINITIONS**. For purposes of this Article 11:

(a) "Policy" means an ordinary life insurance contract or a term life insurance contract issued by an insurer on the life of a Participant.

(b) "Issuing Insurance Company" is any life insurance company which has issued a policy upon application by the Trustees under the terms of this Agreement.

(c) "Contract" or "Contracts" means a policy of insurance. In the event of any conflict between the provisions of this Plan and the terms of any contract or policy of insurance issued in accordance with this Article 11, the provisions of the Plan shall control.

(d) "Insurable Participant" means a Participant to whom an insurance company, upon an application being submitted in accordance with the Plan, will issue insurance coverage, either as a standard risk or as a risk in an extra mortality classification.

11.4 **DIVIDEND PLAN**. The dividend plan shall be premium reduction unless the Trustees in their discretion decide to the contrary. The Trustees shall use all premiums for a contract to purchase insurance benefits or additional insurance benefits for the Participant on whose life the insurance company has issued the contract. Furthermore, the Trustees shall arrange, where possible, that all policies issued on the lives of Participants under the Plan shall have the same premium due date and all ordinary life insurance contracts shall contain guaranteed cash values with as uniform basic options as are possible to obtain. The term "dividends" includes policy dividends, refunds of premiums and other credits.

11.5 **INSURANCE COMPANY NOT A PARTY TO AGREEMENT**. No insurance company is a party to this Agreement nor shall any insurance company be responsible for its validity.

11.6 **INSURANCE COMPANY NOT RESPONSIBLE FOR TRUSTEES' ACTIONS**. No insurance company is required to examine the terms of this Agreement nor be responsible for any action taken by the Trustees.

11.7 **INSURANCE COMPANY RELIANCE ON TRUSTEES' SIGNATURE**. For the purpose of making application to an insurance company and in the exercise of any right or option contained in any policy, the insurance company may rely upon the signature of the Trustees and shall be saved harmless and completely discharged in acting at the direction and authorization of the Trustees.

11.8 **ACQUITTANCE**. An insurance company shall be discharged from all liability for any amount paid to the Trustees or paid in accordance with the direction of the Trustees and it shall not be obliged to see to the distribution or further application of any moneys it so pays.

11.9 **DUTIES OF INSURANCE COMPANY**. Each insurance company shall keep such records; make such identification of contracts, funds and accounts within funds; and supply such information as may be necessary for the proper administration of the Plan under which it is carrying insurance benefits.

**** * * * End of Article 11 * * * ****

## ARTICLE 12.
## MISCELLANEOUS

12.1 **EVIDENCE**. Anyone required to give evidence under the terms of the Plan may do so by certificate, affidavit, document or other information which the person to act in reliance may consider pertinent, reliable and genuine, and to have been signed, made or presented by the proper party or parties. Both the Plan Administration Committee and the Trustees shall be fully protected in acting and relying upon any evidence described under the immediately preceding sentence.

12.2 **NO RESPONSIBILITY FOR EMPLOYER ACTION**. Neither the Trustees nor the Plan Administration Committee shall have any obligation nor responsibility with respect to any action required by the Plan to be taken by the Employer, any Participant or eligible Employee, nor for the failure of any of the above persons to act or make any payment or contribution, or to otherwise provide any benefit contemplated under this Plan, nor shall the Trustees or the Plan Administration Committee be required to collect any contribution required under the Plan, or determine the correctness of the amount of any Employer contribution. Neither the Trustees nor the Plan Administration Committee need inquire into or be responsible for any action or failure to act on the part of the others. The Employer shall not be responsible for any act or failure to act on the part of the Plan Administration Committee, the Trustees or any Participant or eligible Employee, nor for the payment of any benefits under this Plan except for its obligation to make Employer Contributions as provided under Section 3.1.

12.3 **FIDUCIARIES NOT INSURERS**. The Trustees, the Plan Administration Committee, the Plan Administrator and the Employer in no way guarantee the Trust Fund from loss or depreciation. The Employer does not guarantee the payment of any money which may be or becomes due to any person from the Trust Fund. The liability of the Plan Administration Committee and the Trustees to make any payment from the Trust Fund at any time and all times is limited to the then available assets of the Trust.

12.4 **WAIVER OF NOTICE**. Any person entitled to notice under the Plan may waive the notice, unless the Code or Treasury regulations (if applicable) prescribe the notice or specifically or impliedly prohibit such a waiver.

12.5 **SUCCESSORS**. The Plan shall be binding upon all persons entitled to benefits under the Plan, their respective heirs and legal representatives, upon the Employer, its successors and assigns, and upon the Trustees and the Plan Administration Committee and their successors.

12.6 **WORD USAGE**. Words used in the masculine shall apply to the feminine where applicable, and wherever the context of the Employer's Plan dictates, the plural shall be read as the singular and the singular as the plural. The headings of Articles and Sections are included solely for convenience of reference, and if there be any conflict between such headings and the text of this Plan, the text will control.

12.7 **STATE LAW**. Colorado law, including the Colorado Civil Union Act, shall determine all questions arising with respect to the provisions of this Agreement except to the extent Federal law supersedes Colorado law. Notwithstanding any provision in the Plan and Trust to the contrary, effective June 26, 2013, for purposes of complying with any federal law applicable to the Plan and Trust, the terms "husband," "wife," "husband and wife," "marriage," and "spouse" shall be defined and construed in accordance with such federal law, including I.R.S. Revenue Ruling 2013-17 and I.R.S. Notice 2014-19 and subsequent regulations and rulings.

12.8 **EMPLOYMENT NOT GUARANTEED**. Nothing contained in this Plan, or with respect to the establishment of the Trust, or any modification or amendment to the Plan or Trust, or in the creation of any Account, or the payment of any benefit, shall give any Employee, Employee-Participant or any Beneficiary any right to continue employment, any legal or equitable right against the Employer, or Employee of the Employer, or against the Trustees, or its agents or employees, or against the Plan Administrator, except as expressly provided by the Plan, the Trust, by a separate agreement, or by applicable law. Nothing contained in this Plan will be construed as a contract of employment between the Employer and any Employee or Participant, or as a limitation on the right of the Employer to employ, discipline or discharge any Employee or Participant.

12.9 **EXEMPTION FROM ACT AND STATUTORY CONSTRUCTION**. It is intended that this Plan is a "governmental plan" as defined in ERISA Section 3(32) and is therefore exempt from the applicability of ERISA and certain provisions of the Code related to tax qualified plans and trusts, except to the extent, and only to the extent, expressly provided to the contrary herein. Nothing contained herein shall be interpreted or construed to be or to represent a waiver of said exemptions nor a consent to the application of any provisions of ERISA or the Code to which governmental plans are exempted, except to the extent, and only to the extent, expressly provided to the contrary herein.

12.10 **QUALIFIED MILITARY SERVICE**. Notwithstanding any provision in this Plan to the contrary, contributions, benefits and Service credit with respect to or related to qualified military service will be provided in accordance with and will comply with the requirements of Code Section 414(u) and applicable regulations thereunder. Loan repayments, if any, will be suspended under this Plan as permitted under Code Section 414(u)(4). The provisions of this Section 12.10 shall be effective as of December 12, 1994.

Effective January 1, 2007, if any Participant dies while performing qualified military service, as defined under Code Section 414(u), the survivors of the Participant are entitled to any additional benefits (other than contributions relating to the period of qualified military service, but including vesting service credit for such period and any ancillary life insurance or other survivor benefits) that would have been provided under this Plan had the Participant resumed employment on the day preceding the Participant's death and then terminated employment on account of death.

For years beginning after December 31, 2008: (i) an individual receiving a differential wage payment, as defined by Code Section 3401(h)(2), is treated as an employee of the employer making the payment; and (ii) the differential wage payment is treated as compensation for purposes of Code Section 415(c)(3) and Treasury Reg. §1.415(c)-2.

12.11 **ELECTRONIC MEDIA**. Effective for applicable notices, elections and consents provided or made for a Participant, Beneficiary, alternate payee or individual entitled to benefits under the Plan, the use of electronic media to provide such applicable notices and make such elections and consents as described in Section 1.401(a)-21 of the Treasury regulations, is permitted.

** * * * End of Article 12 * * * **

## ARTICLE 13.
## EXCLUSIVE BENEFIT, AMENDMENT, TERMINATION

13.1 **EXCLUSIVE BENEFIT**. Except as provided under Article 3, relating to utilization of Forfeitures to reduce Employer Contributions, the Employer shall have no beneficial interest in any asset of the Trust and no part of any asset in the Trust shall ever revert to or be repaid to an Employer, either directly or indirectly; nor prior to the satisfaction of all liabilities with respect to the Participants and their Beneficiaries under the Plan, shall any part of the corpus or income of the Trust Fund, or any asset of the Trust, be (at any time) used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries. Notwithstanding the foregoing provision for impossibility of diversion of Trust assets to the Employer, if the Commissioner of Internal Revenue, upon the Employer's request for initial approval of this Plan, determines that the Trust created under the Plan is not a qualified trust exempt from Federal income tax, then the Trustees, upon written notice from the Employer, shall return the Employer's contributions (and earnings increment attributable to the contributions) to the Employer. The Trustees must make the return of the Employer contribution under this Section 13.1 within one year of a final disposition of the Employer's request for initial approval of the Plan. The Plan and Trust shall terminate upon the Trustees' return of the Employer's contributions and earnings increment.

13.2 **AMENDMENT BY EMPLOYER**.

(a) The Employer reserves the right to amend the Plan and the Trust Agreement from time to time, provided that: (1) except as otherwise provided hereafter in this subsection (a), at least sixty-five percent (65%) of the participating Employees who are affected by such amendment approve of it; (2) no amendment will reduce the non-forfeitable interest in the Accrued Benefit of any Participant, Former Participant or Beneficiary as of the date of such amendment; and (3) no amendment will result in any part of the Trust Fund reverting or being paid to the Employer. To the extent not prohibited by applicable law, the Plan and the Trust Agreement may be amended by written agreement of the Employer and all of the then acting members of the Plan Administration Committee without approval of at least sixty-five percent (65%) of the participating Employees who are affected by such amendment if, but only if: (1) the Plan Administration Committee and the Employer determine that such amendment is required in order to obtain or maintain the Plan's or the Trust's initial or continued qualification under Code Section 401 or the Trust's tax-exempt status under Code Section 501, as the same may be amended, [the Plan Administration Committee and the Employer may rely upon the good faith advice of its pension or tax counsel in making any such determination]; and (2) the Plan Administration Committee and the Employer determine that such amendment does not affect the rights or interests of any Participant, Former Participant or Beneficiary in the Plan or in their Plan benefit in a material way.

(b) No amendment may authorize or permit any of the Trust Fund (other than the part which is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the

Participants or their Beneficiaries or estates. No amendment may cause or permit any portion of the Trust Fund to revert to or become a property of the Employer. The Employer also may not make any amendment which affects the rights, duties or responsibilities of the Trustees, the Plan Administrator or the Plan Administration Committee without the written consent of the affected Trustees, the Plan Administrator or the affected member of the Plan Administration Committee.

(c) With regard to any amendment of the Plan and Trust Agreement which alters in any way the benefits received by the Participants under the Plan, the Plan Administration Committee shall represent and be the agent for the Participants in the negotiations with the Employer regarding such amendments.

13.3 **CONTINUANCE OF THE PLAN**. The Employer expects to continue this Plan and Trust indefinitely. However, in the event that the Employer is legally dissolved pursuant to federal or state statute, court order or judicial decision, the Employer may terminate the Plan and Trust, but only if such termination is permitted under applicable Colorado law.

13.4 **FULL VESTING ON TERMINATION**. Notwithstanding any other provision of this Plan to the contrary, upon either full or partial termination of the Plan by the Employer at any time, an affected Participant's right to his or her Accrued Benefit shall be one hundred percent (100%) Nonforfeitable.

13.5 **MERGER**. Applicable Colorado law may currently prohibit the merger or consolidation of this Plan with, or the transfer of its assets or liabilities to, another qualified deferred compensation plan. However, in the event that applicable Colorado law would ever permit this Plan to merge or consolidate with, or transfer its assets or liabilities to, any other qualified deferred compensation plan, and subject to Section 13.2, the Trustees shall not consent to, or be a party to, any merger or consolidation with another plan, or to a transfer of assets or liabilities to another plan, unless immediately after the merger, consolidation or transfer, the surviving Plan provides each Participant a benefit equal to or greater than the benefit each Participant would have received had the Plan terminated immediately before the merger or consolidation or transfer. The Trustees possess the specific authority to enter into merger agreements or direct transfer of assets agreements with the trustees of other retirement plans described in Code Section 401(a), including an elective transfer, and to accept the direct transfer of plan assets, or to transfer plan assets, as a party to any such agreement. Prior to termination of employment with the Employer, but no sooner than one (1) year after the DB Plan Participant Effective Date, a Participant whose Accrued Benefit derived from Employer Contributions is 100% Nonforfeitable may elect, using such form and at such time as prescribed by the Plan Administration Committee, to purchase service credit in the DB Plan, in accordance with the provisions of the DB Plan, by a trustee-to-trustee transfer to the DB Plan. Such trustee-to-trustee transfer will be treated as complying with the direct transfer agreement requirement of this Section.

The Trustees may accept a direct transfer of plan assets on behalf of an Employee prior to the date the Employee satisfies the Plan's eligibility condition(s). If the Trustees accepts a direct transfer of plan assets, the Plan Administration Committee and Trustees shall treat the Employee as a Participant for all purposes of the Plan except the Employee may not make Participant Mandatory Contributions under Article 4 nor shall the Employee share in Employer Contributions or Forfeitures under the Plan until he or she actually becomes a Participant in the Plan.

The Trustees shall not consent to, or be a party to a merger, consolidation or transfer of assets with a pension plan that is subject to the provisions of the Code and ERISA related to qualified joint and survivor annuities and preretirement survivor annuities, except with respect to an "elective transfer", as such term is described in Treasury Regulation Section 1.411(d)-4, Q & A3. The Trustees shall hold, administer and distribute the transferred assets as a part of the Trust Fund and the Trustees shall maintain a separate Employer contribution Account for the benefit of the Employee on whose behalf the Trustees accepted the transfer in order to reflect the value of the transferred assets.

13.6 **TERMINATION**. Upon termination of the Plan, the distribution provisions of Article 6 shall remain operative, with the following exception: the Participant or the Beneficiary, in addition to the distribution events permitted under Article 6, may elect to have the Trustees commence distribution of his or her Nonforfeitable Accrued Benefit as soon as administratively practicable after the Plan terminates.

To liquidate the Trust, the Plan Administration Committee shall purchase a deferred annuity contract for each Participant which protects the Participant's distribution rights under the Plan, if the Participant does not elect an immediate distribution pursuant to the preceding sentence and the distribution provisions of Article 6. The Trust shall continue until the Trustees in accordance with the direction of the Plan Administration Committee has distributed all of the benefits under the Plan.

On each Accounting Date, the Plan Administration Committee shall credit any part of a Participant's Accrued Benefit retained in the Trust with its proportionate share of the Trust's income, expenses, gains and losses, both realized and unrealized. A resolution or amendment to freeze all future benefit accrual but otherwise to continue maintenance of this Plan, is not a termination for purposes of this Section 13.6.

13.7 **PLAN TO CONFORM TO CODE AND COLORADO LAWS**. It is the intention of the Employer that it shall be impossible for any part of the Trust Fund ever to be used for or diverted to purposes other than for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering the Plan and Trust Fund. The Plan and Trust Agreement will, therefore, be construed and administered to follow the spirit and intent of the Code and applicable Colorado laws.

13.8 **APPLICABILITY**. The provisions of this Plan and Trust shall apply only to an Employee who terminates employment on or after the Effective Date. The rights and Plan Benefits, if any, of an employee of the Employer whose employment terminates prior to the Effective Date shall be determined in accordance with the provisions of the Prior Plan, if any, in effect on the date his or her employment terminated.

**** * * End of Article 13 * * * ****

This Plan and Trust Agreement may be executed by original signature or electronic signature in multiple counterparts and may be delivered by fax or other electronic means, each of which shall be deemed to be an original, and all of which, when taken together shall constitute one (1) document.

Subject to an approval in an election of Participants as required in Section 13.2(a) for amendments requiring a Participant election, which approval has already been obtained, the Employer and each member of the Plan Administration Committee (who is also a Trustee) has executed this Plan and Trust Agreement in Aurora, Colorado on each date indicated below.

ATTEST:

______________________________
Kadee Rodriguez, City Clerk

Approved as to Form:

______________________________
Daniel Brotzman, City Attorney

**EMPLOYER**

By: ______________________________
Mike Coffman, Mayor

Dated:____________________________

**PLAN ADMINISTRATION COMMITTEE/TRUSTEES**

______________________________
Brian Kelly

Dated:____________________________

______________________________
Kris McDowell

Dated:____________________________

______________________________
Heath Graw

Dated:____________________________

______________________________
Douglas Daufeldt

Dated:____________________________

______________________________
Wynne Shaw

Dated:____________________________

**MONEY PURCHASE PENSION PLAN AND TRUST AGREEMENT OF THE POLICE DEPARTMENT OF THE CITY OF AURORA (AS AMENDED AND RESTATED EFFECTIVE NOVEMBER 30, 2021) ("PLAN")**

**SUMMARY OF MAJOR CHANGES FOR THE AMENDED AND RESTATED PLAN**

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1. **Witnesseth.**

   Amended the first paragraph to reflect the November 30, 2021 effective date.

2. **Section 1.7. Compensation.**

   Amended to (a) reference pertinent City Council resolutions; (b) reference other compensation as detailed in the Employee Manual (effective January 1, 2021); (c) include regular Compensation for services paid post-severance that would have been paid if Employee had continued employment; and (d) exclude any payments not previously described that are paid post-severance.

3. **Section 1.9. DB Plan.**

   Added this definition, to identify the Retirement Plan of the Police Department of the City of Aurora. Revised other sections to reflect the proper cross-references in each section, due to the addition of the new definition.

4. **Section 1.10. DB Plan Participant.**

   Added this definition, to describe a participant who has made an irrevocable election to participate in the DB Plan. Revised other sections to reflect the proper cross-references in each section, due to the addition of the new definition.

5. **Section 1.11. DB Plan Participant Effective Date.**

   Added this definition, to reflect the date on which the DB Plan Participant commences participation in the DB Plan. Revised other sections to reflect the proper cross-references in each section, due to the addition of the new definition.

6. **Section 1.13. Effective Date.**

   Revised to reflect the new general effective date of the amended and restated Plan.

7. **Section 2.3. Mandatory Participation Plan.**

   Amended to (a) remove special police chief provisions; and (b) describe the irrevocable elections to participate in the DB Plan for active employees and new hires.

8. **<u>Section 3.1. Employer Contributions.</u>**

Amended to reflect that the Employer will make contributions on behalf of each Participant, for the following periods and in the following amounts: (a) for the first payroll period beginning on or after December 21, 2019, and ending on the last payroll period prior to the first payroll period beginning on or after January 1, 2022, an amount that together with reallocated forfeitures equals 12% of each Participant's Compensation; and (b) for the first payroll period beginning on or after January 1, 2022, and each payroll period thereafter, an amount together with reallocated forfeitures equals 12% of each Participant's Compensation, provided, however, for a DB Plan Participant, an amount equal to 3.75% of the DB Plan Participant's Compensation beginning on the DB Plan Participant's Effective Date.

9. **<u>Section 4.1. Participant Mandatory Contributions.</u>**

Amended to reflect that the Participant shall be required to make contributions for the following periods and in the following amounts: (a) for the first payroll period beginning or after December 21, 2019, and ending on the last payroll period prior to the first payroll period beginning on or after January 1, 2022, an amount equal to 12% of each Participant's Compensation; and (b) for the first payroll period beginning on or after January 1, 2022, and each payroll period thereafter, an amount equal to 12% of each Participant's Compensation, provided, however, for a DB Plan Participant, an amount equal to 3.75% of the DB Plan Participant's Compensation beginning on the DB Plan Participant's Effective Date.

10. **<u>Section 6.7. In-Service Distribution.</u>**

Amended to reflect that (a) the In-Service Distribution provisions only apply to Participants whose employment commencement date is on or before December 31, 2021, and (b) Participants whose employment commencement date is after December 31, 2021, are not eligible to elect to receive an In-Service Distribution.

11. **<u>Section 9.1 Plan Administration Committee.</u>**

Revised to add the Finance Director for the City and a Deputy Manager of the City appointed by the City Manager as ex-officio members of the Plan Administration Committee.

12. **<u>Section 13.5. Merger.</u>**

Amended to reflect that a Participant whose Accrued Benefit derived from Employer Contributions is 100% Nonforfeitable, prior to termination of employment, but no sooner than one year after the DB Plan Participant Effective Date, may elect to purchase service credit in the DB Plan by trustee-to-trustee transfer to the DB Plan, in accordance with the provisions of the DB Plan.

# RETIREMENT PLAN AND TRUST AGREEMENT
## OF
# THE POLICE DEPARTMENT OF THE CITY OF AURORA

## (EFFECTIVE JANUARY 1, 2022)

## RETIREMENT PLAN
## OF
## THE POLICE DEPARTMENT OF THE CITY OF AURORA

Page No.

# ARTICLE I

## Purpose

The City of Aurora, Colorado ("City") hereby establishes a Plan effective January 1, 2022, for the administration and distribution of contributions made by the Employer and its eligible Employees for the purpose of providing retirement benefits for its eligible Employees.

This Plan and Trust are intended to comply with the requirements of Code Sections 401(a) and 501(a).

The provisions of this Plan shall apply solely to an Employee whose employment with the Employer terminates on or after the Effective Date of the Plan, unless otherwise provided herein.

## ARTICLE II

## Definitions and Construction

2.1 Definitions: Where the following words and phrases appear and are capitalized in this Plan, they shall have the respective meaning set forth below, unless their context clearly indicates to the contrary:

(a) Accrued Benefit. The benefit determined under the Plan expressed in the form of a monthly benefit commencing at Normal Retirement Date.

(b) Actuarial (or Actuarially) Equivalent or Equivalence. The following assumptions shall be used to determine Actuarial Equivalent or Equivalence for all purposes under the Plan except as otherwise specifically provided in the Plan, or where otherwise required by the Code, the Treasury Regulations, and other U.S. federal guidance including for equality in value of the aggregate amounts expected to be received under different forms of payment and purchase of service amounts based on interest rate and mortality assumptions as defined below, or until changed by Plan amendment.

(1) Interest rate assumption for alternative periodic benefits. The interest rate used for purposes of computing alternative periodic forms of benefits shall be six percent (6%) per year compounded annually until changed by Plan amendment.

(2) Interest rate assumption for actuarial single-sum payments. The interest rate used for purposes of computing single-sum payments shall be six percent (6%) per year compounded annually until changed by Plan amendment.

(3) Cost-of-living assumption for alternative periodic benefits, purchase of service amounts and single-sum payments. The cost-of-living assumption used for purposes of computing alternative periodic forms of benefits, purchase of service amounts and single-sum payments shall be zero percent (0%) per year compounded annually until changed by Plan amendment.

(4) Mortality assumptions. The mortality assumptions for calculations based upon the mortality of an Employee or Beneficiary shall be the following:

(A) Employee (Pre-Retirement): Pub-2010 Safety Employee Mortality for Males (amount weighted), projected to 2036 using the ultimate rates from Scale MP2019;

(B) Employee (Post-Retirement): Pub-2010 Safety Retiree Mortality for Males (amount-weighted), projected to 2028 using the ultimate rates from Scale MP2019; and

(C) Beneficiary (Post-Retirement): Pub-2010 General Employee Retiree Mortality for Females (amount-weighted), projected to 2028 using the ultimate rates from Scale MP2019.

Said mortality assumptions shall be used until changed by Plan amendment.

(c) Average Monthly Compensation. The average monthly Compensation of the Employee during the 36 consecutive calendar months in the last 120 or fewer calendar months of employment affording the highest such average determined based on pay dates and including regular Compensation paid after severance from employment as described in Section 2.1(f), including months as an Employee prior to membership in the Plan, or if the period of employment is less than 36 months, during all of the months of the Employee’s employment. However, should a considered period contain any months for which no Compensation was received, such months shall be disregarded in the count of consecutive months and shall not cause months that are not otherwise consecutive to fail to be consecutive.

(d) Beneficiary. The person (or persons) who survives the Member and is designated by a Member pursuant to the latest written notice which the Member has filed with the Plan Administration Committee (or its designee) to receive payment to which a Beneficiary may become entitled under this Plan. If the Member did not designate a Beneficiary, the Default Beneficiary rules in Section 9.4 shall apply.

(e) Code. This term means the U.S. Internal Revenue Code of 1986, as amended from time to time.

(f) Compensation. Means the total base salary set forth in the Employer’s Compensation Ordinance and/or pertinent City Council resolutions, as from time to time in effect, for the rank and grade held by the Employee concerned and paid by the Employer to the Employee for services rendered by such Employee as an Employee, including longevity pay (where eligible therefor) and other compensation as detailed in the Employee Manual, but excluding bonuses, commissions, overtime pay, holiday pay, other taxable income, and other forms of extra pay, received for services performed as an Employee for the portion of the Plan Year during which the Employee was a Member. However, Compensation shall not be reduced by the Member’s mandatory contributions which are picked up by the Employer pursuant to Section 4.2, nor shall Compensation be reduced by any Elective Contributions, as defined in Section 2.1(o).

Any reference in this Plan to Compensation is a reference to the definition in this Section 2.1(f), unless the Plan reference specifies a modification to this definition. The Plan Administration Committee will take into account only Compensation actually paid during (or as permitted under the Code, paid for) the relevant period. A Compensation payment includes Compensation by the Employer through another person under the common paymaster provisions in Code Sections 3121 and 3306.

In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual Compensation taken into account under the Plan for any Plan Year shall not exceed the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) annual compensation limit.

The EGTRRA annual compensation limit is $200,000, as adjusted by the Commissioner for increases in the cost of living in accordance with Code Section 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the EGTRRA annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Compensation shall also include regular Compensation (as defined above which excludes leave cashouts) for services, paid by the later of 2½ months after a Member's severance from employment with the Employer or the end of the Plan Year that includes the date of the Member's severance from employment, if it is a payment that, absent a severance from employment, would have been paid to the Employee while the Employee continued in employment with the Employer.

Any payments not described above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the Plan Year that includes the date of severance from employment.

(g) Contribution Accumulation. An amount equal to a Member's contributions pursuant to Section 4.2 or otherwise and amounts paid to purchase or restore service, credited with interest which begins to accrue on the first day of the month following the date the Member's contribution (or service purchase/restoration, if applicable) is made, through the earliest of a Member's retirement, commencement of participation in the DROP under Section 8.5, payment upon death, or receipt of refund, on such amounts at the rate of 2½% per annum, compounded annually, or until changed by Plan amendment.

(h) Covered Employment. This term means employment by the Employer as an Employee but excludes leased employees as defined in Code Section 414(n).

(i) Credited Service. This term is defined in Article III.

(j) CRS. This term shall mean Colorado Revised Statutes, as amended.

(k) Deferred Vested Member. A Member whose employment has terminated and who is entitled to receive a Deferred Vested Pension (as defined in Section 6.3).

(l) Disabled/Disability. A Member shall be Disabled (or have a Disability) when determined by the Board of Directors of the FPPA to be eligible for disability benefits as a result of such Member's having a permanent occupational disability or a total disability, and whether on-duty or whether not on-duty, as provided under and defined in CRS Title 31, Article 31, Part 8, and specifically in CRS Sections 31-31-801, 31-31-803 and 31-31-806.5, or any successor provision thereto.

(m) Disabled Member. A Member who is Disabled.

(n) Effective Date. The Effective Date of this Plan is January 1, 2022.

(o) Elective Contributions. Means amounts excludible from the Employee's gross income under Code Sections 125, 132(f)(4), 402(e)(3), 402(h)(2), 403(b), 408(p), 457(b) or 414(v), and contributed by the Employer, at the Employee's election, to a cafeteria plan, a qualified transportation fringe benefit plan, a 401(k) arrangement, a SARSEP, a tax-sheltered annuity, a SIMPLE plan or a Code Section 457(b) plan.

(p) Employee. Any person

(1) who is employed by the Employer in the Civil Service;

(2) who is paid by the Employer on a full-time salary basis;

(3) whose duties are directly involved with the provision of police protection; and

(4) who can normally be expected to be credited with at least one thousand six hundred (1,600) Hours of Service each Plan Year.

The term Employee shall not mean or include clerical or other personnel whose services for the Employer are auxiliary to actual police protection services. Leased employees, as defined in Code Section 414(n), shall be treated as Employees hereunder. However, see the exclusion for leased employees under Covered Employment.

The Employer shall, under its current employment policy, make the determination of whether a person employed by it meets the definition of Employee as set forth in this Section 2.1(p).

(q) Employer. The Police Department of the City of Aurora, Colorado ("Aurora Police Department"), provided, however, that Employer means the City of Aurora, Colorado (and any member of the group treated as a single employer under Code Section 414(b), (c), (m) or (o)) for purposes of determining (1) whether an Employee has terminated employment or retired, unless otherwise specifically provided, (2) Vesting Service, and (3) the Employer under USERRA.

(r) FPPA. This term means the Colorado Fire and Police Pension Association established pursuant to CRS, Title 31, Article 31, Part 2.

(s) Funding Agreement. An insurance contract with an Insurance Company, if any, or the trust agreement with the Trustee for the purpose of the investment and management of Retirement Trust Fund assets.

(t) Insurance Company. Any Insurance Company or Companies appointed by the Plan Administration Committee as provided in Article X.

(u) IRS. This term means the U.S. Internal Revenue Service.

(v) Leave of Absence. Any absence authorized by the Employer under the Employer's standard personnel practices, and supplemented by the labor agreement between the Employer and the recognized bargaining unit, as may from time to time be in effect. An absence due to military service described in CRS Section 28-3-601, et seq. (or other applicable law), including annual, extended and emergency military leave, shall be governed by CRS Section 28-3-601, et seq. and shall be considered a Leave of Absence hereunder, provided that the absence meets the requirements set forth in CRS Section 28-3-601, et seq.

(w) Member. Any Employee in Covered Employment who has made an irrevocable election to be included in the membership of the Plan. Any individual who agrees with the Employer that the individual's services are to be performed as a leased employee or an independent contractor shall not be a Member regardless of any classification as a common-law employee by the IRS or any other governmental agency, or any court of competent jurisdiction.

(x) Member's DB Plan Effective Date. The date as specified in the participation election made by a Member on which the Member commences participation in this Plan. The Member's DB Plan Effective Date must commence with the first day of the first complete payroll period ending in the calendar month immediately following the date the election is made except as provided in the following sentence. For the initial enrollment effective January 1, 2022, the election may be made no earlier than December 1, 2021.

(y) Money Purchase Pension Plan or MPPP. The Money Purchase Pension Plan and Trust Agreement of the Police Department of the City of Aurora (Amended and Restated Effective November 30, 2021), as amended from time to time.

(z) Normal Retirement Age. The earlier of

(1) the later of the date a Member attains age 65 or the date such Member completes five years of Vesting Service; or

(2) the date the Member's age plus years of Credited Service is equal to or greater than 80; provided the Member has attained at least age 50.

(aa) Normal Retirement Date. For purposes of the commencement of a Pension, the term shall mean the first day of the month coinciding with or next following a Member's Normal Retirement Age provided the Member has terminated employment with the Aurora Police Department.

(bb) Pension. A series of monthly amounts which are payable to a person who is entitled to receive benefits under the Plan.

(cc) Pension Commencement Date. This term is defined in Section 8.1(b).

(dd) Plan. This Retirement Plan and Trust Agreement of the Police Department of the City of Aurora (Effective January 1, 2022), as amended from time to time.

(ee) Plan Administration Committee. The Plan Administration Committee established pursuant to Article IX which shall also serve as the Plan Administration Committee for the Money Purchase Pension Plan.

(ff) Plan Year. The 12-month period beginning on January 1st and ending on December 31st during the Plan's existence.

(gg) Qualified Employment. Full-time employment as a law enforcement officer with any U.S. federal, state, or local law enforcement agency (other than (1) military service and (2) employment by the Police Department of the City of Aurora), any United States military service (other than Qualified Military Service) for which the Member was honorably discharged, and any service with the United States Public Health Service Commissioned Corps (other than Qualified Military Service) for which the Member was honorably discharged, provided to the extent necessary to satisfy Code Section 415(n), if applicable, that such service is not recognized if such service would cause a Member to receive a retirement benefit for the same service under more than one plan (excluding Social Security).

(hh) Qualified Military Service. Any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service in accordance with Code Section 414(u)(5).

(ii) Retired Member. A former Member whose employment has terminated by reason of Retirement and who is receiving or entitled to receive, or whose Beneficiary or Default Beneficiary under Section 9.4 is entitled to receive, benefits under this Plan.

(jj) Retirement. Termination of employment after a Member has fulfilled all age and service requirements for a Pension. Retirement shall be considered as commencing on the day immediately following a Member's last day of employment (or authorized Leave of Absence, if later). A Member shall not be eligible for Retirement if he is employed by the Employer as an Employee, unless the Member has attained his Normal Retirement Age and has terminated employment with the Aurora Police Department.

(kk) Retirement Trust Fund, Trust Fund or Trust. The trust fund for the operation of the Plan, titled the City of Aurora Police Retirement Plan Trust, maintained in accordance with the terms of the Funding Agreement or a separate Funding Agreement, as from time to time amended, and incorporated herein by reference, to which contributions are made, from which benefits and expenses of the Plan are paid, and which constitutes a part of this Plan and if a separate document, is incorporated herein by reference. "Retirement Trust Fund," "Trust Fund" or "Trust" when used in the Plan and

Funding Agreement shall refer to the City of Aurora Police Retirement Plan Trust and/or the assets thereof.

(ll) Termination Benefit. This term is defined in Section 7.1.

(mm) Trustee. The members of the Plan Administration Committee shall serve as the Trustees unless the Plan Administration Committee appoints an individual, corporation or an appropriate entity as Trustee to administer the Retirement Trust Fund in accordance with a trust agreement.

(nn) USERRA. Uniformed Services Employment and Reemployment Rights Act of 1994, as amended from time to time.

(oo) Vested Member. An active Member in Covered Employment who has completed five or more years of Vesting Service or who has attained his Normal Retirement Age, if earlier.

(pp) Vesting Service. This term is defined in Article III.

2.2 Construction: The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender and words used in the singular shall include the plural unless the context clearly indicates to the contrary. Words such as "hereof," "herein," and "hereunder" shall refer to the entire Plan, not to any particular provision or section. Specific sections of the Plan shall be referenced herein by Section number.

## ARTICLE III

## Service, Eligibility, and Membership

3.1 Vesting Service: Except as provided in this Section 3.1, Vesting Service shall include all service, from the Member's employment commencement date as an Employee to the date of termination of employment, including any period of absence which is not considered a Break in Service as described in Section 3.4 hereof. Vesting Service shall also include the period of time during which a Member ceases to be in Covered Employment but continues to be employed by the Employer. If any break or breaks shall occur in the service of a Member, his Vesting Service prior to such break shall not be forfeited if such Member did not receive a refund of his Contribution Accumulation upon his termination.

3.2 Credited Service: Credited Service shall be used to determine a Member's benefit accrual and eligibility for retirement benefits under the Plan. A Member's Credited Service is the elapsed time period from the membership commencement date to the date of termination of employment with the Aurora Police Department, except as otherwise stated within this section. Generally, one day of Credited Service shall be credited for each day in the elapsed time period. A Member's Credited Service includes service purchased according to Section 6.4 or repaid. Credited Service shall be credited on the basis of 1/365th year (or 1/366$^{th}$ year in leap years) for each day of Covered Employment as an Employee, or as a Member of the Plan, if less, unless limited by Section 3.3. A Member who is on a Leave of Absence for Qualified Military Service shall be credited with each day in accordance with Code Section 414(u).

3.3 Limitations on Credited Service: Credited Service shall not include any period of service or hours during which the Employee failed to make any Member Contributions required by the Plan. No period of Credited Service shall be deemed to be increased or extended by overtime. Notwithstanding any other Plan provisions to the contrary, Credited Service shall not include any Breaks in Service, nor any unpaid period of absence which is not considered a Break in Service, as described in Section 3.4 hereof.

3.4 Breaks in Service:

(a) General. If any break or breaks shall occur in the service of a Member, none of his service prior to the last such break shall be included in his Credited Service or Vesting Service, except as provided in Section 3.8. The Plan Administration Committee shall have the power to determine when a Break or Breaks in Service shall have occurred and such determination shall be made in a nondiscriminatory manner.

(b) Exceptions to Breaks in Service. None of the following shall be considered a Break in Service.

(1) A temporary layoff because of an illness or for purposes of economy, suspension, or dismissal, followed by reinstatement, reemployment or reappointment within one year.

(2) A formal Leave of Absence (other than for Qualified Military Service) followed by reinstatement, reemployment or reappointment within one year after termination of the Leave of Absence.

(3) A Leave of Absence for Qualified Military Service, provided that the Member meets the qualifications under USERRA for reemployment, including receiving an honorable discharge from the military, and returns to the service of the Employer within the time period specified under USERRA, and provided further that the cumulative period of Qualified Military Service does not exceed five (5) years in his employment relationship with the Employer (with limited exceptions as provided under USERRA).

(4) The first 12 months of any absence (not already counted hereunder) by reason of pregnancy of the Member, birth of the Member's child, placement of a child with the Member in connection with the adoption of such child by such Member, and absence for purposes of caring for such a child for a period beginning immediately following such birth or placement.

(5) A leave of absence pursuant to the Family and Medical Leave Act of 1993, as amended.

(c) Failure to Timely Return from Leave of Absence. A Leave of Absence shall be considered a Break in Service if a Member does not return to the service of the Employer within the time specified by (1) an authorized Leave of Absence or (2) a Leave of Absence required by U.S. federal law, including the time specified under USERRA following an absence for Qualified Military Service.

3.5 Membership: An Employee in Covered Employment shall become a Member only by making an irrevocable election by the time and in the manner prescribed by the Plan Administration Committee. Such irrevocable election must be completed by the fifteenth ($15^{th}$) day of the calendar month and shall be effective commencing with the first complete payroll period ending in the calendar month immediately following the date the election is made, except as provided in the following sentence. For the initial enrollment effective January 1, 2022, the election may be made no earlier than December 1, 2021 and be completed by December 15, 2021 (or for any Employee in Covered Employment who is on a Leave of Absence for Qualified Military Service, December 31, 2021). Furthermore, once an election has been made to become a Member, such election may not be changed even for rehired Employees.

Notwithstanding the foregoing:

(a) Any Employee in Covered Employment hired or rehired (provided no prior election has been made) by the Employer after January 1, 2022, must elect to become a Member within thirty-six (36) months of such hire or rehire date, and

(b) Any Employee in Covered Employment not described in (a) above must elect to become a Member no later than June 30, 2023;

provided, however, that the Plan Administration Committee may establish appropriate rules with respect to an Employee in Covered Employment who is on a Leave of Absence for Qualified

Military Service that extends such election deadlines applicable to such Employee by up to the length of such Employee's Leave of Absence for Qualified Military Service.

3.6 Termination of Membership: Active membership in the Plan shall terminate upon Retirement or upon the earlier termination of Covered Employment of a Member.

Notwithstanding the above, a Member who ceases to be in Covered Employment and terminated employment with the Aurora Police Department but continues to be employed by the Employer shall leave his Contribution Accumulation on deposit in the Retirement Trust Fund, but such Member who is no longer in Covered Employment may commence receipt of his Normal Pension after attainment of his Normal Retirement Age.

3.7 Withdrawal from Membership: Once an Employee has become a Member of the Plan, he may not withdraw from membership unless he ceases to be eligible for membership or unless he becomes eligible for benefits under the Plan.

3.8 Break in Service Prior to Retirement: If a Member terminates employment and does not receive a refund of his Contribution Accumulation upon his termination, his prior Credited Service and Vesting Service shall not be forfeited, if applicable.

3.9 Leave of Absence for Qualified Military Service: Notwithstanding any provision of this Plan to the contrary:

(a) contributions, benefits and service credit with respect to Qualified Military Service shall be provided in accordance with Code Section 414(u). The Plan Administration Committee shall establish appropriate procedures for a Member to make up contributions he missed by reason of such Leave of Absence for Qualified Military Service, on or prior to his last day of employment with his post-service Employer; and

(b) if a Member dies while performing Qualified Military Service, the survivors of the Member are entitled to any additional benefits (other than benefit accruals or contributions relating to the period of Qualified Military Service but including Vesting Service Credit and other survivor benefits) provided under this Plan had the Member resumed employment and then terminated employment on account of death.

## ARTICLE IV

## Contributions

4.1 Contributions by the Employer:

(a) The Employer shall make contributions to the Retirement Trust Fund equal to 8.25% of each Member's Compensation per pay period, commencing effective with the Member's DB Plan Effective Date; provided that once the Plan is funded on an actuarially sound basis, the Employer, after consultation with and agreement by the Plan Administration Committee, which agreement shall not be unreasonably withheld, may adjust its contribution rate to the Plan to take into account advance funding of the Employer contributions made to the Plan.

(b) In accordance with USERRA, when the Member contributes his make-up contributions, the Employer will also make timely contributions to the Retirement Trust Fund based on the same Compensation used to determine the amount of contributions made up by the Member and the Employer contribution rates for the Plan Years for which the contributions are made up by the Member.

4.2 Mandatory Member Contribution Amounts: Each Member shall make mandatory contributions to the Retirement Trust Fund equal to 8.25% of such Member's Compensation per pay period, commencing effective with the Member's DB Plan Effective Date. Contributions shall be made by payroll deductions. Such amounts shall be paid by the Employer to the Trust in lieu of such contribution being paid directly by each Member. No Member shall have the option of choosing to have the Employer pay the Employee directly the mandatory Member contribution required under the Plan instead of having such mandatory Member contribution picked up and paid over to the Trust by the Employer. Although the mandatory Member contribution under this Section is otherwise designated and treated herein as a contribution of such Member, such contribution shall be treated for federal income tax purposes as an Employer contribution under Code Section 414(h)(2). For purposes of determining the amount of the contributions set for in this Section, Compensation as defined in Section 2.1 shall be used. However, for federal income tax purposes, the amount of a Member's taxable income for withholding tax purposes shall not include the mandatory Member contribution picked up by the Employer under this Section. For purposes of the Plan, the Member's contribution picked up by the Employer under this Section 4.2 shall be allocated to the Member's Contribution Accumulation in the same manner as if it had been paid directly to the Plan by the Member.

4.3 Application of Forfeitures: Any amount forfeited because of termination of employment of a Member prior to his having acquired a fully vested right to Retirement Benefits, because of death of any Member or for any other reason, shall not be applied to increase the benefits provided by the Plan.

4.4 Expense Contribution: The Employer may make contributions to the Retirement Trust Fund to be used to pay some or all of the expenses described in Section 9.8 and/or Article X.

## ARTICLE V

## Requirements for Retirement Benefits

5.1 Normal Retirement or Delayed Retirement:

(a) Normal Retirement. A Member shall be eligible for a Normal Pension (described in Section 6.1 commencing as of his Normal Retirement Date, or Delayed Retirement Date (described in Section 5.1(b)), as applicable,

(1) if his employment terminates on or after his Normal Retirement Age and he is not employed by the Employer or

(2) if he is employed by the Employer but such Member has terminated employment with the Aurora Police Department, and he has attained his Normal Retirement Age.

Notwithstanding the foregoing, a Member must file a benefit election form in accordance with the provisions of Section 8.1 before payment of his Normal Pension shall commence.

(b) Delayed Retirement. In the event a Member continues his employment with the Aurora Police Department beyond his Normal Retirement Age, such Member shall continue to contribute to the Plan, as provided in Section 4.2, and shall continue to accrue a benefit as provided in Section 6.1 for such period of employment. Such Member's Delayed Retirement Date shall be as of the first day of the month coincident with or next following the date of his actual Retirement. Notwithstanding the foregoing, a Member must file a benefit election form in accordance with the provisions of Section 8.1 before payment of his Pension shall commence.

5.2 Early Retirement: A Member shall be eligible for Early Retirement if his employment with the Employer terminates after he has attained the age of 50 years and he has completed at least 5 years of Vesting Service. A Member eligible for an Early Retirement shall be eligible for an Early Retirement Pension (described in Section 6.2 commencing as of his Normal Retirement Date), provided he is then living. Such Member may request the commencement of his Early Retirement Pension as of the first day of the month coinciding with or next following his Early Retirement, or as of the first day of any subsequent month which precedes his Normal Retirement Date, but the amount thereof shall be adjusted as provided in Section 6.2. Notwithstanding the foregoing, a Member must file a benefit election form in accordance with the provisions of Section 8.1 before payment of his Early Retirement Pension shall commence.

5.3 Deferred Vested Retirement:

(a) A Member shall be eligible for, and may elect, a Deferred Vested Pension commencing as of his Normal Retirement Date, provided:

(1) he is then living;

(2) his employment terminates after he has become a Vested Member;

(3) he is not employed by the Employer; and

(4) he is not eligible for benefits under Section 5.1 or 5.2.

Notwithstanding the foregoing, a Deferred Vested Member must file a benefit election form in accordance with the provisions of Section 8.1 before payment of his Deferred Vested Pension shall commence.

(b) A Deferred Vested Member may request early commencement of his Deferred Vested Pension if such Member requests commencement of his Deferred Vested Pension as of the first day of the month coincident with or next following his 50th birthday or as of the first day of any subsequent month which precedes his Normal Retirement Date. If a Deferred Vested Member eligible to request commencement of his Deferred Vested Pension prior to his Normal Retirement Date makes such election, the amount thereof shall be adjusted as provided in Sections 6.2 and 6.3. Notwithstanding the foregoing, a Deferred Vested Member must file a benefit election form in accordance with the provisions of Section 8.1 before early payment of his Deferred Vested Pension shall commence.

5.4 Latest Date for Commencement of Payment of Benefits: Distribution of a Member's Accrued Benefit must be made or must commence no later than the Required Beginning Date. The Required Beginning Date is April 1 of the calendar year following the later of the calendar year in which the Member (a) attains age 70 ½ for an individual who attains age seventy and one-half (70 ½) before January 1, 2020, or effective for distributions required to be made after December 31, 2019, the calendar year in which the individual attains 72 years of age for an individual who attains age 70 ½ after December 31, 2019 or (b) retires.

The Plan shall comply with the minimum distribution requirements of Code Section 401(a)(9) including the incidental death benefit requirements in Code Section 401(a)(9)(G). All required distributions shall be determined and made in accordance with Code Section 401(a)(9) and the final regulations under Code Section 401(a)(9), including the minimum distribution incidental benefit requirements of the final regulations, including Treasury Regulations Sections 1.401(a)(9)-1 through 1.401(a)(9)-9; provided, however, that for distributions required to be made after December 31, 2019, for individuals who attain 70 ½ years of age after December 31, 2019, such distributions shall take into account that age 70 ½ was stricken and age 72 was inserted in Code Section 401(a)(9)(B)(iv)(I), Code Section 401(a)(9)(C)(i)(I) and Code Section 401(a)(9)(C)(ii)(I). The provisions reflecting Code Section 401(a)(9) override any distribution options in the Plan which are inconsistent with Code Section 401(a)(9). The Plan incorporates by reference any other provisions reflecting Code Section 401(a)(9) that are prescribed by the Commissioner in revenue rulings, notices and other guidance published in the Internal Revenue Bulletin.

Notwithstanding anything herein to the contrary, the Plan, which is a governmental plan (within the meaning of Code Section 414(d)) is treated as having complied with Code Section 401(a)(9) for all years to which Code Section 401(a)(9) applies to the Plan if the Plan complies with a reasonable and good faith interpretation of Code Section 401(a)(9).

## ARTICLE VI

## Amount of Retirement Benefits

6.1 Normal Pension or Delayed Pension: A Member who retires or terminates (including termination with the Aurora Police Department but continuing to work for the Employer but not in Covered Employment) and has met the requirements for a Normal Pension or Delayed Pension shall receive a monthly Pension benefit equal to 2.0% of the Member's Average Monthly Compensation multiplied by the total number of years of Credited Service; provided, however, the monthly Pension benefit shall not exceed 90% of the Member's Average Monthly Compensation.

6.2 Early Retirement Pension: A Member who meets the requirements for an Early Retirement Pension under Section 5.2 shall receive a monthly amount computed as for a Normal Pension, considering his Credited Service and Average Monthly Compensation at the date of his actual Retirement. If a Member eligible for an Early Retirement Pension under Section 5.2 or a Member eligible for a Deferred Vested Pension under Section 5.3 elects a Pension Commencement Date prior to his Normal Retirement Date, such monthly Pension benefit is reduced for each month between the Member's Pension Commencement Date and the Member's Normal Retirement Date. The reduction for early commencement of a monthly Pension benefit is as follows:

(a) 0.292% per month for each month (if any) between:

(1) the Member's Pension Commencement Date, and

(2) the earlier of the Member's Normal Retirement Date and the first of the month coincident with or next following the Member's 55th birthday, plus

(b) 0.375% per month for each month (if any) between:

(1) the later of the Member's Pension Commencement Date and the first of the month coincident with or next following the Member's 55th birthday, and

(2) the earlier of the Member's Normal Retirement Date and the first of the month coincident with or next following the Member's 60th birthday, plus

(c) 0.458% per month for each month (if any) between:

(1) the later of the Member's Pension Commencement Date and the first of the month coincident with or next following the Member's 60th birthday, and

(2) the Member's Normal Retirement Date.

6.3 Deferred Vested Pension:

(a) A Member who meets the requirements for a Deferred Vested Pension may elect to (1) leave his Contribution Accumulation on deposit in the Retirement Trust Fund and become a Deferred Vested Member, or (2) receive, in lieu of all other benefits hereunder, a refund of his Contribution Accumulation.

(b) If the Member elects to receive a cash refund or a direct rollover (or a combination thereof) of his Contribution Accumulation in accordance with Section 7.7, payment shall be made within 90 to 120 days after the later of: (1) his date of termination of employment (or, if a Member has appealed his dismissal, the latest of (A) his date of termination, (B) an adverse Civil Service Commission ruling affirming the termination of employment as regulated by the Aurora City Charter, as amended from time to time, or (C) a final court order entered by a court of competent jurisdiction upholding the Member's termination of employment); or (2) the date he files his election form with the Plan Administration Committee (or its designee). Notwithstanding the foregoing, such Member's refund of Contribution Accumulation shall not be paid during any period in which he is employed by the Employer.

(c) A Deferred Vested Member who meets the requirement for a Deferred Vested Pension under Section 5.3 shall receive a monthly amount payable under Sections 6.1 or 6.2 above, considering his Credited Service at the date of his actual termination of employment and the Member's age at his Pension Commencement Date.

6.4 Purchase of Credited Service:

(a) Subject to 6.4(b) below, a Vested Member may elect to purchase one month of Credited Service for each full month of

(1) full-time Qualified Employment, to a maximum of sixty (60) months of Credited Service; and

(2) full-time employment as a law enforcement officer with the Police Department of the City of Aurora prior to becoming a Member.

(b) Purchase of Credited Service pursuant to Section 6.4(a) shall be subject to all of the following terms and conditions.

(1) After the Employee first becomes a Member of the Plan, the Employee must accrue one year of Credited Service and be a Vested Member in order to be eligible to purchase service credit, and the election to purchase service credit must be made within two years of an Employee's first eligibility to purchase service credit and furthermore such election and purchase must be made at the time and in the manner prescribed by the Plan Administration Committee.

(2) Only one election to purchase Credited Service under this Section 6.4 may be made by a Member, provided, however that such election is still construed to be one election if the funding is from a combination of the funds from the Member's vested Money Purchase Pension Plan account(s) and a Member's 457(b) Plan account(s) as described in Section 6.4(c)(3) below.

(3) For purposes of Section 6.4(a)(1),

(A) a Member must provide certification from the previous employer (or a copy of the military discharge papers) as to the dates of Qualified Employment; and

(B) no service credit may be purchased for any period of employment for which no pay was received.

(4) For purposes of Section 6.4(a)(2), the Plan Administration Committee must be able to verify the dates of full-time employment as a law enforcement officer with the Police Department of the City of Aurora prior to becoming a Member.

(5) A Member may not purchase the same month more than one time even if there is an overlap with previous employment.

(6) The Member transfers to the Plan and Trust, at the time and in the manner prescribed by the Plan Administration Committee, the cost to purchase the Credited Service determined in accordance with Section 6.4(g). For trust-to-trust transfers from the Member's Money Purchase Pension Plan account(s), no such transfer shall be allowed in an amount which would cause the benefit to exceed the limits under Code Section 415(b)(1)(A).

(7) To the extent necessary to satisfy Code Section 415(n), if applicable, the Member must certify that recognition of such Qualified Employment as Credited Service will not cause the Employee to receive a retirement benefit for the same service under more than one plan (excluding Social Security).

(8) The Plan Administration Committee may establish appropriate rules by which a Member may purchase Credited Service where the certifications described above are impossible or impracticable to obtain.

(c) Purchase of Credited Service shall be made by

(1) a one-time trust-to-trust transfer of vested proceeds from the Employee's Money Purchase Pension Plan account(s) (without such funds being made available to the Member) to this Plan, or

(2) a one-time trust-to-trust transfer of vested proceeds from the Employee's 457(b) Plan accounts pursuant to Code Section 457(e)(17) from an

eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state to this Plan, or

(3) a combination of (1) and (2).

Any trust-to-trust transfer from a Member's 457(b) Plan account shall be made within sixty (60) days of a trust-to-trust transfer from the Employee's Money Purchase Pension Plan account. Except as provided in (d) below, no portion of the purchase payment shall include Roth funds or after-tax employee contributions.

(d) The Plan Administration Committee shall establish at least two dates per Plan Year (except as otherwise determined by the Plan Administration Committee, generally in May and November of each Plan Year) when the purchase of Credited Service including, if applicable, the trust-to-trust transfers of vested proceeds from the Employee's Money Purchase Pension Plan Account(s) (without such funds being made available to the Member) to this Plan may be made. Solely in the event that a Member elects such a trust-to-trust transfer of vested proceeds and the Member has after-tax employee contributions in the Money Purchase Pension Plan, then a Member's investment in the contract will be allocated pro rata between the amounts transferred to this Plan and the amounts that remain in the Employee's Money Purchase Pension Plan account(s). In all other circumstances, no portion of the purchase payment shall include Roth funds or after-tax employee contributions.

(e) The purchase payment for Credited Service is due within sixty (60) days of the date the Employee makes the election under Section 6.4(b) or such later date as is administratively feasible as determined by the Plan Administration Committee.

(f) A payment for Credited Service purchase is subject to this Plan's distribution provisions and shall be held in the general assets of this Plan (no separate account shall be established for the Member). Purchased Credited Service shall be credited to the Member upon receipt by the Plan of the payment.

(g) The cost to purchase Credited Service shall be determined by the Plan Administration Committee, in its sole discretion and such cost shall be calculated on an Actuarial Equivalent basis in accordance with Section 2.1(b), including the additional assumptions not defined in Section 2.1(b) or until changed by Plan amendment:

(1) The Member remains in continuous Covered Employment and is assumed to earn projected Credited Service until eligibility for Normal Retirement (reflecting the months of Credited Service purchased), with 3.5% annual salary increases during this period, and

(2) The Member retires immediately upon the date described in (1).

(h) If a Member is eligible to make a repayment of an amount received upon the Member's prior termination of employment upon forfeiture of service credit under the

Plan under Section 11.1, a Member must make such repayment before acquiring additional service credit under this Section 6.4.

(i) The Plan Administration Committee may establish such rules as are necessary to implement the provisions of this Section 6.4, including rules with respect to submission to the IRS for a private letter ruling.

6.5 Non-Automatic Cost of Living Adjustment: Cost of living adjustments shall not be automatic but may be granted on an annual basis as determined by the Plan Administration Committee.

## ARTICLE VII

## Termination, Death and Disability

7.1 Termination Benefit: If any Member's employment terminates before he is eligible for benefits under Article V, the Termination Benefit is a refund of his Contribution Accumulation. Notwithstanding the foregoing, such Member's Termination Benefit shall not be paid during any period in which he is employed by the Employer. Upon election by such Member, such benefit shall be paid in cash in one lump-sum (or in a direct rollover, or a combination thereof), after such Member's termination and shall be in lieu of all other benefits under the Plan. If such Member elects to receive a cash refund of his Contribution Accumulation (or a direct rollover, or a combination thereof in accordance with Section 7.8), payment shall be made within 90 to 120 days after the later of: (a) his date of termination of employment (or, if a Member has appealed his dismissal, the latest of (A) his date of termination, (B) an adverse Civil Service Commission ruling affirming the termination of employment as regulated by the Aurora City Charter, as amended from time to time, or (C) a final court order entered by a court of competent jurisdiction upholding the Member's termination of employment); or (b) the date he files his election form with the Plan Administration Committee (or its designee).

7.2 Death of Member/In Line of Duty Survivor Benefits: If a Member dies while in active service as the direct and proximate result of a personal injury sustained while performing official duties or as a result of an occupational disease arising out of and in the course of the Member's employment, and the survivors of such Member qualify for a benefit under C.R.S Section 31-31-807.5 (as the same may be amended or any successor provision thereto), and the Member has not made an irrevocable election to participate in the Deferred Retirement Option Plan (DROP) under Section 8.5, a Termination Benefit consisting of a refund of his Contribution Accumulation shall be payable after his date of death. Such Termination Benefit shall be in lieu of all other benefits under the Plan. The Plan Administration Committee (or its designee) shall direct the Trustee or custodian to distribute such deceased Member's Termination Benefit in the form elected by such Member's Beneficiary as a cash lump-sum (or in an direct rollover or a combination thereof as permitted under Section 7.8). In the absence of such election, the Plan Administration Committee (or its designee) may direct the Trustee or custodian to distribute the Termination Benefit to the deceased Member's designated Beneficiary (or to the Default Beneficiary if the Member has not designated a Beneficiary) in the form of a lump sum distribution as soon as administratively practicable following the death of the Member, or, if later, as soon as administratively practicable following the date the Plan Administration Committee (or its designee) receives notification of, or otherwise confirms, the Member's death.

7.3 Death of Member/Survivor Benefits:

(a) If a Member's employment with the Employer terminates on account of his death and the Member's Beneficiary or Default Beneficiary is eligible for a death benefit under Part 8 of Title 31, Article 31 of the Colorado Revised Statutes under C.R.S. Section 31-31-807 (as the same may be amended or any successor provision thereto), and the Member has not made an irrevocable election to participate in the Deferred Retirement Option Plan (DROP) under Section 8.5, a Termination Benefit consisting of a refund of his Contribution Accumulation shall be payable after his date of death. Such

Termination Benefit shall be in lieu of all other benefits under the Plan. The Plan Administration Committee (or its designee) shall direct the Trustee or custodian to distribute such deceased Member's Termination Benefit in the form elected by such Member's Beneficiary as a cash lump-sum (or in a direct rollover or a combination thereof as permitted under Section 7.8). In the absence of such election, the Plan Administration Committee (or its designee) may direct the Trustee or custodian to distribute the Termination Benefit to the deceased Member's designated Beneficiary (or to the Default Beneficiary if the Member has not designated a Beneficiary) in the form of a lump sum distribution as soon as administratively practicable following the death of the Member, or, if later, as soon as administratively practicable following the date the Plan Administration Committee (or its designee) receives notification of, or otherwise confirms, the Member's death.

(b) If (1) a Member's employment with the Employer terminates on account of his death which is not an in line of duty death under Section 7.2, (2) the Member has not made an irrevocable election to participate in the DROP under Section 8.5, (3) the Member's Beneficiary or Default Beneficiary is not eligible for a death benefit under C.R.S. Section 31-31-807 (as the same may be amended or any successor provision thereto) and (4) Section 8.1(d) does not apply, the Plan shall pay survivor benefits to such Member's designated Beneficiary (or to the Default Beneficiary if the Member has not designated a Beneficiary). If the Member has designated one individual person as his or her primary designated Beneficiary, such designated Beneficiary, if any, may elect (1) a refund of the Contribution Accumulation or (2) a Pension payable beginning on the earliest date the Member would have been eligible to receive benefits. If the Pension is selected, the survivor benefits shall be calculated as if the Member fully vests upon death and had selected Option 2 under Section 8.2. If there is no designated Beneficiary, the Default Beneficiary shall receive a refund of the Contribution Accumulation.

7.4 FPPA On-Duty Total Disability or On-Duty Permanent Occupational Disability: In the event that the FPPA determines that a Member has an "on-duty" Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5 (as the same may be amended or any successor provision thereto), and the Member has not made an irrevocable election to participate in the Deferred Retirement Option Plan (DROP) under Section 8.5, a Disabled Member shall receive the Member's Contribution Accumulation which is payable upon such Disabled Member termination of employment with the Employer, and is in lieu of all other benefits payable under the Plan.

(a) Distribution of Lump Sum Plan Offset Amount. If **all** of the following circumstances occur:

(1) A Member is determined by FPPA to have an on-duty Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended or any successor provision thereto;

(2) Such Member is, therefore, found by FPPA to be entitled to either a total disability or a permanent occupational disability benefit pursuant to the

provisions of CRS Section 31-31-806.5, as the same may be amended or any successor provision thereto (hereinafter referred to as the "FPPA On-Duty Disability Benefit");

(3) Such disabled Member's FPPA On-Duty Disability Benefit is excludible from such disabled Member's gross income for federal income tax purposes under the provisions of Code Section 104(a)(1), which excludes from gross income amounts that are received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to employees for personal injuries or sickness incurred in the course of employment;

(4) Pursuant to the provisions of CRS Section 31-31-803(7), as the same may be amended or any successor provision thereto, such disabled Member's FPPA On-Duty Disability Benefit that would otherwise be payable under CRS Section 31-31-806.5 is reduced by FPPA in an amount that is the actuarial equivalent of the lump sum value of the Member's aggregate Contribution Accumulation as of a date selected by FPPA and, as adjusted by FPPA based on CRS Section 31-31-803(7) ("Lump Sum Plan Offset Amount"); and

(5) The Plan Administration Committee and the Trustee make a good faith determination that pursuant to applicable U.S. federal tax law, Treasury regulations and applicable IRS and court rulings that the Member's Lump Sum Plan Offset Amount is also exempt from federal income taxation under the provisions of Code Section 104(a)(1) as an on-duty workmen's compensation type of benefit,

then the Plan Administration Committee (or its designee) shall direct the Trustee or custodian to distribute to the Disabled Member that portion of his or her Contribution Accumulation as soon as administratively practicable following the later of the Member's termination of employment with the Employer or the date of the determination by FPPA that the Member has an on-duty Disability, which is either a total disability or a permanent occupational disability, pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended or any successor provision thereto.

(b) <u>Distribution of Remainder of Participant's Nonforfeitable Accrued Benefit</u>. If pursuant to the provisions of Section 7.3(a), a Disabled Member's Lump Sum Plan Offset Amount is distributed to him or her in the form of a lump sum distribution, and if after such lump sum distribution is made there is any remaining balance in the Disabled Member's Contribution Accumulation (hereinafter referred to as the "Remainder"), then the Disabled Member may elect to receive the entire Remainder of his or her Contribution Accumulation in the form of a lump sum distribution or direct rollover (or a combination thereof) after his or her receipt of the Code Section 402(f) notice.

7.5 FPPA Disability Other than On-Duty Total Disability or On-Duty Permanent Occupational Disability: In the event that the FPPA determines that a Member has a Disability that is neither an "on-duty" total disability nor an "on-duty" permanent occupational disability pursuant to the provisions of CRS Section 31-31-806.5, as the same may be amended or any successor provision thereto, and after the date of the determination by FPPA that such Participant has such a Disability, and the Member has not made an irrevocable election to participate in the Deferred Retirement Option Plan (DROP) under Section 8.5, a Disabled Member's benefit is the Member's Contribution Accumulation which is payable upon the Member's termination of employment in the form of a lump sum distribution in lieu of all other benefits payable under the Plan.

7.6 Death of a Retired Member or Other Member Before Contributions Recovered: In the event that, at the termination of Pension payments following the death of a Retired Member or any other Member, the aggregate of such payments made to the Retired Member and his Beneficiary (if any), or any other Member and his Beneficiary (if any) is less than the amount of the Contribution Accumulation of a Retired Member at his Pension Commencement Date or his commencement of participation in the DROP under Section 8.5 (if earlier), or for any other Member, the date of payment due to his termination of employment or death, whichever is earlier, the difference shall be paid in one lump sum to the Beneficiary or to the Default Beneficiary if the Member has not designated a Beneficiary.

7.7 Death of a Retired Member, Deferred Vested Member or DROP Member:

(a) In the event a Retired Member dies while receiving Retirement Benefit payments, his death benefit, if any, will be determined by the form of Retirement Benefit being paid. In the event a Member dies while participating in the Deferred Retirement Option Plan under Section 8.5, his death benefit, if any, shall be paid in the same form as the Member elected upon entering the DROP and Section 8.5.

(b) In the event that a Deferred Vested Member or a Retired Member dies prior to his Pension Commencement Date and Section 8.1(d) does not apply, the Plan shall pay survivor benefits to such Member's designated Beneficiary (or to the Default Beneficiary if the Member has not designated a Beneficiary). If the Member has designated one individual person as his or her primary designated Beneficiary, such designated Beneficiary, if any, may elect (1) a refund of the Contribution Accumulation or (2) a Pension payable beginning on the earliest date the Member would have been eligible to receive benefits. If the Pension is selected, the survivor benefits shall be calculated as if the Member had selected Option 2 under Section 8.2. If there is no designated Beneficiary, the Default Beneficiary shall receive a refund of the Contribution Accumulation.

7.8 Direct Rollovers: Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section and provided that the Eligible Rollover Distribution is at least two hundred dollars ($200), a Distributee, including a non-spouse designated beneficiary, to the extent permitted under Section 7.8(b), may elect, at the time and in the manner prescribed by the Plan Administration Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the

Distributee in a Direct Rollover. If the Eligible Rollover Distribution is at least five hundred dollars ($500), the Distributee, including a non-spouse designated beneficiary, to the extent permitted under Section 7.8(b), may elect to have a portion of the Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover and receive a portion of the Eligible Rollover Distribution provided that the amount of the Direct Rollover is at least five hundred dollars ($500). For purposes of this Section, the following definitions shall apply:

(a) Direct Rollover. A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(b) Distributee. A Member or former Member. In addition, the Member's or former Member's surviving spouse and the Member's or former Member's spouse or former spouse who is the alternate payee under a domestic relations order are Distributees with regard to the interest of the spouse or former spouse. Pursuant to Code Section 402(c)(11), a Distributee also includes the Member's non-spouse designated beneficiary, pursuant to Code Section 401(a)(9)(E) (which includes certain trusts described in Code Section 402(c)(11)(B)), in which case any portion of the distribution made in a Direct Rollover can only be transferred to an individual retirement account or annuity (other than an endowment contract) described in Code Section 408(a) or (b) ("IRA") (including, effective for distributions after December 18, 2015, a SIMPLE IRA but only if such contribution occurs after the 2-year period described in Code Section 72(t)(6) and is made in accordance with the Protecting Americans from Tax Hikes Act of 2015) established for the purpose of receiving the distribution on behalf of such non-spouse beneficiary, subject to applicable tax restrictions, or to a Roth individual retirement account or annuity under Code Section 408A ("Roth IRA") established on behalf of the non-spouse designated beneficiary for the purpose of receiving the distribution. Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395, as clarified by the Special Edition dated February 13, 2007, of Employee Plans News of the Internal Revenue Service Tax Exempt and Government Entity Division. The required minimum distribution rules of Code Section 401(a)(9)(B) (other than clause iv thereof) shall apply to the transferee IRA.

(c) Eligible Retirement Plan. An individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the Distributee's Eligible Rollover Distribution. An Eligible Retirement Plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from the Plan. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the "alternate payee" pursuant to a qualified domestic relations order as defined in Code Section 414(p). An Eligible Retirement Plan includes a Roth IRA, subject to any limitations described in Code Section 408A(c). An Eligible Retirement Plan includes a SIMPLE IRA in accordance with Code Section 408(p)(1)(B) for purposes of a rollover contribution to such SIMPLE IRA, but only if such rollover contribution rollover contribution occurs after the 2-year period described in Code Section 72(t)(6).

(d) Eligible Rollover Distribution. A distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:

(1) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary; or for a specified period of 10 years or more;

(2) any distribution to the extent such distribution is required under Code Section 401(a)(9); and

(3) the portion of any distribution that is not includible in gross income; provided, however, that a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only:

(A) to an individual retirement account or annuity described in Code Section 408(a) or 408(b); or

(B) in a direct trustee-to-trustee transfer, to a qualified trust, or an annuity contract described in Code Section 403(b), if such trust or annuity contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

Such after-tax portion may also be directly transferred to a Roth IRA, subject to any limitations described in Code Section 408A(c).

For purposes of determining the portion of a disbursement of benefits from the Plan to a Distributee that is not includible in gross income under Code Section 72, the guidance under IRS Notice 2014-54 shall be followed.

(e) Waiver of 30 Day Notice and Notice of Tax Treatment. At least thirty (30) days before and not more than one hundred eighty (180) days before the date of distribution, the Distributee must be provided with a notice of rights which satisfies Code Section 402(f) as to rollover options and tax effects.

If a distribution is one to which Code Sections 401(a)(11) and 417 do not apply, such distribution may commence less than 30 days after the notice required under Section 1.411(a)-11(c) of the Income Tax Regulations is given, provided that:

(1) the Plan Administration Committee (or its designee) clearly informs the Distributee that the Distributee has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and

(2) the Distributee, after receiving the notice, affirmatively elects a distribution.

(f) Distribution to Non-spouse Designated Beneficiary. A distribution with respect to a non-spouse designated beneficiary shall be subject to Code Sections 401(a)(31), 402(f), and 3405(c).

7.9 Designation of Beneficiary:

(a) Each active or Deferred Vested Member may designate a primary Beneficiary or Beneficiaries and a contingent Beneficiary or Beneficiaries to receive any benefit that may become payable under this Plan by reason of his death. Such designation shall be made on the form furnished by the Plan Administration Committee (or its designee), and may be changed or revoked at any time without notice to the Beneficiary or Beneficiaries, but shall not be effective until filed with the Plan Administration Committee (or its designee).

(b) If the active or Deferred Vested Member designates an individual under the age of 18 as a Beneficiary, any benefit that may become payable under this Plan by reason of his death shall be paid to a custodian under the Uniform Transfers to Minors Act or to a guardian or conservator appointed by the court for the benefit of such minor Beneficiary.

(c) If any person entitled to receive a benefit under this Plan is deemed by the Plan Administration Committee and/or its designee to be incapable of personally receiving and giving a valid receipt of such payment, the Plan shall make payment to a duly appointed guardian or other legal representative of such person or, if none, to any person or institution then contributing toward or providing for the care and maintenance of such person. Any such payment shall be payment for the account of such person and a complete discharge of any liability of the Plan, the Plan Administration Committee, its designee and the employees and agents of the Plan Administration Committee. However, the Plan Administration Committee and/or its designee reserves the right to obtain periodic evidence that the Beneficiary is still living.

7.10 Uniform Simultaneous Death Act: The provisions of any law of Colorado providing for the distribution of estates under the Uniform Simultaneous Death Act, when applicable, shall govern the distribution of amounts payable under this Plan.

## ARTICLE VIII

## Retirement Benefit Payments

8.1 General:

(a) Basic Form of Pension. The Plan's basic form of pension is a single life annuity. The Retired Member shall receive a pension payable for life with no payments to be made subsequent to his death, except as set forth in Section 7.6.

(b) Notice and Timely Filed Benefit Election Form by Member. The Pension Administration Committee (or its designee) shall furnish to each Member no more than 180 days prior to the date of commencement of actual payment to the Member, a written explanation in nontechnical language of the terms and conditions of the Pension payable to the Member in the basic and optional forms. Such explanation shall include a general description of the eligibility conditions for, and the material features of, the optional forms of payment under the Plan, and the right of the Member to make and revoke elections. Except for payments required pursuant to Code Section 401(a)(9), a Member who is eligible for Retirement under this Plan must make a benefit election, in writing and in such manner as prescribed by the Plan Administration Committee, and such benefit election form must be filed with the Plan Administration Committee (or its designee) within 180 days prior to the date the Member requests commencement of his Pension, which must be as of the first day of a month, and which date shall be the Member's "Pension Commencement Date."

(c) Administrative Delay. In the event commencement of payments are delayed due to administrative delay beyond the Pension Commencement Date for a Normal Pension or Delayed Pension under Section 6.1, or an Early Retirement Pension under Section 6.2, the Member shall be entitled to receive up to six (6) retroactive Pension payments.

(d) Death of Member Within 60 Days Prior to Member's Pension Commencement Date. If a Member eligible for Retirement or a Deferred Vested Member made a benefit election in writing, in such manner as prescribed by the Plan Administration Committee, and timely filed such benefit election form with the Plan Administration Committee (or its designee), but died within 60 days prior to the Member's Pension Commencement Date, benefits shall be paid in accordance with the Member's election, unless the Member elected a single life annuity. In the event a Member described in this Section 8.1(d) dies and had elected a single life annuity but named one individual person as his or her primary designated Beneficiary, to receive any contributions which had not yet been recovered under Section 7.6, then such designated Beneficiary may elect a (1) refund of the Contribution Accumulation or (2) a Pension payable beginning on the earliest date the Member would have been eligible to receive benefits and such survivor benefits shall be calculated as if the Member had selected Option 2 under Section 8.2. In the event a Member described in this Section 8.1(d) dies and had elected a single life annuity without naming a Beneficiary as described in the preceding sentence, then the benefit shall be paid in accordance with Section 7.6.

8.2 Optional Forms of Payment: A Member may elect to receive a Pension payable in accordance with one of the following options in lieu of the basic form of pension described in Section 8.1(a).

(a) Option 1—Joint and 100% Survivor Annuity. The Retired Member shall receive an adjusted Pension payable for life, and payments of 100% of such adjusted Pension shall, after the Retired Member's death, be continued to the Beneficiary during the Beneficiary's lifetime.

(b) Option 2—Joint and 50% Survivor Annuity. The Retired Member shall receive an adjusted Pension payable for life, and payments of 50 percent of such adjusted Pension shall, after the Retired Member's death, be continued to the Beneficiary during the Beneficiary's lifetime.

(c) Option 3—Joint and 100% Survivor Annuity with Pop Up Feature. The Retired Member shall receive an adjusted Pension payable for life, and payments of 100% of such adjusted Pension shall, after the Retired Member's death, be continued to the Beneficiary during the Beneficiary's lifetime. Upon the death of the Beneficiary prior to the death of the Retired Member (1) the single life annuity shall become payable to the Retired Member and the monthly amount of such benefit shall be the amount of Pension which would have otherwise been payable to the Retired Member had he not elected an optional form of payment and (2) the first payment of such benefit shall be made as of the first day of the calendar month coincident with or next following the date of the Beneficiary's death and the last payment of which shall be made as of the first day of the month in which the death of the Retired Member occurs.

(d) Option 4—Joint and 50% Survivor Annuity with Pop Up Feature. The Retired Member shall receive an adjusted Pension payable for life, and payments of 50% of such adjusted Pension shall, after the Retired Member's death, be continued to the Beneficiary during the Beneficiary's lifetime. Upon the death of the Beneficiary prior to the death of the Retired Member (1) the single life annuity shall become payable to the Retired Member and the monthly amount of such benefit shall be the amount of Pension which would have otherwise been payable to the Retired Member had he not elected an optional form of payment and (2) the first payment of such benefit shall be made as of the first day of the calendar month coincident with or next following the date of the Beneficiary's death and the last payment of which shall be made as of the first day of the month in which the death of the Retired Member occurs.

The aggregate of the Pension payments expected to be made to a Retired Member and his Beneficiary (if any) under Section 8.2(a), (b), (c), or (d) shall be the Actuarial Equivalent of the Pension which the Retired Member is otherwise entitled to receive under the single life annuity form of payment upon Retirement. Subject to the provisions of Section 8.4, a Member may elect, change, or revoke an option without the approval of the Plan Administration Committee if his election, change, or revocation is filed in writing with the Plan Administration Committee (or its designee) no later than his Pension Commencement Date. Except as provided in Section 8.1(d), an election to receive an optional form of payment under Section 8.2(a), (b), (c), or (d) shall not become effective unless both the Member and the Beneficiary are alive on the Pension Commencement Date.

8.3 Benefit Election: A properly completed benefit election form (furnished by the Plan Administration Committee (or its designee)) must be returned to the Plan Administration Committee (or its designee) prior to the Member's Pension Commencement Date. If the Member files another benefit election form after the earlier form and prior to his Pension Commencement Date, the earlier form shall be deemed annulled. The designated Beneficiary may not be changed after the Pension Commencement Date.

8.4 Other Benefits Canceled by Option: Any Pension, death benefit, or other benefit that would otherwise have become payable under this Plan shall be canceled and superseded by an option or any other form of payment elected under this Article as of the date such option or other form of payment becomes operative.

8.5 Deferred Retirement Option Plan (DROP):

(a) In lieu of terminating employment and receiving a Pension, a Member who is eligible to receive an unreduced Pension may make an irrevocable election to participate in the Deferred Retirement Option Plan (DROP) and defer the receipt of Pension benefits in accordance with the provisions of this Section 8.5.

(b) The purpose of the DROP is to allow an eligible Member to elect, in lieu of immediate termination of employment and receipt of a service retirement benefit, to continue employment for a specified period of time and to have the Member's contribution and Pension paid into the DROP account until the end of such specified period of the Member's participation, at which time employment is to cease. When a Member begins participation in the DROP, Employer contributions shall cease with the first complete payroll period which ends in the first month in which the DROP election is effective; provided, however, if the payroll period ends on the last day of the month prior to which the DROP election is effective the City Contribution shall cease then. An eligible Member must choose a straight life annuity or one of the retirement options for his non-DROP benefit provided in Article VIII at the same time the Member elects to participate in the DROP.

(c) An eligible Member may participate in the DROP only once.

(d) The duration of a Member's participation in the DROP shall not exceed a total of three years. Participation in the DROP must begin the first day of a month and end on the last day of a month. As a condition precedent to participation in the DROP, the Member shall execute an irrevocable agreement with his Employer in the form prescribed by the Plan Administration Committee which shall, among other items, clearly and unequivocally state that, except as provided in Section 8.5(e), the Member must retire after three years of the Member's participation in the DROP, and the Member shall also acknowledge that no distribution of any DROP funds can occur absent the termination of employment or death of the Member. The Employer shall provide a copy of such agreement to the Plan Administration Committee (or its designee).

(e) If the Member’s participation in the DROP is interrupted by Qualified Military Service, then, upon reestablishment of membership and provided that the Member has not received any distribution from his DROP account, the Member shall be immediately eligible for resumption of participation in the DROP for the balance of the three year maximum. Other than the above-described interruptions of participation, the three-year period shall continue to run in all other cases.

(f) Upon commencement of the Member’s participation in the DROP, the Member shall remain an active Member. Nevertheless, the Member shall earn no additional Credited Service or additional benefits under the non-DROP provisions of the Plan.

(g) Upon commencement of the Member’s participation in the DROP, the Member’s Pension provided under Article VIII and the Member contributions under Section 4.2 shall be paid into the Member’s hypothetical DROP account. In no case shall the Employer Contribution be used to fund the DROP.

(h) At the conclusion of a Member’s participation in the DROP (including, but not limited to death), the Member shall terminate employment with the Employer and the Member (or survivor, if applicable) shall start receiving the Member’s monthly Pension under the non-DROP portion of the Plan in the same form as the Member elected upon entering the DROP.

(i) Interest on a Member’s contributions made pursuant to Section 4.2 and paid into the Member’s hypothetical DROP account begins to accrue on the first day of the month following the date the Member’s contribution is made. Furthermore, the following shall be used in determining and crediting interest for a Member’s DROP account, with crediting to the DROP in any Plan Year reflective of both the DROP account balance at the start of the Plan Year, the timing of monthly nominal credits to the DROP account, and the timing of distribution of the DROP accumulated account balance:

(1) The DROP Interest Rate is determined as of December 31st for each Plan Year and is calculated by taking the actual annual rate of fair market value return of the investment portfolio of the Plan for such Plan Year net of Plan investment-related expenses and then reducing that return by two percent (2%). For any Plan Year, the DROP Interest Rate shall be no less than two and one-half percent (2.5%) nor greater than the interest rate specified in Section 2.1(b)(1) of the Plan. The DROP Interest Rate may be changed at any time by Plan amendment.

(2) Subject to (m) below,

(A) such DROP Interest Rate shall be credited to the Member’s DROP account on an annual basis as of December 31st of each Plan Year, and

(B) if a Member’s (or Beneficiary’s) DROP account balance is distributed for any period when the DROP Interest Rate has yet to be determined by the Plan Administration Committee, 4.25% per annum, compounded annually (until changed by Plan amendment), shall be substituted for the DROP Interest Rate as defined above.

(j) A Member who participates in the DROP shall receive, at the option of the Member:

(1) A lump sum payment (or Direct Rollover, or a combination thereof) equal to the Member's DROP account balance; or

(2) A lump sum equal to the Member's DROP account balance, payable to an annuity provider selected by the Member as a result of the research and investigation by the Member.

(k) A Beneficiary of a Member who participates in the DROP shall, at the option of the Beneficiary, receive a lump sum payment (or Direct Rollover or combination thereof) equal to the Member's DROP account balance.

(l) A Member's (or Beneficiary's) failure to make an election under (j) or (k) above, as applicable, within 150 days of a Member's termination of employment (or, if a Member has appealed his dismissal, the latest of (i) his date of termination, (ii) an adverse Civil Service Commission ruling affirming the termination of employment as regulated by the Aurora City Charter, as amended from time to time, or (iii) a final court order entered by a court of competent jurisdiction upholding the Member's termination of employment) or death, if applicable, shall result in:

(1) an automatic rollover of the distribution (if greater than $1,000 including the portion of the Member's distribution attributable to any rollover contribution) to an individual retirement plan consistent with the mandatory distribution rules of Code Section 401(a)(31) for any Member before the Member attains the later of age 62 or the Member's Normal Retirement Age, and

(2) a direct lump sum distribution to the Member (or Beneficiary) for any other distribution.

(m) If a Member dies without having designated a Beneficiary, the Member's DROP account shall be paid to the Member's Default Beneficiary following the Member's death and if not paid to the Default Beneficiary within 150 days of the Member's date of death shall cease to earn interest.

(n) Notwithstanding any other provision contained herein to the contrary, commencement of distributions under the DROP shall be paid in accordance with Code Section 401(a)(9) and regulations and applicable IRS guidance thereunder.

(o) All benefits payable from the Plan, including payments from the DROP, shall be paid from the general assets of the Plan.

# ARTICLE IX

## Administration

9.1 Plan Administration Committee: The Plan shall be administered by the Plan Administration Committee.

(a) The Plan Administration Committee shall be the Plan Administrator.

(b) Membership. The Plan Administration Committee shall be made up of five (5) individual members who shall be: four (4) current Participants and one (1) person who is not a Participant and who has business and/or investment experience within the local community. The Finance Director for the City ("Finance Director") and a Deputy Manager of the City appointed by the City Manager ("Deputy City Manager") shall be ex officio members of the Plan Administration Committee.

(c) Election. The member of the Plan Administration Committee who is not a Participant shall be elected by majority vote of the other members of the Plan Administration Committee. The four (4) members of the Plan Administration Committee who are Participants shall be elected by plurality vote of the current Participants.

(d) Resignation. Any member of the Plan Administration Committee may resign by delivering his or her written resignation to the Employer and the other members of the Plan Administration Committee. Any resignation of a member of the Plan Administration Committee shall be effective thirty (30) days after written notice has been delivered, unless otherwise agreed to by the other members of the Plan Administration Committee.

(e) Removal. Members of the Plan Administration Committee who are Participants may be removed, with or without cause, by majority vote of the current Participants. The member of the Plan Administration Committee who is not a Participant may be removed, with or without cause, by the majority vote of the other members of the Plan Administration Committee. Written notice of any such removal shall be delivered to any such removed member, to the other members of the Plan Administration Committee and to the Employer. Any removal of any member of the Plan Administration Committee shall be effective thirty (30) days after written notice has been delivered.

(f) Vacancies. Any vacancy on the Plan Administration Committee arising as a result of the resignation, removal, death or otherwise of a member who was a Participant shall be filled by plurality vote of the current Participants. Any other vacancy on the Plan Administration Committee shall be filled by majority vote of the other members of the Plan Administration Committee.

(g) Trustee. Each member of the Plan Administration Committee shall also be a Trustee, unless the Plan Administration Committee appoints a trustee.

(h) Compensation and Expenses. The members of the Plan Administration Committee shall serve without compensation for services rendered as a Plan

Administration Committee member, unless authorized by majority vote of the members of the Plan Administration Committee. Any compensation for services is to be made from the Trust Fund. Each Plan Administration Committee member shall be reimbursed from the Trust Fund for any expenses he or she may properly incur in connection with the performance of his or her duties as a member of the Plan Administration Committee.

(i) Bond. Every member of the Plan Administration Committee shall be bonded if required by applicable law, or as they deem appropriate, and the costs of such bond will be paid by the Trust Fund.

(j) Indemnification. The Plan Administration Committee and the individual members thereof including the ex officio members thereof, whether acting as the Plan Administrator or as Trustees, and any employee of the Plan Administration Committee, performing duties therefor, shall be indemnified by the City of Aurora against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of the Plan, including expenses reasonably incurred in the defense of any claim relating thereto.

9.2 Term: Except as provided in this Section 9.2, each member of the Plan Administration Committee who is elected by the current Participants shall serve for staggered three (3) calendar year terms or until the appointment of his or her successor. Under the staggering of the terms of such members elected by the current Participants, one such member shall be elected in one year, one such member shall be elected in the following year, and two such members shall be elected in the next following year. Anything contained in this Section 9.2 to the contrary notwithstanding, the staggering of the terms of the members of the Plan Administration Committee elected by the current Participants began under the Money Purchase Pension Plan as of January 1, 1992, so that the initial term of one such member shall be for one (1) year, the initial term for one such member shall be for two (2) years and the initial term for two such members shall be for three (3) years. The Plan Administration Committee shall determine which such members shall have the initial terms of one year, two years or three years.

The other member of the Plan Administration Committee who is appointed by the majority vote of the other members of the Plan Administration Committee shall serve for a term designated by the Plan Administration Committee or until the appointment of his or her successor.

9.3 Powers in Event of Vacancy: In case of a vacancy in the membership of the Plan Administration Committee, the remaining members of the Plan Administration Committee may exercise any and all of the powers, authority, duties and discretion conferred upon the Plan Administration Committee pending the filling of the vacancy.

9.4 Plan Administration Committee Powers and Duties: The Plan Administration Committee shall have such powers as may be necessary to discharge its duties hereunder, including, but not by way of limitation, the following powers and duties:

(a) to select a President, Secretary and other officers, who need not be members of the Plan Administration Committee;

(b) to determine the rights of eligibility of an Employee to participate in the Plan and the value of a Participant's Accrued Benefit;

(c) to adopt by-laws, rules of procedure and regulations necessary for the proper and efficient administration of the Plan provided the rules are not inconsistent with the terms of this Plan, including the adoption of rules regarding the payment of a death benefit when a Member dies without having designated a Beneficiary in which case, the death benefit shall be paid as follows to the "Default Beneficiary":

(1) for a married Member, to the Member's surviving spouse;

(2) for a Member with a partner in a civil union under the Colorado Civil Union Act, Colorado Revised Statutes Section 14-15-101, et seq., (as the same may be amended or any successor provision thereto): to the Member's partner in a civil union who survives the Member;

(3) for all other Members, to the Member's issue per stirpes, as defined in the Colorado Probate Code (or by common meaning if not so defined) or, if no such issue survives the Member, then to the Member's father and mother, in equal shares, or all to the survivor, or if neither survives the Member, then to the personal representative of the Member's estate;

(d) to construe and enforce the terms of the Plan and the by-laws, rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation;

(e) to make, amend, interpret, and enforce all appropriate rules and regulations for the administration of the Plan and to decide or resolve any and all questions, including interpretations of the Plan, as may arise in connection with the Plan;

(f) to determine the amounts and time of payment of benefits and the rights of Members and beneficiaries to Plan benefits; to take any actions necessary to assure timely payment of benefits to any Member or beneficiary eligible to receive benefits under the Plan; and to assure a full and fair review for any Member who is denied a claim to any benefit under the Plan;

(g) to determine all considerations affecting the eligibility of any Employee to be or become a Member of the Plan;

(h) to determine the amount of the Member's contributions to be withheld by the Employer in accordance with the Plan and to maintain such records of a Member's Contribution Accumulation as are necessary under said Plan;

(i) to determine the Vesting Service or Credited Service of any Member and compute the amount of Pension, or other sum, payable under the Plan to any person;

(j) to authorize and direct disbursements of Pensions under the Plan and payment of Plan expenses;

(k) to appoint or employ for the Plan any agents and to obtain such administrative, clerical, medical, legal, and actuarial services as it may deem necessary or appropriate and to authorize an agent or designee to execute or deliver any instrument, receive any notice, process and approve benefits applications, or make any payment on its behalf;

(l) to engage the services of an Investment Manager or Managers (as defined in ERISA Section 3(38)), each of whom shall have full power and authority to manage, acquire or dispose (or direct the Trustee or custodian with respect to acquisition or disposition) of any Plan asset under its control;

(m) with the advice of the Plan's actuary, to adopt from time to time such mortality and other tables as it may deem necessary or appropriate for the operation of the Plan;

(n) to make valuations and appraisals of the assets held in the Retirement Trust Fund and with the advice of the Plan's actuary, to determine the liabilities of the Plan;

(o) to create reserves from such assets for any purpose;

(p) to delegate to one or more of the members of the Plan Administration Committee the right to act on its behalf in all matters connected with the administration of the Plan and Trust;

(q) to receive and review reports of the financial condition and of the receipts and disbursements of the Retirement Trust Fund from the Funding Agent;

(r) to furnish the Employer with information which the Employer may require for tax or other purposes; and

(s) to develop such procedures and may require such information from the distributing plan as it deems necessary to reasonably conclude that a potential rollover contribution is a valid rollover contribution under Section 1.401(a)(31)-1, Q&A-14(b)(2), of the Income Tax Regulations.

The Plan Administration Committee shall exercise all of its powers, duties and discretion under the Plan in a uniform and nondiscriminatory manner.

9.5 Manner of Action/Rules and Decisions: Any action or decision of the Plan Administration Committee shall be decided by majority vote of the members of the Plan Administration Committee then appointed and qualified. The Plan Administration Committee may adopt such rules and actuarial tables as it deems necessary or desirable. All rules and decisions of the Plan Administration Committee shall be uniformly and consistently applied to all Members in similar circumstances. The Plan Administration Committee is required to provide a notice in writing to any person whose claim for benefits under this Plan has been denied, setting forth the specific reasons for such denial. The Plan Administration Committee shall adopt rules and procedures to carry out the intent of this Section and to provide a basis for a full and fair review by the Plan Administration Committee of the decision denying the claim and provide such person with an opportunity to supply any evidence he has to sustain the claim.

Any rule or decision, except as to benefits, which is not inconsistent with the provisions of the Plan shall be conclusive and binding upon all persons affected by it, and there shall be no appeal from any ruling by the Plan Administration Committee which is within its authority.

When making a determination or calculation, the Plan Administration Committee shall be entitled to rely upon information furnished by the Employer, the legal counsel of the Plan Administration Committee, or the actuary for the Plan.

9.6 Authorized Representative: The Plan Administration Committee may authorize any one of its members, or its President or Secretary, to sign on its behalf any notices, directions, applications, certificates, consents, approvals, waivers, letters or other documents. The Plan Administration Committee must evidence this authority by an instrument signed by all members.

9.7 Authorization of Benefit Payments: The Plan Administration Committee shall issue directions to the Funding Agent concerning all benefits which are to be paid from the Retirement Trust Fund pursuant to the provisions of the Plan. The Plan Administration Committee shall keep on file, in such manner as it may deem convenient or proper, all reports from the Funding Agent.

9.8 Payment of Expenses: All expenses incident to the administration, termination or protection of the Plan and Retirement Trust Fund, including, but not limited to, actuarial, legal, accounting and Funding Agent's fees shall be paid from the Retirement Trust Fund pursuant to applicable Colorado and U.S. federal law, unless the Employer pays the expenses.

9.9 Unclaimed Benefits: During the time when a benefit hereunder is payable to any Member, Beneficiary or other payee, the Plan Administration Committee, upon request by the Funding Agent or at its own instance, shall mail by registered or certified mail to such payee at his last known address, a written demand for his then address or for satisfactory evidence of his continued life, or both. If such information is not furnished to the Plan Administration Committee within three months from the mailing of such demand, the Plan Administration Committee may, in its sole discretion, determine that such payee is deceased and may declare such benefit, or any unpaid portion thereof, terminated as if the death of the payee had occurred on the date of the last payment made thereon or the date such payee first became entitled to receive benefit payments, whichever is later. Any such declaration by the Plan Administration Committee shall later be revoked upon a receipt of the requested information by the Plan Administration Committee.

9.10 Electronic Media: Any applicable notices, elections, and consents provided or made for a Member, Beneficiary, alternate payee or individual entitled to benefits under the Plan may be made by means of electronic media to provide such applicable notices and make such elections and consents as described in Section 1.401(a)-21 of the Income Tax Regulations or other U.S. federal guidance.

9.11 Governing Law: The Plan and Trust shall be deemed executed and governed under U.S. federal law and the laws of the State of Colorado. Notwithstanding any provision in the Plan and Funding Agreement to the contrary, the terms “husband,” “wife,” “husband and wife,” “marriage,” and “spouse” shall be defined and construed in accordance with U.S. federal tax law, including IRS Revenue Ruling 2013-17, IRS Notice 2014-19, subsequent Treasury regulations and applicable IRS and court rulings, but only to the extent required to maintain qualification of the Plan and Trust under Code Sections 401(a) and 501(a) for a governmental plan, as defined in Code Section 414(d). Should any provision of the laws of the State of Colorado be in conflict with the express powers, duties and responsibilities of the Trustee or Plan Administration Committee as set forth in this instrument, in such event the terms of this instrument shall control. If any provision of the Plan or Trust is or becomes invalid or otherwise unenforceable, that fact shall not affect the validity or enforceability of any other provision of the Plan or Trust. All provisions of the Plan and Trust shall be so construed as to render them valid and enforceable in accordance with their intent.

9.12 Return of Contributions Made Under a Mistake of Fact: Notwithstanding any other provision in the plan, if a contribution (whether Employer and/or Member Contribution) that is more than the correct amount of contribution be paid to the Retirement Trust Fund due to a mistake of fact, the Plan may refund the mistaken portion of the contribution to the Employer within one year of the date on which the mistaken portion of the contribution was made. The Plan shall not pay the Employer earnings attributable to the mistaken portion of the contribution but shall reduce the amount returned to the Employer pursuant to this Section by the amount of losses attributable to the mistaken portion of the contribution.

## ARTICLE X

## Funding Agent/Management of Funds

10.1 Acceptance: This Plan is initially established with a trust agreement and each member of the Plan Administration Committee shall serve as a Trustee, accepts the trust created under the Plan, and agrees to perform the obligations imposed. Thereafter, the Plan Administration Committee may appoint a Trustee (or Trustees) or an Insurance Company to administer the Retirement Trust Fund. The Trustee (or Trustees) or Insurance Company shall serve at the pleasure of the Plan Administration Committee and shall have such rights, powers and duties as are provided to it under the trust agreement or insurance contract.

10.2 Responsibility of Funding Agent: All contributions under this Plan shall be paid to the Trustee, or Insurance Company, if applicable, the "Funding Agent" and shall be held, invested and reinvested by the Trustee or Insurance Company, if applicable. All property and funds of the Retirement Trust Fund shall be retained for the exclusive benefit of Members, as provided in the Plan, and shall be used to pay benefits to Members or their Beneficiaries, or to pay expenses of administration of the Plan.

10.3 Appointment of Custodian: The Plan Administration Committee may appoint a custodian to hold all or any portion of the Plan assets and may enter into a separate agreement with the custodian.

10.4 Funding and Investment Policy: The Plan Administration Committee shall periodically obtain cash flow projections from the Plan's actuary and shall supply them to the Trustee or Insurance Company, if applicable, so that an appropriate investment policy may be maintained which shall satisfy the objectives of the Plan. The Plan Administration Committee shall conduct an annual review of the funding policy and methods and shall notify the Trustee or Insurance Company, if applicable, of any anticipated significant changes in the number or composition of plan participants or any other matter (including a change in the contribution level) which would have a significant impact on the expected cash flow.

10.5 Bonding of Funding Agent: No Trustee or Insurance Company shall be required to furnish any bond or security for the performance of its powers and duties hereunder unless applicable law makes the furnishing of such bond or security mandatory, in which event the Retirement Trust Fund may pay the premium on any bond secured hereunder.

10.6 Investment Powers:

(a) Except as provided in subsection (b), the Trustee shall have full discretion and authority with regard to the investment of the Trust Fund, except with respect to a Plan asset under the control or direction of a properly appointed Investment Manager. The Trustee shall coordinate his or her investment policy with Plan financial needs as communicated by the Plan Administration Committee. Each Trustee is authorized and empowered, subject to the provisions of subsection (b), with the following powers, rights and duties:

(1) To invest any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds, repurchase agreements, United States retirement plan bonds, corporate and municipal bonds, municipal securities, debentures, convertible debentures, secured loans, privately or closely held debt instruments, commercial paper, U.S. Treasury bills, U.S. Treasury notes, U.S. Treasury bonds and other direct or indirect obligations of the United States Government or its agencies, American depositary receipts, Eurobonds, and similar instruments, foreign currency and bank accounts, improved or unimproved real estate situated in the United States, real estate investment trusts and similar investments, oil, gas, and mineral interests, limited partnerships and limited liability companies (as well as their non-U.S. equivalents), exempted companies, pooled investment interests, insurance contracts of any type, variable and fixed annuities and guaranteed investment contracts issued by insurance companies licensed to do business in one or more states in the U.S., commodity futures and forward contracts, short sales, mortgages, notes or other property of any kind, real or personal, and to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common stock, as a prudent man would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Trustees in good faith shall be proper but must be of a kind constituting a diversification considered by law suitable for trust investments;

(2) To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest, including, if a bank is acting as Trustee, specific authority to invest in any type of deposit of the Trustee at a reasonable rate of interest or in a common trust fund (the provisions of which govern the investment of such assets and which the Plan incorporates by this reference) as described in Code Section 584 which the Trustee (or an affiliate of the Trustees, as defined in Code Section 1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as trustee and which conforms to the rules of the Comptroller of the Currency;

(3) To invest any part of the money or property of the Trust Fund in a collective investment trust, a common trust fund or in a group trust that satisfies the requirements of IRS Revenue Ruling 81-100, as further amended by IRS Revenue Ruling 2004-67, IRS Revenue Ruling 2008-40, and effective January 10, 2011, by IRS Revenue Ruling 2011-1, and as subsequently amended by future guidance. Each such collective investment trust, common trust fund or group trust is adopted, with respect to monies invested therein, as part of the Plan and its Trust Fund, and custodial account and each declaration of trust or trust agreement and related adoption, participation, investment management, or other agreements, as amended from time to time, with respect to monies invested therein, are incorporated by reference into the Plan and its trust instrument, or custodial agreement(s), upon approval by the Trustees.

(4) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustees shall decide;

(5) To credit and distribute the Trust as directed by the Plan Administration Committee. The Trustees shall not be obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustees shall be accountable only to the Plan Administration Committee for any payment or distribution made by it in good faith on the order or direction of the Plan Administration Committee;

(6) To extend mortgages;

(7) To compromise, contest, arbitrate or abandon claims and demands, in the discretion of the Trustees;

(8) To have with respect to the Trust all of the rights of an individual owner, including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights;

(9) To lease for oil, gas and other mineral purposes and to create mineral severance by grant or reservation; to pool or unitize interests in oil, gas and other minerals; and to enter into operating agreements and to execute division and transfer orders;

(10) To hold any securities or other property in the name of the Trustees or their nominee, with depositories or agent depositories or in another form as they may deem best, with or without disclosing the trust relationship;

(11) To perform any and all other acts in the judgment of the Trustees necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust;

(12) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction;

(13) To file all tax returns required of the Trustees;

(14) To furnish to the Employer, (specifically the City Manager, Finance Director and City Attorney), the Plan Administrator and the Plan Administration Committee an annual statement (no later than July 1 of the succeeding year) of account showing the condition of the Trust Fund and all

investments, receipts, disbursements, and other transactions effected by the Trustees during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts shall be conclusive on all persons, including the Employer, the Plan Administrator and the Plan Administration Committee, except as to any act or transaction concerning which the Employer, the Plan Administrator or the Plan Administration Committee files with the Trustees written exceptions or objections within ninety (90) days after the receipt of the accounts or for which applicable law authorizes a longer period within which to object; and

(15) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Trustees shall not be obliged or required to do so unless indemnified to their satisfaction.

(16) No later than November 30 of each year, the Trustees shall make available to the Finance Director of the Employer a copy of the most recent audit report of the Plan and Trust prepared through the means of an independent audit.

(b) Anything contained herein to the contrary notwithstanding, the Trust Fund shall be invested by the Trustees; provided that, the Trust Fund shall be managed and invested by the Trustees pursuant to the standard and other provisions for trustees set forth in the Colorado Uniform Prudent Investor Act, Article 1.1 of Title 15, C.R.S. Such investments shall be audited at least biennially. To the extent the investment limitations described in this subsection (b) are modified or repealed by applicable Colorado law, then the provisions of this subsection shall be deemed modified or repealed in accordance therewith.

10.7 Records and Statements: The records of the Trustees pertaining to the Plan shall be open to the inspection of the Plan Administrator, Plan Administration Committee and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Administration Committee may specify in writing. The Trustees shall furnish the Plan Administration Committee or the Plan Administrator with whatever information relating to the Trust Fund the Plan Administration Committee or Plan Administrator considers necessary.

10.8 Fees and Expenses from Fund: Each Trustee shall serve without compensation for services rendered as a Trustee, unless authorized by majority vote of the Trustees if payment is to be made from the Trust Fund. The Trustees shall pay all fees and expenses reasonably incurred by them in their administration of the Plan from the Trust Fund unless the Employer pays the fees and expenses.

10.9 Parties to Litigation: Except as otherwise provided by applicable law, only the Employer, the Plan Administrator, the Plan Administration Committee, and the Trustees shall be necessary parties to any court proceeding involving the Trustees or the Trust Fund. No Participant, or Beneficiary, shall be entitled to any notice of process unless required by applicable law. Any final judgment entered in any proceeding shall be conclusive upon the

Employer, the Plan Administrator, the Plan Administration Committee, the Trustees, Participants and Beneficiaries.

10.10 Professional Agents: The Trustees may employ and pay from the Trust Fund reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustees as in their opinion may be necessary. The Trustees may delegate to any agent, attorney, accountant or other person selected by the Trustees any non-Trustee power or duty vested in the Trustees by the Plan, and the Trustees may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

10.11 Distribution of Cash: The Trustees shall make any distribution under the Plan in cash.

10.12 Distribution Directions: If no one claims a payment or distribution made from the Trust, the Trustees shall promptly notify the Plan Administration Committee and shall dispose of the payment in accordance with the subsequent direction of the Plan Administration Committee.

10.13 Third Party: No person dealing with the Trustees shall be obligated to see to the proper application of any money paid or property delivered to the Trustees, or to inquire whether the Trustees have acted pursuant to any of the terms of the Plan. Each person dealing with the Trustees may act upon any notice, request or representation in writing by the Trustees, or by the Trustees' duly authorized agent, and shall not be liable to any person whomsoever in so doing. The certificate of the Trustees that they are acting in accordance with the Plan shall be conclusive in favor of any person relying on the certificate.

10.14 Resignation: A Trustee(s) may resign at any time as a Trustee of the Plan by giving thirty (30) days' written notice in advance to the Employer and to the Plan Administration Committee.

10.15 Removal: A Trustee may be removed in the same manner as a member of the Plan Administration Committee, as set forth in Section 9.1(e). Vacancies in the Trustees shall be filled in the same manner as vacancies in the Plan Administration Committee, as set forth in Section 9.1(f).

10.16 Interim Duties and Successor Trustees: Each successor Trustee shall succeed to the title to the Trust vested in his or her predecessor by accepting his or her position on the Plan Administration Committee if the Plan Administration Committee members serve as Trustees and if not by accepting in writing his or her appointment as successor Trustee and filing the acceptance with the former Trustee and the Plan Administration Committee without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee (if applicable), shall execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee shall have and enjoy all of the powers, both discretionary and ministerial, conferred under this Agreement upon his or her predecessor. A successor Trustee shall not be personally liable for any act or failure to act of any predecessor Trustee. With the approval of the Employer and the Plan Administration Committee, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.

10.17 Valuation of Trust: The Trustees shall value the Trust Fund as of the last day of the Plan Year, and the Trustees shall value the Trust Fund on such other date(s) as directed by the Plan Administration Committee.

10.18 Limitation of Liability – If Investment Manager Appointed: The Trustees shall not be liable for the acts or omissions of any Investment Manager or Managers the Plan Administration Committee may appoint, nor shall the Trustees be under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed Investment Manager. The Plan Administration Committee, the Trustees and any properly appointed Investment Manager may execute a letter agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager with respect to any part of the Trust Fund under the control of the Investment Manager.

10.19 Manner of Action: Any action or decision of the Trustees shall be decided by majority vote of the Trustees then appointed and qualified.

## ARTICLE XI

## Reemployment and Limitations

11.1 Reemployment of Former Members: A Member whose employment has terminated, and who is rehired by the Employer as an Employee within five years after his date of termination, may make a one-time repayment, within one (1) year of reemployment with the Employer as an Employee, into the Trust Fund of an amount received upon the previous termination of employment upon forfeiture of service credit under the Plan, with compound interest thereon at the Actuarial Equivalent interest rate under Section 2.1(b)(2) from the distribution date through the date of repayment. For purposes of restoring Vesting and Credited Service, the Plan shall accept payment by a direct rollover of an eligible rollover distribution from, the following: a qualified plan described in Code section 401(a) or 403(a), excluding after-tax employee contributions, an annuity contract described in Code section 403(b), excluding after-tax employee contributions, and an eligible plan under Code section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. Under no circumstances may the repayment be made from Roth funds or after-tax employee contributions. For purposes of restoring Vesting and Credited Service, the Plan will also accept a Member's direct rollover contribution of the portion of a distribution from a traditional individual retirement account or annuity described in Code section 408(a) or 408(b) that is eligible to be rolled over and would otherwise be includible in gross income. Upon repayment of the full amount, the Member shall be entitled to the Vesting Service and Credited Service accrued at the prior termination. Should a former Member, rehired by the Employer, elect not to reimburse the Trust for the amount previously received with interest as provided in this subsection, such former Member, upon being employed by the Employer shall be treated as a new Employee for all purposes of this Plan, and the previously accrued Vesting Service and Credited Service shall not be reestablished.

If a Deferred Vested member is rehired by the Employer as an Employee in Covered Employment prior to payment or commencement of payments under the Plan, the Credited Service accrued at the prior termination shall be reestablished and the pension payable upon the later of termination of employment or retirement shall be based on the combined total Credited Service established during each period of employment and the Average Monthly Compensation as of the later termination of employment or retirement.

11.2 Reemployment of Retired Members: If a Retired Member is reemployed by the Employer, no Pension payments shall be made during the period of such reemployment. Such reemployed Retired Member shall be entitled to a pro rata portion of the monthly Pension for the month of reemployment which shall reflect the portion of such month the Member was retired. Upon the subsequent termination of employment by a Retired Member who was reemployed by the Employer, the Plan shall resume paying the Member's previous benefit that was suspended and an additional amount based on the period of reemployment as a Plan Member, if applicable. The additional benefit shall be equal to the benefit earned under Article VI, which generally is 2% of the Average Monthly Compensation earned during the period of reemployment, multiplied by the years of Credited Service earned during the period of reemployment, subject to adjustment for early retirement under Article VI. The Member may not change the form of annuity benefit that was originally selected. Such annuity benefit shall commence as soon as practicable following the Member's subsequent termination of employment.

11.3 Maximum Benefit Limitation: The Plan incorporates by reference the requirements of Code Section 415 and final regulations interpreting Code Section 415, as applicable to this governmental retirement plan, including but not limited to the special provisions under Code Section 415(b)(2)(G) for qualified participants as defined in Code Section 415(b)(2)(H), and the provisions of Code Sections 415(b)(2)(I) and 415(b)(11). The cost-of-living increase of Code Section 415(d), the regulations thereunder, revenue rulings, notices, or other published guidance prescribed by the Commissioner and published in the Internal Revenue Bulletin, shall continue to apply to increase the dollar benefit limit of Code Section 415(b) after the Member's severance from employment. The limitation year is the calendar year. If a Member repays the Retirement Trust Fund all or a portion of the an amount previously received upon the Member's prior termination of employment upon forfeiture of service credit under the Plan, with compound interest thereon pursuant to Section 11.1, any such repayment shall not be taken into account for purposes of Code Section 415 to the extent Code Section 415(k)(3) applies.

11.4 Special Rules Relating to Purchase of Permissive Service Credit: If a Member purchases Credited Service under Section 6.4 that qualifies as "permissive service credit" pursuant to Code Section 415(n), the limitations of Code Section 415 may be met by either:

(a) treating the accrued benefit derived from such contributions as an annual benefit for purposes of Code Section 415(b), or

(b) treating all such contributions as annual additions for purposes of Code Section 415(c).

11.5 Special Rules Relating to Repayment of Cashouts: If a Member repays the Retirement Trust Fund all or a portion of an amount received upon the Member's prior termination of employment upon forfeiture of service credit under the Plan, with compound interest thereon at the Actuarial Equivalent interest rate under Section 2.1(b)(2) from the distribution date through the date of repayment, any such repayment shall not be taken into account for purposes of Code Section 415.

11.6 Limitations on Actions: Unless a shorter statute of limitations applies, administrative actions or civil actions brought by a Member, spouse, Beneficiary, or any other person regarding any benefit of any kind payable under this Plan, including, but not limited to, actions regarding the eligibility for or amount of benefits, shall commence within two years after the Member begins receiving retirement benefits or the Member terminates and receives a refund of the Member's Contribution Accumulation.

11.7 Binding Effect: The Plan, and all actions and decisions made thereunder, shall be binding upon all applicable parties, and their heirs, executors, administrators, successors and assigns.

## ARTICLE XII

## Miscellaneous

12.1 Nonguarantee of Employment: Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee or Member, or as a right of any Employee or Member to be continued in the employment of the Employer, or as a limitation of the right of the Employer to discharge any Employee or Member at any time, with or without cause.

12.2 Rights to Retirement Trust Fund Assets: No Member shall have any right to, or interest in, any assets of the Retirement Trust Fund upon termination of his employment or otherwise, except as provided under this Plan, and then only to the extent of the benefits payable to such Member out of the assets of the Retirement Trust Fund. Neither the Employer, the Funding Agent, nor any member of the Plan Administration Committee shall be liable to any Member or Beneficiary for benefits from this Plan, except for those payable from the Retirement Trust Fund in accordance with the terms of the Plan and the Funding Agreement.

12.3 Inalienability: Except for:

(a) assignments for child support purposes provided for in Colorado Revised Statutes Sections 14-10-118(1) and 14-14-107, as they existed prior to July 1, 1996,

(b) income assignments for child support provided for in Colorado Revised Statutes Section 14-14-111.5,

(c) writs of garnishment that are the result of a judgment taken for arrearages for child support or for child support debt, and

(d) payments made in compliance with a properly executed and certified court order approving a written agreement dividing retirement benefits between a Member and an alternate payee ("DRO"), entered into pursuant to Colorado Revised Statutes Section 14-10-113(6),

benefits under this Plan shall not be assignable either in law or in equity or be subject to execution, levy, attachment, garnishment, or other legal process. Members, Retired Members, Disabled Members, Deferred Vested Members and their Beneficiaries under the Plan are hereby restrained from selling, transferring, anticipating, assigning, pledging, encumbering, or otherwise disposing of their Retirement Benefit, prospective Retirement Benefit, or any other rights or interest under the Plan, and any attempt to anticipate, assign, pledge, or otherwise dispose of the same shall be void. Said Retirement Benefits, prospective Retirement Benefits and rights and interests of said Members, Retired Members, Disabled Members, Deferred Vested Members or Beneficiaries shall not at any time be subject to the claims of creditors or liabilities or torts of said Members, Retired Members, Disabled Members, Deferred Vested Members or Beneficiaries, nor be liable to attachment, execution, or other legal process.

In accordance with the provisions of CRS Section 14-10-113(6), the Plan Administration Committee may adopt, modify and revoke from time to time rules or procedures governing the implementation of this subsection. Any such rules or procedures implementing this subsection may include, but are not limited to: (1) a requirement that, in order for the parties' agreement concerning the division of a Participant's Accrued Benefit under the Plan to be effective, a standardized form adopted by the Plan Administration Committee must be used by the parties and the court; (2) the timing and method of payment to the alternate payee under such court order of a Participant's Accrued Benefit under the Plan; and (3) any other provisions that are consistent with the provisions of CRS Section 14-10-113(6).

The rights of an alternate payee under a DRO end upon the death of the Member unless such alternate payee is named as a Beneficiary or co-Beneficiary. If a former spouse is designated as co-Beneficiary, such person shall receive a portion of the benefit which would otherwise be payable to the Beneficiary.

12.4 Confidentiality: Records of Members, Former Members, Retired Members, Disabled Members, Deferred Vested Members, Beneficiaries, benefit recipients and their dependents which specifically identify financial information of such persons shall be kept confidential.

12.5 Use of IRS Compliance Programs: Nothing in this Plan document should be construed to limit the availability of the IRS's Employee Plans Compliance Resolution System ("EPCRS"). The Plan Administration Committee or the Employer may take whatever corrective actions are permitted under the IRS EPCRS, as is deemed appropriate by the Plan Administration Committee or the Employer.

12.6 Severability of Provisions: In the event that any provision of this Plan shall be held to be illegal, invalid or unenforceable for any reason, the remaining provisions under the Plan shall be construed as if the illegal, invalid or unenforceable provisions had never been included in the Plan.

## ARTICLE XIII

## Amendments

13.1 Amendment by Employer: The Employer reserves the right to amend this Plan from time to time, provided that: (1) except as otherwise provided hereafter in this paragraph, at least sixty-five percent (65%) of the participating Employees who are affected by such amendment approve of it; and (2) no amendment will reduce the non-forfeitable interest in the Accrued Benefit of any Member, Retired Member, Disabled Member, Deferred Vested Member or Beneficiary as of the date of such amendment. To the extent not prohibited by applicable law, this Plan may be amended by written agreement of the Employer and all of the then acting members of the Plan Administration Committee without approval of at least sixty-five percent (65%) of the participating Employees who are affected by such amendment if, but only if (a): (1) the Plan Administration Committee and the Employer determine that such amendment is required in order to obtain or maintain the Plan's initial or continued qualification under Code Section 401 or the Retirement Trust Fund's tax-exempt status under Code Section 501 (and provided that the Plan Administration Committee and the Employer may rely upon the good faith advice of its pension or tax counsel in making any such determination); and (2) the Plan Administration Committee and the Employer determine that such amendment does not affect the rights or interests of any Member, Retired Member, Disabled Member, Deferred Vested Member or Beneficiary in the Plan or in their Plan benefit in a material way; (b) the amendment pertains to a change in assumptions used to determine Actuarial Equivalence under Section 2.1(b) of the Plan or the DROP Interest Rate under Section 8.5 of the Plan; or (c) the amendment is required to conform to a law change including state law change.

No amendment may authorize or permit any of the Retirement Trust Fund (other than the part which is required to pay taxes and administration expenses) to be used for or diverted to purposes other than for the exclusive benefit of the Members or their Beneficiaries (or their Default Beneficiaries if such Members have not designated Beneficiaries) or estates. Except as provided in Section 14.4, no amendment may cause or permit any portion of the Retirement Trust Fund to revert to or become a property of the Employer. The Employer also may not make any amendment that affects the rights, duties or responsibilities of the Trustees, the Plan Administrator or the Plan Administration Committee without the written consent of the affected Trustees, the Plan Administrator or the affected member of the Plan Administration Committee.

With regard to any amendment of the Plan that alters in any way the benefits received by the Members under the Plan, the Plan Administration Committee shall represent and be the agent for the Members in the negotiations with the Employer regarding such amendments.

## ARTICLE XIV

## Termination

14.1 Continuance of the Plan/Right to Terminate: The Employer expects to continue this Plan and the related Trust indefinitely. However, in the event that the Employer is legally dissolved pursuant to U.S. federal or state statute, court order or judicial decision, the Employer may terminate the Plan and related Trust, but only if such termination is permitted under applicable Colorado law. The Employer may at any time by adoption of a resolution to completely terminate the Plan and related Trust upon full funding of the Plan on a Plan termination basis. The Employer may direct and require the Funding Agent to liquidate the share of the Retirement Trust Fund allocable to Members or their Beneficiaries.

14.2 Allocation of Assets Upon Plan Termination: Upon a complete termination or partial termination of the Plan, or a permanent discontinuance of contributions, the benefits accrued up to the date of termination by the affected Members and their Beneficiaries, respectively, shall be nonforfeitable; however, actual payment of such benefits shall only be to the extent permitted from Plan assets as described below. The assets of the Retirement Trust Fund available to the Members, or their Beneficiaries, affected by the termination or partial termination shall be allocated to provide such nonforfeitable benefits, to the extent possible, in the following order of precedence:

(a) Such amount which is equal to the Member's Contribution Accumulation, with interest thereon, to the date of termination of the Plan or, if earlier, the date of the Member's Retirement, less the total amount of Retirement Benefits, if any, theretofore received by such Member or his Beneficiary;

(b) The balance remaining after the allocation described in (a) above shall be allocated for the benefit of each Retired Member (including his Beneficiary) in an amount proportionate to, but not in excess of, the Actuarially Equivalent value of the Pension of such Member at the date of termination, less any amount allocated pursuant to (a) above;

(c) The balance remaining after the allocation described in (b) above shall be allocated for the benefit of each Member who has attained his Normal Retirement Date but who has not retired, in an amount proportionate to, but not in excess of, the Actuarially Equivalent value of the Pension accrued by such Member at the date of termination of the Plan, less an amount allocated pursuant to (a) above;

(d) The balance remaining after the allocation described in (c) above shall be allocated for the benefit of each Member and Deferred Vested Member for whom no allocation has been made under (b) and (c) above, in an amount proportionate to, but not in excess of, the Actuarially Equivalent value of the Pension accrued by each such Member at the date of termination, less any amount allocated pursuant to (a) above.

14.3 Manner of Distribution: Any distribution after termination of the Plan may be provided:

(a) through the purchase of nontransferable annuities from one or more insurance companies, with the amount of the benefit determined by a premium equal to the Actuarial Equivalent value of each Member's benefit;

(b) by a distribution in a single sum of the Actuarial Equivalent value of each Member's benefit; or

(c) by a combination of (a) or (b).

In making such distribution, any and all determinations, divisions, appraisals, apportionments and allotments shall be made by the Plan Administration Committee acting under the information supplied by the Plan's actuary and shall be final and conclusive and not subject to question by any person.

14.4 Exclusive Benefit Rule/Residual Amounts: In no event shall the Employer receive any amounts from the Retirement Trust Fund except that, upon termination of the Plan and notwithstanding any other provisions of the Plan, the Employer shall be entitled to receive such amounts, if any, as may remain after the satisfaction of all liabilities of the Plan to its Members and Beneficiaries arising out of any variations between actual requirements and expected actuarial requirements.

14.5 Contributions Contingent Upon Approval: This Plan and the Retirement Trust Fund are designed to qualify under Code Sections 401(a) and 501(a). Anything herein to the contrary notwithstanding, if a determination letter is issued by the IRS to the effect that the Plan does not meet the requirements of Code Sections 401(a) and 501(a), as initially submitted, the Employer shall be entitled at its option to withdraw all contributions made, in which event the Plan and the Retirement Trust Fund shall then terminate and all rights of the Members shall terminate effective as of the date of the adverse determination letter.

14.6 Consolidation or Merger: The Plan shall not be merged or consolidated with, nor shall any assets or liabilities be transferred to any other plan, unless the benefits payable to each Member if the Plan were terminated immediately after such action would be equal to or greater than the benefits to which such Member would have been entitled if this Plan had been terminated immediately before such action.

This Plan may be executed by original signature or electronic signature in multiple counterparts and may be delivered by fax or other electronic means, each of which shall be deemed to be an original, and all of which, when taken together shall constitute one (1) document.

The Employer and each member of the Plan Administration Committee (who is also a Trustee) have executed this Plan on each date indicated below.

| ATTEST: | **EMPLOYER** |
|---|---|
| ______________________________ | By: ______________________________ |
| Kadee Rodriguez, City Clerk | Mike Coffman, Mayor |
| | Dated:______________________________ |
| Approved as to Form: | **PLAN ADMINISTRATION COMMITTEE/TRUSTEE** |
| ______________________________ | ______________________________ |
| Daniel Brotzman, City Attorney | Brian Kelly |
| | Dated:______________________________ |
| | ______________________________ |
| | Kris McDowell |
| | Dated:______________________________ |
| | ______________________________ |
| | Heath Graw |
| | Dated:______________________________ |
| | ______________________________ |
| | Douglas Daufeldt |
| | Dated:______________________________ |
| | ______________________________ |
| | Wynne Shaw |
| | Dated:______________________________ |

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (hereinafter "MOU") is entered into as of the date this MOU is last signed by a party hereto (the "Effective Date") between **CITY OF AURORA, COLORADO** (hereinafter "Aurora") on the one hand and the **FIRE AND POLICE PENSION ASSOCIATION OF COLORADO** (hereinafter "FPPA") on the other hand. Aurora and FPPA may hereinafter collectively be referred to as the "Parties" and each as a "Party."

For purposes of this MOU, Aurora shall be defined to include Aurora and anyone claiming liability or liable through Aurora including, but not limited to, the City Council, the Mayor, the City Manager, executives, officers, and employees of Aurora and, the predecessors, successors and assigns of each of them.

For purposes of this MOU, FPPA shall be defined to include the Fire and Police Pension Association and anyone claiming liability or liable through FPPA including, but not limited to the Board of Trustees, individual trustees, executives, officers, and employees of FPPA, and the predecessors, successors and assigns of each of them.

### RECITALS

WHEREAS, the City of Aurora sponsors the Money Purchase Pension Plan and Trust Agreement of the Police Department of the City of Aurora (the "MPP");

WHEREAS, C.R.S. Section 31-31-601 provides that a withdrawn local alternative pension plan may be amended to change from a money purchase to a defined benefit plan;

WHEREAS, the City is considering amending the MPP to include a defined benefit option (hereinafter the MPP and defined benefit option are referred to as the "Hybrid Plan");

WHEREAS, under the Hybrid Plan, 7.5% of a member's compensation per year shall be contributed to the MPP, with the remaining mandatory member and employer contributions contributed to a defined benefit option, if the Hybrid Plan is elected by the Member;

WHEREAS, C.R.S. § 31-31-601(1)(b)(II) requires members of local alternative plans to be covered by the provisions of C.R.S. Sections 31-31-803, 31-31-807 and 31-31-807.5, related to disability and survivor benefits in lieu of any other defined disability and preretirement death benefits ("FPPA Disability and Survivor Benefit Statutes");

WHEREAS, Aurora and FPPA intend for the eligible members of the Hybrid Plan to continue to be covered under the FPPA Disability and Survivor Benefit Statutes; and

WHEREAS, Aurora and FPPA intend that the benefits provided under the FPPA Disability and Survivor Benefit Statutes shall be offset by (a) the actuarial equivalent as determined by FPPA of (i) the benefits a member or survivor receives from the MPP and (ii) any refund of contributions and any deferred retirement option plan (DROP) balance payable under the defined benefit option under the Hybrid Plan and (b) any amount payable as a monthly annuity under the defined benefit option of the Hybrid Plan, but the combined offsets shall be adjusted by taking into account that the total contribution to the Hybrid Plan for purposes of determining the offsets shall not exceed that required by FPPA for benefits under C.R.S. Section 31-31-403.

## AGREEMENT

The Parties hereby agree as follows:

(1) That FPPA shall not challenge the establishment of the Hybrid Plan by Aurora.

(2) That each member of the Hybrid Plan who is eligible for the death and disability coverage provided by the FPPA Disability and Survivor Benefits Statutes shall

(a) be covered by the FPPA Disability and Survivor Benefits Statutes, and

(b) have a contribution made for such member.

(3) That the benefits provided under the FPPA Disability and Survivor Benefit Statutes shall be offset by (a) the actuarial equivalent as determined by FPPA of (i) the benefits a member or survivor receives from the MPP and (ii) any refund of contributions and any DROP balance payable under the defined benefit option under the Hybrid Plan and (b) any other amount payable as a monthly annuity under the defined benefit option of the Hybrid Plan, but the combined offsets shall be adjusted by taking into account that the total contribution to the Hybrid Plan for purposes of determining the offsets shall not exceed that required by FPPA for benefits under C.R.S. Section 31-31-403.

(4) That under C.R.S. Section 31-31-803(7), C.R.S. Section 31-31-804, and C.R.S. Section 31-31-808, when computing the offsets (which are based on benefits paid by the Hybrid Plan) under the FPPA Disability and Survivor Statutes, the combined contribution rates by Aurora and the member to the MPP and the defined benefit option under the Hybrid Plan shall be taken into account to determine if the benefits have been funded at the same rate of contribution specified in C.R.S. Sections 31-31-402(1) and (2) as are required for benefits under C.R.S Section 31-31-403 ("FPPA Rate of Contribution").

(5) That in the event such contributions made to the Hybrid Plan exceed the FPPA Rate of Contribution, such excess shall be allocated first to the MPP account balance and second to the defined benefit option under the Hybrid Plan.

(6) That Aurora shall cooperate to provide such information as FPPA needs to properly compute the offset amounts.

(7) This MOU may be executed in counterparts, each of which is equally admissible into evidence.

(8) This MOU is for the sole benefit of the Parties hereto and their respective successors and assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this MOU.

(9) This MOU constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter.

(10) This MOU may only be amended, modified or supplemented by an agreement in writing signed by both of the Parties hereto. No waiver by either Party of any of the provisions of this MOU shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by either Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from or under this MOU shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege arising from or under this MOU preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(11) If any provision of this MOU is found to be in violation of any law by a court of competent jurisdiction in a final, non-appealable decision, the Parties covenant that they

shall undertake good-faith efforts to reform this MOU, or make a new agreement that, to the maximum extent permitted by law, is consistent with this MOU.

(12) This MOU shall be construed and enforced pursuant to the laws of the State of Colorado.



Aurora Representative's Initials

FPPA Representative's Initials

IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year written below.

**CITY OF AURORA, COLORADO**

Dated: ________________

________________________________
By: Michael Coffman
Title: Mayor, City of Aurora

STATE OF COLORADO )
)ss.
COUNTY OF _______________ )
Subscribed and sworn before me this _____ day of _______ 20___ by ____________________.

________________________________
Notary Public
My Commission expires:

Seal:
___________________.

APPROVED AS TO FORM

By:____________________________________ Dated: __________.
Daniel Brotzman
City Attorney, City of Aurora

**FIRE AND POLICE PENSION ASSOCIATION OF COLORADO**

Dated: ________________

________________________________

By: Dan M. Slack
Its: Executive Director

STATE OF COLORADO )
)ss.
COUNTY OF _______________ )

Subscribed and sworn before me this _____ day of _______ 20___ by ____________________.

________________________________

Notary Public
My Commission expires:

Seal:

___________________.

APPROVED AS TO FORM

By:____________________________________ Dated: __________.

Kevin Lindahl
General Counsel, Fire and Police Pension Association of Colorado

## AURORA POLICE HYBRID PLAN ESTIMATED TIMELINE

| Action | Responsible Party | Date |
|---|---|---|
| 1. Review Plan, Memorandum of Understanding with FPPA ("MOU") and seed money requirements | DGS, Milliman | June 9, 2020<br>(8:00 am to 10:00 am) |
| 2. Review Plan, MOU, and seed money requirements | DGS, Milliman | July 8, 2020<br>(9:00 am to 11:00 am) |
| 3. Prepare final drafts of Hybrid Plan and MOU | DGS | July 22, 2020 |
| 4. Present Plan, MOU, and seed money requirements to Management and Finance Policy Committee | Hybrid Plan Team | July 28, 2020<br>(1:00 pm to 5:00 pm) |
| 5. Hybrid Team Meeting (Pre-City Council Prep Meeting) | Hybrid Plan Team | August 12, 2020<br>(9:00 am to 11:00 am) |
| 6. Present Plan, MOU, and seed money requirements to City Council Meeting | Hybrid Plan Team | August 17, 2020 |
| 7. Hybrid Team Meeting | Hybrid Plan Team | September 9, 2020<br>(9:00 am to 11:00 am) |
| 8. Educate MPPP plan participants regarding the DB option | Innovest, Aurora Police Board | September 14, 2020 – September 30, 2020 |
| 9. Hybrid Team Meeting | Hybrid Plan Team | October 14, 2020<br>(9:00 am to 11:00 am) |
| 10. Conduct participant vote to allow DB option plan modification | Innovest, Aurora Police Board | October 2020 |
| 11. Hybrid Team Meeting | Hybrid Plan Team | November 12, 2020<br>(1:00 pm to 3:00 pm) |
| 12. Amendment to MPPP to accommodate increased contribution | Aurora, Aurora Police Board | December 9, 2020 |
| 13. Hybrid Team Meeting | Hybrid Plan Team | December 10, 2020<br>(1:00 pm to 3:00 pm) |

| Action | Responsible Party | Date |
|---|---|---|
| 14. Revise DGS/Milliman Agreement, DGS/Innovest Agreement, and DGS Agreements with the City of Aurora and the Board of Trustees of the MPPP and Trust | Aurora, Milliman, Innovest, Aurora Police Board | December 15, 2020 |
| 15. Present timeline and discuss Hybrid Plan and trustee roles with Aurora Police Board | Milliman, DGS, Aurora, Innovest | January 5, 2021 |
| 16. Hybrid Team Meeting | Hybrid Plan Team | January 13, 2021<br>1:00 PM to 3:00 PM |
| 17. Modify DB Plan to accommodate revised purchase of service design and tax law changes | DGS | January 2021 |
| 18. Hybrid Team Meeting | Hybrid Plan Team | February 3, 2021<br>9:00-11:00 AM |
| 19. Meeting with Social Security Administrator (Dean Conder) | Cindy Birley, Terri Velasquez and Jared Martin | February 11, 2021<br>10:00 to 11:00 AM |
| 20. Management and Finance Policy Committee | Hybrid Plan Team | February 23, 2021<br>1:00 PM to 3:00 PM |
| 21. Hybrid Team Meeting | Hybrid Plan Team | March 10, 2021<br>10:00 AM to 12:00 PM |
| 22. Participant communication regarding Hybrid Plan | Innovest | Q1 - 2021 |
| 23. Hybrid Team Meeting | Hybrid Plan Team | March 31, 2021<br>9:00 AM to 11:00 AM |
| 24. Aurora Police Board Meeting | Aurora Police Board, Hybrid Plan Team | April 6, 2021<br>8:30 AM to 10:30 AM |
| 25. Hybrid Team Meeting | Hybrid Plan Team | April 22, 2021<br>9:00 AM to 11:00 AM |
| 26. Hybrid Team Meeting | Hybrid Plan Team | May 12, 2021<br>9:00 AM to 11:00 AM |
| 27. Modify existing MPPP to accommodate new design | DGS | Q2 - 2021 |

| Action | Responsible Party | Date |
|---|---|---|
| 28. Engage Innovest as DB Administrative TPA and Investment Consultant, and DB Software TPA | Aurora, Aurora Police Board | Q2 - 2021 |
| 29. Provide new vendor with employee specific data to calculate years of service options; execute confidentiality/NDA | Empower/DB Software TPA/Innovest | June 2021 |
| 30. Review fiduciary insurance | Aurora, Aurora Police Board | Q2 - 2021 |
| 31. Set up Pension codes Contribution code and Deduction for Hybrid plan and On-going Money Purchase Plan | Payroll | June 1, 2021 |
| 32. Set up DROP codes for employee | Payroll | June 1, 2021 |
| 33. Hybrid Team Meeting | Hybrid Plan Team | June 16, 2021<br>9:00 AM to 11:00 AM |
| 34. Conduct RFP regarding Custodian for Plan | Aurora, Innovest, Aurora Police Board | June 2021 |
| 35. Send sample payroll file to Milliman | Payroll | July 2021 |
| 36. Set up new GL accounts | Payroll, Accounting | July 1, 2021 |
| 37. Select Custodian for Hybrid Plan | Aurora, Innovest, Aurora Police Board | July 6, 2021 |
| 38. Hybrid Team Meeting | Hybrid Plan Team | July 20, 2021<br>9:00 AM to 11:00 AM |
| 39. Hybrid Team Meeting | Hybrid Plan Team | August 3, 2021<br>2:00 PM to 4:00 PM |
| 40. Hybrid Team Meeting | Hybrid Plan Team | September 8, 2021<br>2:00 PM to 4:00 PM |
| 41. Hybrid Team Meeting | Hybrid Plan Team | September 21, 2021<br>8:00 AM to 10:00 AM |
| 42. Conduct informational meetings for Police Officers with years of service calculations specific to Police Officer | Innovest | July through September 2021 |
| 43. Determine seed money | Milliman, Aurora | Q3 - 2021 |

| Action | Responsible Party | Date |
|---|---|---|
| 44. Prepare select administrative forms, including update of Social Security Notice, and SPD | Milliman, DGS, Innovest | Q3/Q4 - 2021 |
| 45. Negotiate custodial agreement | DGS, Aurora (Hans) | Q3/Q4 - 2021 |
| 46. Finalize and execute MOU with FPPA | DGS, Aurora, FPPA | Q3/Q4 - 2021 |
| 47. Prepare pick-up and adoption resolutions for final DB Plan and Trust and MPPP amendments | DGS | Q3/Q4 - 2021 |
| 48. Hybrid Team Meeting | Hybrid Plan Team | October 4, 2021<br>11:00 AM to 1:00 PM |
| 49. Trustee update, including vote to approve creation of DB option | Aurora Police Board | October 5, 2021 |
| 50. Prepare workflow item | Finance Director | October 15, 2021 |
| 51. Submit final documents for City Council | Finance Director | October 15, 2021 |
| 52. Study Session regarding MOU with FPPA, Resolutions, DB Plan and Trust, and MPPP amendment and restatement | City Council | November 1, 2021 |
| 53. Regular City Council meeting to adopt MOU with FPPA, Resolutions, DB Plan and Trust and MPPP amendment and restatement | City Council | November 8, 2021 |
| 54. Aurora Police Board meeting to adopt Resolutions, DB Plan and Trust and MPPP amendment and restatement, including resolutions providing Milliman and Innovest serve as designees | Aurora Police Board | November 9, 2021 |
| 55. Apply for Trust EIN | City of Aurora, Aurora Police Board, DGS | Q4 - 2021 |
| 56. Engage DGS as attorney and Milliman as actuary | Aurora, Aurora Police Board | Q4 - 2021 |
| 57. Draft Bylaws | Innovest | Q4 - 2021 |
| 58. Begin completing pension plan election forms | Police Officers | December 1, 2021 –<br>December 15, 2021 |

| Action | Responsible Party | Date |
|---|---|---|
| 59. File for IRS Determination Letter | DGS | Q4 - 2021/Q1 - 2022 |
| 60. File for IRS Private Letter Ruling | DGS | Q4 - 2021/Q1 - 2022 |
| 61. Assignment from City of Aurora of: (1) Retirement Plan Services Agreement, and (2) Schwab Custody Agreement to Plan Administration Committee/Plan Trustees | City of Aurora, Plan Administration Committee, Milliman, Schwab | January 1, 2022 |
| 62. Start Hybrid Plan | Aurora, Aurora Police Board | January 1, 2022 |
| 63. Initial $100 funding from City to establish trust | Payroll/Brian Kelly | January 1, 2022 |
| 64. Transferred officer's information available on DB Software TPA's platform | DB Software TPA | January 4, 2022 |
| 65. Trust/Custody account funding of $1,000,000 | Payroll/Schwab | January 7, 2022 |
| 66. First file upload of payroll data for payroll to custodian portal | Payroll/Milliman | January 19, 2022 |
| 67. First wire transfer to new custodian | Payroll | January 21, 2022 |
| 68. Update system from OneSolution ERP to Workday ERP | Aurora, Milliman | Q1 – 2022 |
| 69. Hire Auditor | Aurora Police Board | Q2 – Q3 2022 |
| 70. Begin purchasing years of service | Police Officers, Custodian, Payroll, DB Software TPA, DB Administrative TPA | May 2023* |
| 71. Form 5310-A filings | Aurora, Milliman | 2023 and later years |

* Subject to IRS approval.

# CITY OF AURORA
## Council Agenda Commentary

| |
|---|
| **Item Title:** Executive Recruitment Kick off and Intake – Court Administrator |
| **Item Initiator:** Geoff DeMoss, City of Aurora Talent Acquisition Manager |
| **Staff Source/Legal Source:** Geoff DeMoss/ Rachel Allen, Client Group Manager City Attorney Civil Division |
| **Outside Speaker:** Scott Reilly, President, Affion Public |
| **Council Goal:** 2012: 1.5--Maintain an unbiased, independent municipal court |

**COUNCIL MEETING DATES:**

**Study Session:** 11/1/2021

**Regular Meeting:** N/A

**ITEM DETAILS:**

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated Presentation/discussion time

Title: Executive Recruitment Kick off and Intake – Court Administrator with Affion Public
Sponsor Name: City Manager Twombly and Mayor Coffman
Staff Source Name: Geoff DeMoss, Talent Acquisition Manager
Outside Speaker: Scott Reilly, President, Affion Public
Estimated time: 30 minutes

**ACTIONS(S) PROPOSED** ***(Check all appropriate actions)***

☐ Approve Item and Move Forward to Study Session

☐ Approve Item as proposed at Study Session

☐ Approve Item and Move Forward to Regular Meeting

☐ Approve Item as proposed at Regular Meeting

☐ Information Only

☐ Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field.

**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** Use dropdown menu to select committee from list.

**Policy Committee Date:** Click or tap to enter a date or type N/A

**Action Taken/Follow-up:** ***(Check all that apply)***

☐ Recommends Approval

☐ Does Not Recommend Approval

☐ Forwarded Without Recommendation

☐ Recommendation Report Attached

☐ Minutes Attached

☐ Minutes Not Available

**HISTORY** ***(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)***

Type text here or enter N/A if no history

**ITEM SUMMARY** ***(Brief description of item, discussion, key points, recommendations, etc.)***

The purpose of this item is to allow for the Mayor and Council to provide their direction, interests and recruitment needs to the lead recruiter from Affion Public, Mr. Scott Reilly, who will be facilitating and managing the recruitment for the Court Administrator position. We are attempting to add Mr. Reilly on the agenda as soon as possible so that the recruitment for this position can begin. Delay means that much more time before we will be able to evaluate applicants, select a candidate and make a hire/appointment. Please consider this agenda item for the desired Study Session so that we may proceed.

**QUESTIONS FOR COUNCIL**

Type question here. (Example: Does Council wish to support… Does Council wish to approve…)

**LEGAL COMMENTS**

There is hereby created and established an administrative unit entitled "court administration" which shall be directed by a court administrator together with support personnel as the budget may provide from year to year. The court administrator shall be appointed and removed by the city council. However, the city council may, by ordinance, delegate its appointment and removal authority to another officer or entity. The court administrator shall be responsible for providing the necessary administrative services to the municipal court other than those services and oversight of staff provided by the presiding judge per Charter section 10-4(b). The court administrator shall serve at the pleasure of the city council and shall not be considered a career service employee with disciplinary review rights. (City Charter Art. 10-4(d)). (R. Allen)

**PUBLIC FINANCIAL IMPACT**

☐ YES ☐ NO

**If yes, explain:** Type explanation here or enter N/A if no public financial impact.

**PRIVATE FISCAL IMPACT**

☐ Not Applicable ☐ Significant ☐ Nominal

**If Significant or Nominal, explain:** Type explanation here or enter N/A if no private fiscal impact.

# CITY OF AURORA
## Late Submission Approval for Agenda Item

| | |
|---|---|
| **Item Title:** Executive Recruitment – Court Administrator position – Kick-off Discussion with Affion Public lead Recruiter | |
| **Item Initiator:** Geoff DeMoss, City of Aurora Talent Acquisition Manager | |
| **Staff Source/Legal Source:** Geoff DeMoss, Ryan Lantz | |
| **Outside Speaker:** Scott Reilly, President, Affion Public | |
| **Council Goal:** 2012: 1.5--Maintain an unbiased, independent municipal court | |

**CRITERIA - PLEASE CONSIDER ITEM FOR LATE SUBMISSION FOR THE FOLLOWING REASON:**

☐ There is a time-sensitive legal requirement that must be met and cannot be met by a future meeting date

☒ The delay will result in an adverse impact to the city

☐ The item is related to a disaster and must be addressed before the next available meeting

**COUNCIL MEETING DATES FOR LATE SUBMISSION:**

**Study Session:** 11/1/2021

**Regular Meeting:** Click or tap to enter a date or type N/A

**EXPLANATION:** ***(Please provide a detailed explanation as to why the item falls into one or more of the above criteria and why it may not be set for a future meeting date.)***

The purpose of this meeting is to allow for the Mayor and Council to provide their direction, interests and recruitment needs to the lead recruiter from Affion Public, Mr. Scott Reilly, who will be facilitating and managing the recruitment for the Court Administrator position. We are attempting to get Mr. Reilly on the agenda as soon as possible so that the recruitment for this position can begin. Delay means that much more time before we will be able to evaluate applicants, select a candidate and make a hire/appointment. Please consider this agenda item for the desired Study Session so that we may proceed.

I understand the agenda item will not be added to the agenda without submitting this completed form as an attachment in e-Scribe. The agenda item will not be added to the agenda if the workflow is not completed by the WORKFLOW COMPLETED date indicated on the agenda deadline calendar.

| | |
|---|---|
| Geoff DeMoss | James M Twombly |
| Agenda Item Initiator Name | Late Submission Approver Name |

| | | | |
|---|---|---|---|
| *Geoff DeMoss* | 10/18/21 | Jam M Twomey | 10/20/21 |
| Agenda Item Initiator Signature | Date | Late Submission Approver Signature | Date |

# CITY OF AURORA
## Council Agenda Commentary

| |
|---|
| **Item Title:** ARPA Funding to Assist in the Capital Development of Aurora Mental Health's Proposed Campus |
| **Item Initiator:** Mayor Mike Coffman |
| **Staff Source/Legal Source:** Kadee Rodriguez / Dan Brotzman |
| **Outside Speaker:** Debbie Stafford |
| **Council Goal:** 2012: 2.4--Work with our partners to ensure that every child and young person in Aurora have access to fundamental resources |

**COUNCIL MEETING DATES:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

Mike Coffman, Mayor/Dan Brotzman, City Attorney
Sponsor: Mike Coffman, Mayor
Outside speaker: Debbie Stafford
Estimated time: 30 minutes

**ACTIONS(S) PROPOSED** ***(Check all appropriate actions)***

☐ Approve Item and Move Forward to Study Session

☐ Approve Item as proposed at Study Session

☒ Approve Item and Move Forward to Regular Meeting

☐ Approve Item as proposed at Regular Meeting

☐ Information Only

☐ Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field.

**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

**Action Taken/Follow-up:** ***(Check all that apply)***

☐ Recommends Approval

☐ Does Not Recommend Approval

☐ Forwarded Without Recommendation

☐ Recommendation Report Attached

☐ Minutes Attached ☐ Minutes Not Available

**HISTORY** ***(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)***

N/A

**ITEM SUMMARY** ***(Brief description of item, discussion, key points, recommendations, etc.)***

The Aurora Mental Health Center Acute Care Campus is a planned consolidated crisis, detox, walk-in crisis, medication assisted treatment, short-term stay and substance use services at their current 7.3 acre campus at 1290 Potomac St. Their developer has estimated the cost to be approximately $29+M for the Acute Care phase-one building. (Phases 2 & 3 will be paid for by STRIDE and a housing partner.) This location will expand capacity for increased mental health care opportunities.

The Acute Care Campus will create a centralized access to mental health crisis services which will enhance access to care for all residents of Aurora and beyond. This will also impact the homeless community in a positive and supportive way to gain services to stabilize. The Acute Care Campus will save time and money for Law Enforcement and First Responders who can more readily get back into service rather than going between multiple locations to get someone in the correct treatment environment.

The Aurora Mental Health Center is one of 18 State Legislated Community Mental Health Centers in Colorado designed to be a mental health safety net along with serving the mental health needs of our community. Their funding is reliant upon Medicaid reimbursement for services delivered, grants, donations and some insurance coverage. Their funding streams do not provide for capital needs. The Acute Care Campus will enable Law Enforcement and First Responders to be back in service quickly, impacting public safety and reducing cost for the City when First Responders are out of service.

**QUESTIONS FOR COUNCIL**

Does Council wish to approve one time ARPA Funding of $8-10 M which will benefit Aurora residents and consolidate critical mental health and substance use services in a one stop campus next to the Medical Center of Aurora.

**LEGAL COMMENTS**

In Pub. Law. 117-2, Subtitle M, Sec. 9901, (The American Rescue Act or “ARPA”) the US Congress allocated money to local government for various purposes. The Department of the Treasury issued Rule 2021-10283 discussing several examples of lawfully permitted uses of the funds allocated by the US Congress. Mental Health programs are within the permitted uses of these funds; therefore, the city may provide funding for the Aurora Mental Health needs including mental health programs, building construction and improvement amongst other needs that have been exacerbated by the Covid-19 pandemic. (Hernandez)

**PUBLIC FINANCIAL IMPACT**

☐ YES ☒ NO

**PRIVATE FISCAL IMPACT**

☒ Not Applicable ☐ Significant ☐ Nominal

**If Significant or Nominal, explain:**

# CITY OF AURORA
## Council Agenda Commentary

| | |
|---|---|
| **Item Title:** FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING ARTICLE IV OF CHAPTER 94 OF THE CITY CODE RELATING TO PROHIBITION OF FIREARMS IN OR UPON THE AURORA MUNICIPAL CENTER | |
| **Item Initiator:** Jim Twombly, City Manager | |
| **Staff Source/Legal Source:** Rachel Allen, Client Group Manager/Peter Schulte, Public Safety Client Group Manager | |
| **Outside Speaker:** N/A | |
| **Council Goal:** 2012: 1.0--Assure a safe community for people | |

**COUNCIL MEETING DATES:**

**Study Session:** 11/1/2021

**Regular Meeting:** 11/8/2021

**ITEM DETAILS:**

- Agenda long title
- Waiver of reconsideration requested, and if so, why
- Sponsor name
- Staff source name and title / Legal source name and title
- Outside speaker name and organization
- Estimated Presentation/discussion time

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING ARTICLE IV OF CHAPTER 94 OF THE CITY CODE RELATING TO PROHIBITION OF FIREARMS IN OR UPON THE AURORA MUNICIPAL CENTER

Staff Cource, Rachel Allen, Client Group Manager/Peter Schulte, Public Safety Client Group Manager

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**ACTIONS(S) PROPOSED** ***(Check all appropriate actions)***

☐ Approve Item and Move Forward to Study Session

☐ Approve Item as proposed at Study Session

☒ Approve Item and Move Forward to Regular Meeting

☐ Approve Item as proposed at Regular Meeting

☐ Information Only

☐ Approve Item with Waiver of Reconsideration

Reason for waiver is described in the Item Details field.

**PREVIOUS ACTIONS OR REVIEWS:**

**Policy Committee Name:** N/A

**Policy Committee Date:** N/A

**Action Taken/Follow-up:** ***(Check all that apply)***

☐ Recommends Approval

☐ Does Not Recommend Approval

☐ Forwarded Without Recommendation

☐ Recommendation Report Attached

☐ Minutes Attached

☐ Minutes Not Available

**HISTORY** ***(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)***

N/A

**ITEM SUMMARY** ***(Brief description of item, discussion, key points, recommendations, etc.)***

The Aurora City Council passed Ord. No. 2003-56 on 9-8-2003 to prohibit open carry of firearms in or upon public facilities as authorized by C.R.S. Sec. 29-11.7-214. The Colorado General Assembly passed SB 21-256 this past session and declared that, "officials of local governments are uniquely equipped to make determinations as to where concealed handguns can be carried in their local jurisdictions." With the passage of this new law, Aurora City Council is authorized to extend their prohibition to concealed carry handguns in public facilities or a specific area so long as they pass an ordinance and post the facility or specific area.

**QUESTIONS FOR COUNCIL**

Does Council wish to support this item?

**LEGAL COMMENTS**

A local government…may enact an ordinance, resolution, rule, or other regulation that prohibits a permittee from carrying a concealed handgun in a building or specific area within the local government's or governing board's jurisdiction, or for a special district, in a building or specific area under the direct control or management of the district, including a building or facility managed pursuant to an agreement between the district and a contractor. An ordinance, resolution, or other regulation prohibiting a permittee from carrying a concealed handgun may only impose a civil penalty for a violation and require the person to leave the premises. For a first offense, the ordinance, resolution, or other regulation may not impose a fine that exceeds fifty dollars and may not impose a sentence of incarceration. A person who does not leave the premises when required may be subject to criminal penalties. If a local government or governing board prohibits carrying a concealed handgun in a building or specific area, the local government or governing board shall post signs at the public entrances to the building or specific area informing persons that carrying a concealed handgun is prohibited in the building or specific area. (C.R.S. Sec. 18-12-214(1)(c)).

A local government may enact an ordinance, regulation, or other law that prohibits the open carrying of a firearm in a building or specific area within the local government's jurisdiction. If a local government enacts an ordinance, regulation, or other law that prohibits the open carrying of a firearm in a building or specific area, the local government shall post signs at the public entrances to the building or specific area informing persons that the open carrying of firearms is prohibited in the building or specific area. (C.R.S. 27-11.7-104).

Council shall act only by ordinance, resolution or motion. All legislative enactments must be in the form of ordinances. (City Charter Art. 5-1). (Allen)

**PUBLIC FINANCIAL IMPACT**

☐ YES ☒ NO

**If yes, explain:** N/A

**PRIVATE FISCAL IMPACT**

☒ Not Applicable ☐ Significant ☐ Nominal

**If Significant or Nominal, explain:** N/A

ORDINANCE NO. 2021- ______

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING ARTICLE IV OF CHAPTER 94 OF THE CITY CODE RELATING TO PROHIBITION OF FIREARMS IN OR UPON THE AURORA MUNICIPAL CENTER AND PUBLIC FACILITIES

WHEREAS, City Council desires to provide a safe environment in the Aurora Municipal Facility ("AMC") and the City's public facilities for Aurora citizens, elected officials and employees; and

WHEREAS, the Colorado General Assembly declared in SB 21-256 that, "officials of local governments are uniquely equipped to make determinations as to where concealed handguns can be carried in their local jurisdictions;" and

WHEREAS; the City Council desires to prohibit open carry and concealed carry firearms in the Aurora Municipal Center ("AMC") and public facilities; and

WHEREAS, City Council desires to amend Ordinance 2003-56, which previously prohibited firearms in or upon public facilities:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The City hereby amends Section 94-154 of the City Code pertaining to prohibition of firearms in the Aurora Municipal Center.

Sec. 94-154 - Firearms **and concealed handguns** prohibited in **the Aurora Municipal Center** or upon public facilities.

(a) The carrying of firearms **and concealed handguns** in **the Aurora Municipal Center** or upon public facilities is unlawful when said facilities are **or a specific area is** posted with ~~notification that the carrying of firearms is prohibited~~ **signs at the public entrances to the building or specific areas informing persons that open carrying a firearm or a concealed handgun is prohibited.**

(b) Nothing in this section shall be construed to forbid any law enforcement officer from carrying or wearing such weapons and firearms as shall be necessary in the proper discharge of his or her duties.

(c) ~~It shall not be an offense of subsection (a) of this section if the person was carrying a concealed handgun and had, at the time of carrying the concealed handgun, a valid permit to carry such concealed handgun issued pursuant to C.R.S. 18-12-105.1 as it existed prior to its repeal or a valid permit to carry a concealed handgun or a temporary emergency permit issued pursuant to pt. 2 of art. 12 of tit. 18 of the Colorado Revised Statutes; except that it shall be an offense under subsection (a) if the person was carrying a concealed handgun in violation of the carrying restrictions contained in C.R.S. 18-12-214.~~ **A person violating subsection (a) of this section shall receive a civil penalty and be asked to leave the premises. For a first offense, a civil penalty of fifty dollars shall be imposed and no penalty of incarceration may be imposed. A person who does not leave the premises when required and for second and subsequent violations may be subject to other criminal charges, a conviction of which may include fines and incarceration.**

(d) For purposes of this section, public facilities shall include, but not be limited to, municipally owned, operated or leased buildings, properties, recreational facilities, parks, trails, and open spaces. **A concealed carry permit does not authorize a person to carry a concealed handgun in the Aurora Municipal Center or public facility, and any person who carries a firearm or concealed handgun is in violation of subsection (a) of this section if the public facility is properly posted.**

Section 2. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 3. Penalty. Violations of the terms, directives, or mandates of this Ordinance are not subject to the general penalty provisions contained in Section 1-13 of this City Code and shall be governed by C.R.S. Sec. 18-12-214(1)(c).

Section 4. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 5. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this _____ day of ____________, 2021.

PASSED AND ORDERED PUBLISHED this ______ day of ____________, 2021.

___________________________________
MIKE COFFMAN, Mayor

ATTEST:

__________________________________
KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

___________________________
RACHEL ALLEN, Client Group Manager

# CITY OF AURORA
## Council Agenda Commentary

| | |
|---|---|
| **Item Title:** 2021 Arts District Stakeholders Update | |
| **Item Initiator:** Andrea Amonick | |
| **Staff Source/Legal Source:** Philip Nachbar | |
| **Outside Speaker:** Kerri Drum, Craig Bond, Krista Robinson, Aaron Vega | |
| **Council Goal:** 2012: 5.2--Plan for the development and redevelopment of strategic areas, station areas and urban centers | |

### COUNCIL MEETING DATES:

**Study Session:** 11/1/2021

**Regular Meeting:** N/A

### ITEM DETAILS:

Philip Nachbar, Development Project Manager / Christine McKinney, Client Services Manager
Outside Speaker: Kerri Drum, Craig Bond, Aaron Vega, Krista Robinson
Estimated time: 30 mins

### ACTIONS(S) PROPOSED *(Check all appropriate actions)*

☐ Approve Item and Move Forward to Study Session

☐ Approve Item as proposed at Study Session

☐ Approve Item and Move Forward to Regular Meeting

☐ Approve Item as proposed at Regular Meeting

☒ Information Only

☐ Approve Item with Waiver of Reconsideration
Reason for waiver is described in the Item Details field.

### PREVIOUS ACTIONS OR REVIEWS:

**Policy Committee Name:** Housing, Neighborhood Services & Redevelopment

**Policy Committee Date:** N/A

**Action Taken/Follow-up:** ***(Check all that apply)***

☐ Recommends Approval

☐ Does Not Recommend Approval

☒ Forwarded Without Recommendation

☐ Recommendation Report Attached

☐ Minutes Attached ☒ Minutes Not Available

**HISTORY** ***(Dates reviewed by City council, Policy Committees, Boards and Commissions, or Staff. Summarize pertinent comments. ATTACH MINUTES OF COUNCIL MEETINGS, POLICY COMMITTEES AND BOARDS AND COMMISSIONS.)***

The Aurora Cultural Arts District is part of the 2002 Fletcher Plaza Urban Renewal Plan. The District is currently "home" to approximately fifteen (15) arts organizations and artists (the "Stakeholders), with its core area centered around the Colfax corridor, between Dayton and Florence Streets in northwest Aurora. The Stakeholders have met informally since 2015, and in 2017 developed the "Stakeholders Strategic Plan", which serves to help guide their agenda and actions.

The boundary of the District extends from Dallas Street on the west to Galena Street on the east. The Urban Renewal Plan's strategic goals address opportunities for redevelopment, and it further acknowledges that "downtown Aurora is the most ethnically diverse, historic, and walkable or pedestrian-oriented part of Aurora". One its primary goals is "to expand the arts and cultural attraction and establish an identity as an arts district".

Often referenced as Original Aurora, the area provides an immediate audience for the ethnic themes and orientation for many of the theatrical performances in the district. The District's largest performing arts venues - Vintage Theater, Peoples Building, and Fox Arts Center include a range of programming that attracts patrons from Aurora and the larger metro Denver area.

The City continues to support the Arts District by providing annual grants to arts organizations and artists through its Northwest Aurora Arts Grants program, consulting opportunities to support organizational capacity, and management of its arts venues which hold a range of performance events. These include: the Peoples Building, 9995 E. Colfax Avenue; the Fox Arts Center, 9901 E. Colfax Avenue; the 1400 Dallas facility, providing artist space for emerging local artists; 1468 Dayton Street, a city-owned performing arts venue currently leased and operated by the Vintage Theater; and the historic Hornbein building, 9901 E. 16th Avenue, currently leased to Red Delicious Press, a local printing cooperative.

**ITEM SUMMARY** ***(Brief description of item, discussion, key points, recommendations, etc.)***

Despite the pandemic, in 2020 the Stakeholders were relatively stable. While some organizations saw dramatic decreases in income from ticket sales, the Arts District Stakeholders were able to stay afloat with the support of federal, local and city COVID response dollars, as well as donations from their loyal supporters. No organization shut their doors as a result of COVID. This is notable – in Colorado, the pandemic has devastated the creative economy with a loss of $2.4 billion in revenue. At the pandemic's peak, 57% of all creative workers in Colorado were unemployed (59,179 people) (source Colorado Creative Industries).

While some organizations have continued to rebound, for some 2021 has been a bit more difficult. COVID funding has largely dried up. Many organizations still have limits on number of attendees they can safely serve and may also be serving populations who are not yet returning to pre-pandemic attendance levels.

The Arts District Stakeholders strive to support their Strategic Plan developed in 2017. The Plan focuses on developing organizational capacity, attention to audiences and programming, and enhancing the physical environment of the District.

In 2022, the City will implement two new projects that support placemaking and Arts District events, engaging local businesses and arts organizations. The Colfax Streetscape project, will improve the sidewalk areas between Dayton and Florence Streets, providing new planting areas, street trees, pedestrian lighting, and sidewalk extensions fronting local businesses, intended to provide a more recognizable physical identity for the District.

In October, the city was also awarded a $150,000 pilot grant to support the activation of Fletcher Plaza and its surrounding public spaces. The grant will be used to provide safety and infrastructure to support new events and commercial activity on the plaza.

Together, these two projects will create a more attractive and safe environment, attract new customers and patrons to the District, and create a more recognizable physical identity for the District.

## QUESTIONS FOR COUNCIL

Information Only

## LEGAL COMMENTS

The City Manager shall be responsible to the City Council for the proper administration of all affairs of the City placed in his charge and, to that end, he shall have the power and duty to make written or verbal reports at any time concerning the affairs of the City under his supervision. City Charter § 7-4(e).

## PUBLIC FINANCIAL IMPACT

☐ YES ☒ NO

**If yes, explain:**

## PRIVATE FISCAL IMPACT

☒ Not Applicable ☐ Significant ☐ Nominal

**If Significant or Nominal, explain:**