

Ordinance No. 118956

Council Bill No. 112095

The City of Seattle
Council Bill/Ordinance

NA

An Ordinance related to the City's Deferred Compensation Plan; providing for the commencement of distribution upon separation from City service and providing two elections to defer the date for commencement of distribution; adopting administrative provisions; amending and clarifying sections of the Plan in response to the 1996 amendments to Section 457 of the Internal Revenue Code; and adding, amending, repealing and recodifying various sections of Seattle Municipal Code Chapter 4.38.

Law Department

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As Amended

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This file is complete and ready

Law Dept. Review

ORDINANCE 118956

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3 AN ORDINANCE related to the City's Deferred Compensation Plan; providing for the commencement
4 of distribution upon separation from City service and providing two elections to defer the date
5 for commencement of distribution; adopting administrative provisions; amending and clarifying
6 sections of the Plan in response to the 1996 amendments to Section 457 of the Internal Revenue
7 Code; and adding, amending, repealing and recodifying various sections of Seattle Municipal
8 Code Chapter 4.38.

9 WHEREAS, amendments to the City's Deferred Compensation Plan Document to redefine the Plan
10 ceiling at SMC 4.38.204 and provide for in-service cash out at SMC 4.38.425 are authorized by
11 1996 amendments to Section 457 of the Internal Revenue Code ("IRC" or "Code");

12 WHEREAS, the 1996 amendments to Section 457 of the Code allows the City to create an additional
13 election for participants to select a payout date ("distribution commencement date") for benefits;

14 WHEREAS, adoption of an additional election to defer the distribution commencement date also
15 requires implementation of an initial election period for participants to defer their
16 commencement date;

17 WHEREAS, the adoption of a distribution commencement date upon separation from City service and
18 the adoption of two election periods to defer a participant's distribution commencement date
19 preserves the integrity of the City's plan, avoids adverse tax consequences to participants, and
20 improves the administration of the Plan;

21 WHEREAS, amending the Plan at SMC 4.38.401(C) as now allowed by the revised Code (IRC
22 457(d)(2) and IRC 409(a)(9)(A)(B)(C)) allows participants to defer their distribution
23 commencement date beyond the date currently allowed by the Plan (in SMC 4.38.404);

24 WHEREAS, amending the Plan at SMC 4.38.403 to provide a process for selection of method of
distribution and a default method of distribution would further clarify the Plan document;

WHEREAS, placing the "normal retirement age" provision (which is now in a separate section, SMC
4.38.402) into the "catch up" section of SMC 4.38.204 would clarify the Plan and assure
consistency with Federal Treasury regulations;

NOW THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 4.38.010 of the Seattle Municipal Code is amended as follows:

1 **4.38.010 Adoption of Deferred Compensation Plan.**

2 The City of Seattle hereby adopts the following deferred compensation plan for City officers and
3 employees (called the "Plan Document"):

4 **THE CITY OF SEATTLE VOLUNTARY**
5 **DEFERRED COMPENSATION PLAN**

6 **Plan Overview**

7 If you enroll in this Plan, The City of Seattle (called the "City") will retain ("defer" paying) a part
8 of your salary or wages. The ~~((City will then deposit or invest the))~~ money retained (called the "deferred
9 amounts") will be deposited or invested in accord with agreements of the City made from time to time
10 with a custodian, Plan administrator, insurance company, investment underwriter, and/or financial
11 institution. [26 U.S.C. § 457(g).] After you leave the service of the City, retire or die, the Plan will pay
12 you, or your beneficiaries, benefits based on the invested value of the deferred amount. If you change
13 your employment to another Washington government with an eligible plan, the City may transfer your
14 amounts to your new employee's Plan. The invested value will be based on the amount deferred, less
15 administrative fees and expenses, plus gain or minus losses from market fluctuations, and, when
16 applicable deductions for withdrawal ("surrender") fees. An earlier withdrawal may only occur if you
17 suffer an unforeseeable financial emergency or if you are eligible for an in-service cash out as provided
18 by this Plan. ~~((All deferred amounts will belong to the City until benefits are paid.))~~ Your right to
19 commence payment of benefits and the manner and timing of benefit payments will be governed by the
20 provisions of this Plan, the Internal Revenue Code, its applicable regulations, and the administrative
21 rules adopted by the City which may be changed from time to time.

22 Section 2. Section 4.38.204 of the Seattle Municipal Code is amended as follows:

23 **4.38.204 Limits on annual deferrals.**

1 A. You may defer as much under the Plan in any year as Code § 457 allows for an eligible
2 deferred compensation plan. Unless the "catch-up" provision of Code § 457 applies, the most you may
3 now defer of your compensation for any taxable year prior to January 1, 1998 is the lesser of Seven
4 Thousand Five Hundred Dollars (\$7,500.00) or one-third (1/3) of your "includable compensation", and
5 for any taxable year beginning on or after January 1, 1998, the lesser of Eight Thousand Dollars
6 (\$8,000.00) or such larger amount as determined periodically by the Secretary of the Treasury, or one-
7 third (1/3) of your "includable compensation" (see ((Section 4.38.1005))SMC 4.38.1005). This amount is
8 called the "plan ceiling."

9 B. Under the "catch-up" provision, ~~((during))~~ for one or more of your last three (3) years before
10 the year in which you reach "normal retirement age"((see Section 4.38.402)), you may defer the lesser
11 of Fifteen Thousand Dollars (\$15,000.00), or the amount of the "plan ceiling" for the current year plus
12 so much of the "plan ceiling" for earlier taxable years as you failed to use. Any deferral during the year
13 you made under another eligible deferred compensation plan established under Code § 457 will be
14 counted in applying these limits. You may use the "catch-up" provision only once; you cannot invoke
15 the higher limits a second time by resetting your retirement age or returning to City service after you
16 retire [regs. § 1.457-(f)2(((e)(3)))].

17 C. "Normal retirement age" for the purpose of determining the three year "catch-up" period,
18 means a retirement age selected by you from the range of ages ending not later than when you reach
19 seventy and one-half (70 1/2) and not sooner than the time when you have the right to retire without the
20 City's consent, and to immediately receive unreduced retirement benefits under the City Employees'
21 Retirement System, the Law Enforcement Officers' and Fire Fighters' Retirement System, or the
22 Washington Public Employees' Retirement System, whichever may be applicable to you; or, if none
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1 apply, the time you would have been eligible for unreduced retirement benefits had you joined the City
2 Employees' Retirement System. If you continue to work beyond this age, you may set a later date or
3 age; the later date or age must come not later than the last date for beginning distribution established by
4 SMC 4.38.401, provided you may only use the catch up provision once under this Plan. [Code §§ 457
5 (d)(2)(A) and 401 (A)(9)(c); Regs. § 1.457-2(f)(4)].

6 Section 3. Section 4.38.205 of the Seattle Municipal Code is amended as follows:

7 **4.38.205 Investment selections.**

8 When enrolling, you need to make an investment selection or selections from among the
9 investment alternatives ((offered))chosen by the City for this Plan. ((Your selection will serve as an
10 index to measure the current value of your account (see Section 4.38.302).)) It is your responsibility
11 throughout your participation in this Plan to direct the investment of your deferred amounts to the Plan's
12 investment options. You may change your investment selection from time to time. Your investment
13 directions must be given according to the procedure or form required by the Plan Administrator and may
14 be subject to reasonable restrictions imposed by the Plan Administrator as to the frequency with which
15 you and all other participants may give investment directions. The City, its custodian, Plan
16 Administrator, or any person deemed to be a fiduciary of the Plan shall have no liability of any kind for
17 any damage, loss, or claim which may arise from the participant or the beneficiary's investment
18 direction or the failure of the participant or the beneficiary to exercise investment direction.

19 Section 4. Section 4.38.206 of the Seattle Municipal Code is amended as follows:

20 **4.38.206 Investment transfers.**

21 You may transfer amounts already deferred from one investment ((selection))option to another as
22 authorized by ordinance. A transfer will be based on the current value of the previous investment
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1 selection, including any gains or less any losses that had already been credited or debited to your account
2 (see Section 4.38.302) and may involve a fee or charge.

3 Section 5. Section 4.38.207 of the Seattle Municipal Code is amended as follows:

4 **4.38.207 Forms and methods.**

5 ~~((To enroll, to change or stop a deferral, or to make an investment selection, you need to sign and
6 file a written form.))~~ An ordinance, administrative rule, or the Plan Administrator will provide for the
7 manner in which enrollment, deferral changes, and investment selections are to be conducted and
8 implemented. Your authorization and your investment selection continue in effect for future pay periods
9 until you direct otherwise ~~((by signing and filing another written form))~~ in the manner established by
10 ordinance, administrative rule, or by the Plan Administrator. ~~((An ordinance or administrative rules will
11 provide for the forms, their filing, and when authorizations take effect.))~~

12 Section 6. Section 4.38.208 of the Seattle Municipal Code is amended as follows:

13 **4.38.208 ~~((Transfers within an investment selection in the City's Deferred Compensation
14 Plan))~~ Investment options and transfers between options.**

15 ~~((Securities (mutual funds, money market accounts annuities:))~~ The Plan's investment options
16 shall include investment alternatives chosen by the City pursuant to the Plan's investment policy, and
17 may include such investment options such as securities, mutual funds, money market accounts, and
18 annuities. From time to time the City may change, add to or remove investment options from the Plan,
19 and the City may employ professional investment advisors for the purpose of reviewing the investment
20 options offered through this Plan. If an investment option is removed from the Plan, your deferred
21 amounts shall be transferred to similar replacement investment options according to administrative
22 procedures adopted for their transfer unless you direct otherwise in the manner established by the City.
23 Losses may be incurred as a result of a transfer from one investment option to another due to market

1 fluctuations, among other reasons. A participant, or after a participant's death, a beneficiary, may
2 transfer funds between the investment options offered by the Plan. ~~((securities and annuities within an~~
3 ~~investment selection orally or by computer communication subject to written confirmation))~~ Transfers
4 must be made in accordance with ordinance, administrative rule, or as required by the Plan
5 Administrator in the manner that securities transactions are conducted under the rules of the New York
6 Stock Exchange or the National Association of Securities Dealers, and subject to the terms and
7 conditions for crediting ~~((sub))~~account values in the City's contract with the Plan Administrator. For
8 cause, the Plan Administrator may require that transfers be authorized in writing in advance.

9 Section 7. Section 4.38.301 of the Seattle Municipal Code is amended as follows:

10 **Article III Administration, Accounts and Reports**

11 **4.38.301 Administration.**

12 To carry out the Plan, the City will deposit or invest the deferred amounts and any earnings from
13 them in a manner authorized by state law and the Washington Constitution. The City may in its
14 discretion assign functions to one or more City officials, establish a committee to make decisions or
15 exercise powers, contract with a plan administrator or custodian to manage day-to-day operations and
16 keep records, deposit or invest funds with an insurance company, an investment underwriter or financial
17 institution, and delegate any or all duties or responsibilities under the Plan (except making the deferral,
18 itself), to any or all of them.

19 Section 8. Section 4.38.302 of the Seattle Municipal Code is amended as follows:

20 **4.38.302 Accounts.**

21 An account will be kept for everyone who participates in the Plan. Like all others, your account
22 will be credited with a sum equal to the amounts deferred from your salary or wages; it will be adjusted
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1 to reflect the current market performance of ~~((as if the deferred amounts were invested according to))~~
2 your investment selection(s); and your account will be reduced by fees charged to your account as
3 authorized by Section 4.38.303 or emergency withdrawals under Section 4.38.407. The adjustment will
4 reflect interest, dividends, and other distributions received; gains or losses from market fluctuations;
5 investment losses; and/or any default by an investment underwriter, each if and when occurring, and, if
6 applicable, a withdrawal ("surrender") fee. The current value of your account will determine the amount
7 of benefits paid under Article IV.

8 Section 9. Section 4.38.303 of the Seattle Municipal Code is amended as follows:

9 **4.38.303 Fees.**

10 The costs of carrying out the Plan will be borne by those participating through reasonable fees set
11 by ordinance for administrative, recordkeeping, investment and other services performed and for
12 appropriate expenses incurred. Your deferred amounts will be subject to fees charged by the City, its
13 custodian, or the Plan Administrator for the administrative cost and expenses of the Plan. The
14 administrative fees charged to the participants may include the costs and expenses of services rendered
15 by a third party administrator, custodian, recordkeeper, or services rendered by a professional investment
16 advisor, accountant, or legal counsel. A fee may take the form of an assessment calculated as a
17 percentage of the current value of your account, a deduction measured by a payment or transaction,
18 and/or a fixed charge for a service, among other reasonable methods.

19 Section 10. Section 4.38.401 of the Seattle Municipal Code is amended as follows:

20 **Article IV Benefits**

21 **4.38.401 ~~((Earliest payment allowed.))~~ Timing for distribution of benefits.**

1 (~~The Plan will not pay or make benefits available before the earliest of the following events: you~~
2 ~~retire from City service on or after you reach "normal retirement age" (see Section 4.38.402); you make~~
3 ~~a permanent separation from City service; the start of the calendar year in which you reach age seventy~~
4 ~~and one half (70½); or you die. (Section 4.38.408 provides for temporary departures.) An earlier~~
5 ~~payment may be authorized for an "unforeseeable emergency" (see Section 4.38.407) [Code §~~
6 ~~457(e)(9); Regs. §1.457-2(h)].~~)

7 **A. Earliest availability of benefits.** Except for hardship withdrawals and in-service
8 distributions allowed under Seattle Municipal Code Sections 4.38.412 and .414, the payment of your
9 benefits under this Plan shall begin not earlier than sixty one (61) days after your permanent separation
10 from City service. [Code § 457(d)(1)(A) and (e)(9); Regs. §1.457-2(h)]. Your permanent separation
11 from City service is the earliest of the following events: your resignation, retirement, the termination of
12 your employment with the City, or your death.

13 **B. Distribution commencement date.** Unless you (or your beneficiary) elect to defer your
14 distribution commencement distribution date or you transfer your account to another eligible
15 government 457 plan, your distribution commencement date under this Plan shall be sixty one (61) days
16 after the date of your permanent separation, and the actual payment of your benefits shall commence
17 within the next monthly payment cycle.

18 **C. Last date to commence distribution of benefits.** Your distribution commencement date
19 shall not be later than the last date for beginning distribution under this Plan, which shall be April 1st of
20 the calendar year following the calendar year in which you reach age 70 1/2, and, if you continue your
21 service with the City beyond age 70 1/2, your distribution commencement date shall be no later than
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1 April 1st of the calendar year following the calendar year in which you leave City service. [Code
2 457(d)(a) and 401(a)(9)(B)(C).]

3 Section 11. Section 4.38.402 of the Seattle Municipal Code is amended as follows:

4 **4.38.402 ((Normal retirement age.))Election to defer distribution commencement date.**

5 (~~"Normal retirement age" means the range of ages ending not later than when you reach seventy~~
6 ~~and one half (70 1/2) and not sooner than the time when you have the right to retire without the City's~~
7 ~~consent, and become eligible by age, length of service, or both to retire and receive immediate retirement~~
8 ~~benefits without actuarial or similar reduction because of retirement before some later specified age,~~
9 ~~under the City Employees' Retirement System, the Law Enforcement Officers' and Fire Fighters'~~
10 ~~Retirement System, or the Washington Public Employees' Retirement System, whichever be applicable~~
11 ~~to you; or, if none apply, the time you would have been eligible for unreduced retirement benefits by~~
12 ~~age, length of service, or both had you been eligible for and had you joined the City Employees'~~
13 ~~Retirement System. If you continue to work beyond this age, you may set a later date or age; the later~~
14 ~~date or age must come not later than the calendar year in which you reach age seventy and one half~~
15 ~~(70 1/2) or you leave City service, which is later [Code §§ 457 (d)(2)(A) and 401 A-9 (e); Regs. § 1.457-~~
16 ~~2(f)(4)].) The Plan allows two election periods for you to postpone, but not accelerate, your distribution~~
17 commencement date.

18 **A. First election period.** You (or your beneficiary(ies)) may elect to defer your distribution
19 commencement date to a fixed future calendar date which is not later than the last date for beginning
20 distribution under SMC 4.38.401. Your election to defer the commencement of the benefit payment(s)
21 must be made in the manner designated by the City and must be received by the City not later than sixty
22 (60) days after the date of your permanent separation from City service. During this first election period
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1 ending sixty (60) days after your separation, you may change your elected distribution commencement
2 date any number of times. The last election that you make within this sixty (60) day election period will
3 be considered your first election, and this election may not be revoked unless you choose to exercise
4 your second election under subsection B. [Reg. 1.457-1(b).]

5 **B. Second election.** After your first sixty (60) day election period has passed, you may have
6 one additional election to defer your distribution commencement date to a fixed future date no later than
7 the last date for beginning distribution under SMC 4.38.401(C). You may only exercise this second
8 election to defer one time, and the second election must be made in the manner designated by the City
9 and must be received by the City no later than thirty (30) days before your benefit payments would
10 otherwise begin. Once you make your second election to defer, it is irrevocable. [Code 457(e)(9)(B).]

11 Section 12. Section 4.38.403 of the Seattle Municipal Code is amended as follows:

12 **4.38.403 ((Benefit selections.)) Election of benefit distribution method.**

13 ~~((A. You may select the method of payment from among alternatives made available by~~
14 ~~ordinance in the case of your retirement or an earlier separation from City service before payment~~
15 ~~benefits commence; if you should die your beneficiary may select a death settlement from among the~~
16 ~~alternatives offered before benefits are paid.~~

17 ~~B. You (or your beneficiary) may postpone making your selection as long as your choice is made~~
18 ~~in the time and manner authorized by ordinance and before any benefits become available. You may not~~
19 ~~revoke a selection after benefits commence [Regs. § 1.457-1].))~~

20 **A. Election of method of distribution.** Your benefits may be paid in a lump sum or in periodic
21 payments or such other method allowed by administrative rule, the Code, and its implementing
22 regulations. You must elect the method of distribution of benefits in writing no later than thirty (30)

1 days before your scheduled (your elected distribution date or the default date designated by the Plan)
2 distribution commencement date. You may not revoke your election of a method of distribution after
3 payments commence, nor can you accelerate your payments after your payments commence. If your
4 beneficiary elects a method of distribution, the period of time and the manner in which the benefits are
5 distributed is governed by administrative rule. If you (or your beneficiary) do not chose a method of
6 distribution within the time specified in this section, the Plan will use the applicable default method of
7 distribution.

8 **B. Default method of distribution.** If you (or your beneficiary) do not elect a method of
9 distribution thirty (30) days before your scheduled distribution commencement date and the current
10 market value of your account is equal to or greater than twenty five thousand dollars (\$25,000), the Plan
11 will distribute your benefits in monthly installments over a period of one hundred twenty (120) months
12 or in such other periods or amounts as may be required by the minimum payout requirements of the
13 Internal Revenue Code. If you do not elect a method of distribution within the required time period and
14 the current market value of your account is less than twenty five thousand dollars (\$25,000), the Plan
15 will distribute the total amount of your benefits in one lump sum payment. If your beneficiary is an
16 estate, trust or other entity the distribution of your benefits will be governed by administrative rule.

17 **C. Minimum distribution requirements.** If your benefits are distributed in periodic payments
18 under this Plan, the amount and timing of such payments shall be governed by administrative rule and
19 the minimum distribution requirements of the Internal Revenue Code and its applicable regulations. [26
20 U.S.C. 457(d)(2) and 401(a)(9).] Your benefit payments must commence no later than the last date for
21 beginning distribution under SMC 4.38.401. The payment of benefits must be scheduled so that the
22 amounts do not increase substantially after the first year; at least one (1) payment occurs every year; and

1 most of the payments will go to you over your life expectancy or over the joint life expectancy of you
2 and your beneficiary. [Code 401(a)(9)(B).]

3 Section 13. Section 4.38.404 of the Seattle Municipal Code is repealed:

4 ~~((4.38.404 Scheduling benefits.))~~

5 ~~((Payment of benefits shall begin on or before the later of the end of sixty (60) days after the end~~
6 ~~of the calendar year in which you (a) reach (or would have reached) "normal retirement age" (see~~
7 ~~Section 4.38.402) or (b) leave City service permanently. The payment of benefits must be scheduled so~~
8 ~~that the amounts do not increase substantially after the first year; at least one (1) payment occurs every~~
9 ~~year; and most of them will go to you rather than your beneficiary. For example, at the time payment of~~
10 ~~benefits begin, the present value of scheduled payments to you over your life expectancy must exceed~~
11 ~~sixty six and two thirds percent (66 2/3%) of the total present value of all payments due [Code § 457~~
12 ~~(d)(2); Regs. § 1.457-2(f)].~~

13 Section 14. Section 4.38.406 of the Seattle Municipal Code is amended as follows:

14 **4.38.406 Payments to beneficiaries.**

15 If you die before drawing benefits or before all benefits are paid, benefits shall be paid to your
16 beneficiary in the manner provided by administrative rule, ~~((over a period of fifteen (15) years or less, or~~
17 ~~if your beneficiary is your surviving spouse, for his/her life or any shorter period)) [Regs. § 1.457-~~
18 ~~2(i)(3)]. Payments must be sufficiently rapid to satisfy the requirements of Code § 457(d)(2) and Code §~~
19 ~~401(a)(9) [Code § 457(d)(2)]. To qualify for benefits your beneficiary must survive ten (10) days after~~
20 ~~your death.~~

21 Section 15. Section 4.38.407 of the Seattle Municipal Code is amended as follows:

22 **4.38.407 Unforeseeable emergency.**

1 Upon application, the City may authorize a payment to you in an amount reasonably needed to
2 meet an "unforeseeable emergency." An "unforeseeable emergency" is a severe financial hardship to you
3 resulting from a sudden and unexpected illness or accident to you or a dependent, loss of your property
4 due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of
5 events beyond your control. No payment can be made to the extent that your hardship may be relieved
6 through reimbursement, compensation by insurance or otherwise; a sale of your assets without causing
7 severe financial hardship; or suspending your deferrals. The payment may not exceed the lesser of the
8 current value of your account (see Section 4.38.302) or the amount required to satisfy your emergency
9 need [Regs. § 1.457-2(h)(4-5)]. Your account will be reduced by an amount equal to any payment made;
10 and any balance remaining in your account after the payment will be paid as benefits in accordance with
11 Section 4.38.401. This is ~~((the only))~~ one of two ways in which payment of deferred amounts ~~((,-))~~ may
12 be authorized by the City prior to your permanent separation from ~~((which the City may authorize while~~
13 ~~you are below your retirement age in))~~ active City service. You may also receive an "in-service cash out
14 election" payment if the conditions of Section 4.38.425 are satisfied.

15 Section 16. Section 4.38.408 of the Seattle Municipal Code is amended as follows:

16 **4.38.408 Temporary interruption of service.**

17 Unless you declare and make your departure from City service permanent or you become
18 permanently separated from City service as defined by the Plan and/or administrative rule ~~((Section~~
19 ~~4.38.406 applies))~~, your account will continue to be maintained during the following absences although
20 your deferrals cease: A layoff of less than one year for lack of work; military service while
21 reemployment rights are maintained; or an extended authorized leave of absence ~~((,- and transfer to other~~
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1 employment while you maintain your membership within the City Employees' Retirement System or the
2 Law Enforcement Officers' and Fire Fighters' Retirement System.)) .

3 Section 17. A new Section 4.38.420 is added to the Seattle Municipal Code as follows:

4 **4.38.420 Distribution date for separated participants.**

5 A participant who has separated from the City prior to the effective date of Ordinance
6 _____ [this ordinance] and who has not commenced distribution of benefits or previously elected
7 a distribution commencement date shall elect a distribution commencement date in writing in the time
8 and manner required by the City. If the separated participant does not elect a distribution
9 commencement date as required by the City, the participant's distribution shall commence at age sixty-
10 five (65). [Treas. Reg. 1.457-2(f)(4).] Those separated participants who receive a default distribution
11 date of age sixty-five (65) may use the second election to postpone the distribution date to a future date
12 as permitted by SMC 4.38.402(B).

13 A separated participant receiving a default distribution commencement date under this section
14 may appeal the designation of a default distribution date by submitting a written appeal to the Deferred
15 Compensation Committee giving a reasonable explanation why he/she failed to elect a distribution
16 commencement date as required by this section and providing evidence that the participant is
17 permanently separated from City service. The Deferred Compensation Committee shall allow the
18 participant to elect a distribution date if the participant has stated reasonable cause for failing to elect a
19 distribution date as required by notice under this section. Reasonable cause may include the failure to
20 send or receive notice, the absence, death, or incapacity of a participant, or other circumstance
21 preventing the participant (or beneficiary) from receiving notice under this section. All decisions of the
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1 Deferred Compensation Committee may be appealed to the Director of Personnel. The decision of the
2 Director of Personnel shall be final.

3 Section 18. A new Section 4.38.425 is added to the Seattle Municipal Code as follows:

4 **4.38.425 In Service cash-out election before separation.**

5 You may elect to receive a lump sum "in-service cash out" payment prior to your permanent
6 separation from City service if you meet certain Code requirements which include the following: no
7 deferrals have been made to your account for the previous twenty-four (24) month period, your account
8 balance is less than the maximum amount allowed by Section 457 of the Code, and you have not
9 previously received an in-service cash out distribution under this Plan. Payment will be made at least
10 thirty (30) days after the City receives and approves your written request for payment. Only one in-
11 service cash out election will be made available to you during your membership in this Plan. [Code
12 §457(e)(9)(A).]

13 Section 19. Section 4.38.504 of the Seattle Municipal Code is amended as follows:

14 **4.38.504 Transfers between government plans.**

15 This Plan will accept plan-to-plan transfers of deferred compensation accounts for employees
16 who enter City service from another employer with an eligible deferred compensation plan established
17 under Code § 457. Conversely, if you leave City service to take a position with another employer with
18 an eligible deferred compensation plan under Code § 457, the City will automatically transfer your
19 account to your new employer for deposit in its plan as long as the receiving plan accepts such transfers
20 [Regs. § 1.457-2(k)]. If you wish to effect a plan to plan transfer, you must give notice to the City in
21 writing no more than sixty (60) days after your separation date and identify the state or local government
22 employer with whom you have accepted employment.

1 Section 20. Section 4.38.1005 of the Seattle Municipal Code is amended as follows:

2 **4.38.1005 Includable compensation.**

3 "Includable compensation" means your compensation from the City reported to the United States
4 Internal Revenue Service for federal income tax purposes, reduced by deferrals under this plan and
5 payments made on your behalf for retirement system purposes under Ordinance 111992 and 26 U.S.C. §
6 414(h), and other non-taxable income. It is determined without taking into account Washington's
7 community property laws [Code § 457(d)(5); Regs. § 1.457-2(e)(2)].

8 Section 21. Section 4.38.1007 of the Seattle Municipal Code is amended as follows:

9 **4.38.1007 Normal retirement age.**

10 "Normal retirement age." See Section 4.38.~~((402))~~204(C).

11 Section 22. Section 4.38.1010 of the Seattle Municipal Code is amended as follows:

12 **4.38.1010 Plan administrator.**

13 "Plan administrator" means a City official or office, a custodian appointed by the City to act as
14 Plan administrator, or an organization that manages the day to day operation of the Plan by providing
15 such services as the following: Preparing informational material, presenting the Plan to City employees,
16 enrolling participants, processing forms and keeping records and accounts, and providing information,
17 answering questions, and giving advice about the Plan, making reports to participants, coordinating with
18 investment underwriters, participating in selecting them, and overseeing their performance, and directing
19 payment of benefits. This listing illustrates the type of tasks performed; a plan administrator may
20 perform some, all, or other tasks, as determined by ordinance.

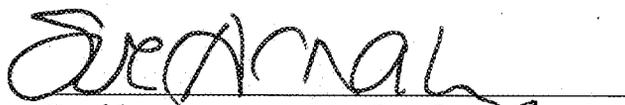
21 Section 23. Section 4.38.1011 of the Seattle Municipal Code is amended as follows:

22 **4.38.1011 Plan ceiling.**

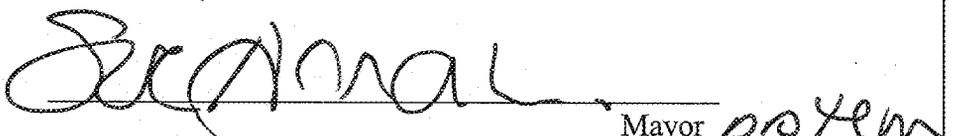
1 "Plan ceiling" is the lesser of Seven Thousand Five Hundred Dollars (\$7,500.00) and for any
2 taxable year beginning on or after January 1, 1998, the lesser of Eight Thousand Dollars (\$8,000.00) (or
3 such larger amount as determined periodically by the Secretary of the Treasury pursuant to 26 U.S.C.
4 457(e)(15)) or one-third (1/3) of a participant's "includable compensation." See Section 4.38.204.

5 Section 24 This ordinance shall take effect and be in force thirty (30) days from and after its
6 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
7 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

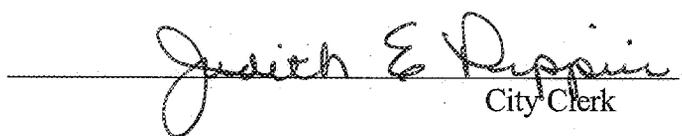
8 Passed by the City Council the 6th day of April, 1998, and signed by me in open
9 session in authentication of its passage this 6th day of April, 1998.

10 
11 _____
President _____ of the City Council

12 Approved by me this 6th day of April, 1998.

13 
14 _____
15 Mayor Proxer

16 Filed by me this 15 day of April, 1998.

17 
18 _____
City Clerk

19 (Seal)

20
21
22
23
24



City of Seattle

Paul Schell, Mayor

Executive Services Department

Dwight D. Dively, Director

March 2, 1998

TO: Honorable Sue Donaldson, President
Seattle City Council

Via: Elaine Marklund
City Budget Office

FROM:


Dwight Dively, Director
Executive Services Department



Sarah Welch
Personnel Director

SUBJECT: Deferred Compensation Plan Document Changes

The City's Deferred Compensation Plan, a voluntary retirement savings program, was implemented in 1985, and has approximately 5,900 participants (both active and separated employees). The attached legislation amends the Plan Document for this program by incorporating changes allowed and mandated by federal law or which have been recommended by the Deferred Compensation Advisory Plan Committee to improve the overall administration of the plan. These changes are explained in more detail below.

We have also attached proposed changes to the Deferred Compensation Plan Rules. Although the Council will not be asked to implement these rule changes, they are attached for your information. Participants have received information on the proposed Plan Document and Plan Rule changes, and we will conduct a Public Hearing on Tuesday, March 10 at 4:00 p.m. in Training Room C on the 12th floor of the Dexter Horton Building to receive comments from participants. We will discuss the results of the public hearing at the Committee briefing on this legislation.

Sue Donaldson
March 2, 1998

INTERNAL REVENUE CODE AMENDMENTS

Amendments to the Internal Revenue Code passed in August of 1996 and other previous Code amendments allow the following changes to 457 deferred compensation plans:

- The \$7,500 annual contribution limit may be indexed for inflation in increments of \$500. (Effective January 1, 1998 the annual limit is \$8,000). (IRC 457(c) and IRC 457 (e)(15)).
- A plan may adopt an additional election period to allow participants to postpone a previously elected payout date ("distribution commencement date") one time. (IRC 457(e)(9)(B)).
- A plan can permit distribution of inactive account balances of \$3,500 or less to participants who are still employed. This amount was later increased to \$5,000 by passage of the Taxpayer Relief Act of 1997. (IRC 457(e)(9)). (Currently, distributions to employed participants can be made only for approved emergency hardships.)
- Previous amendments to Section 457 and 401(a)(9) of the Internal Revenue Code allow plans to extend the required beginning date for distributions until April 1st of the year after a participant reaches age 70½ or, if the participant works beyond age 70½, until April 1st of the year after the participant leaves City service.

PROPOSED CHANGES

The 1996 Internal Revenue Code amendments, particularly the provision allowing for an additional election of a beginning date for payout of benefits (a "distribution commencement date") prompted us to take a close look at the benefit distribution requirements of the Plan Document. The Plan Document lacks a clear process for electing a distribution commencement date, which can result in adverse tax consequences to participants if distributions are

Sue Donaldson
March 2, 1998

administered as if the benefits were available at any time. Further, a process for the election of a method of distribution was never adopted by ordinance as contemplated by the Plan document. We are now attempting to remedy this situation by incorporating the necessary provisions into the Plan Document.

The proposed changes described in the following table were developed after discussions with other jurisdictions, legal counsel at the Internal Revenue Service, and a review of the current IRS notices. These proposed changes would create a process for payout of benefits, and implement other provisions of the Code described above. The other changes in the attached legislation clarify administrative responsibilities of the City.

Again, enclosed for informational purposes are the proposed changes to the Plan Rules. We are proposing the following modifications: revisions to implement the above Plan changes, revisions to the minimum distribution rules to make them more complete, addition of a new rule addressing court orders issued after a dissolution of marriage that affect a participant's account, and revisions to effect other incidental housekeeping changes.

We request that you approve the enclosed ordinance as we believe the proposed changes will strengthen the operation and integrity of this retirement savings program. If you should have any questions regarding the attached legislation, please call Claudia Gross in the Benefits & Safety Unit at 684-7832.

For your information, we are also moving toward implementing additional 1996 amendments to the Code, which mandate 457 deferred compensation plans to establish a trust for holding plan assets by January 1, 1999. You will see this legislation later this year.

DD:cg

Enclosures

PROPOSED DEFERRED COMPENSATION PLAN DOCUMENT CHANGES

PROPOSED PLAN DOCUMENT CHANGE	CURRENT PLAN DOCUMENT
<p>Allow for commencement of payment after permanent separation from City service, unless the participant elects to postpone the payout date during a 60 day election period (described below). Payment would begin in the next monthly payment cycle after your separation from City employment unless the election to delay payment is made within the 60 day period. Most plans in other jurisdictions provide for a commencement date and an election period.</p>	<p>The City's Plan states that distribution must occur at separation or normal retirement age, whichever is later. (See fourth box below). If the participant separates before retirement, the Plan appears to delay distribution until normal retirement age. No process was adopted for the election of an earlier distribution commencement date.</p>
<p>Adopt an initial election period which ends 60 days after a participant separates from employment to allow the participant to elect a future distribution commencement date. During this election period, a participant, who does not want payment to begin in the next monthly payment cycle after separation, must elect a future date for payment to begin. (The adoption of the additional election allowed by the new tax code amendments [see next box below] means the Plan must also be amended to provide an initial election period.)</p>	<p>The Plan does not provide a process for participants to select a distribution commencement date.</p>
<p>Adopt the additional election period to allow participants to postpone the first elected distribution commencement date one time before distribution begins. The adoption of the additional election period gives participants one more chance to delay payout before payment actually begins.</p>	<p>No additional election period is available.</p>

PROPOSED PLAN DOCUMENT CHANGE	CURRENT PLAN DOCUMENT
<p>Extend the last required date for commencement of distribution to April 1st of the year following the year the participant reaches age 70½ (or April 1st of the year following the year the participant leaves City service if the participant works past age 70½).</p>	<p>Payment must commence by the 61st day of the year following the year in which the participant attains or would have attained, eligibility for a full retirement benefit, or separates from service, whichever is later.</p>
<p>Provide for a default method of payment if the participant fails to elect the manner in which he or she wants to receive payment (e.g., lump sum or periodic payments). If the participant's account is equal to or greater than \$25,000, then payment will be made in equal monthly installments over 120 months or a lesser period as may be required to satisfy the Internal Revenue Code requirements. Participants with accounts of \$25,000 or less will receive a lump sum payment.</p>	<p>The Plan does not provide a process for selecting the method of payment or a default method.</p>
<p>Provide a process for participants who have already separated from employment to elect a distribution commencement date if one has not been elected yet. This process would allow separated participants to begin payout now, or, if they wish, to postpone payout to a future date, and to take advantage of the additional deferral period.</p>	<p>Not applicable.</p>

ATTACHMENT

RULES IMPLEMENTING THE CITY'S DEFERRED COMPENSATION PLAN

These Rules implement the City's Deferred Compensation Plan. They are subordinate to the Plan Document and ~~Ordinance 112517~~. In case of conflict, the Plan and Ordinances amending the Plan Document, including 112517, 113134, 115911, and Ordinance 117151 control.

These rules are in effect unless amended, revoked, or superseded. The rules in Part G (Rules 61-~~623~~) interpret and apply particular language in 26 USC §457 and provide guidance to the Plan Administrator and City officials. If and to the extent that an authoritative opinion of a court or of the Internal Revenue Service rules directly on the issue, the Plan Administrator or a City official may follow that decision rather than the guidance of Rules 61-~~623~~.

"You" means the participant in the City's Deferred Compensation Plan.

A. Enrollment

Rule 1. Enrollment ((Forms and))Services. ((Deferred Compensation Service Center, One Nationwide Plaza, P.O. Box 16766, Columbus, OH 43216 will make enrollments for the City's Plan and process other forms. You should file your enrollment and other program forms with its national headquarters or its local office.))
Enrollment services are provided in a manner specified by the Plan Administrator. The Plan Administrator can be contacted for detailed information.

Rule 2. Time to Reconsider. A copy of the Plan Document will be provided you upon ((before)) enrollment. ((To let you study the Plan and think it over)) After

enrolling, you may ~~((within three (3) days after filing your enrollment form))~~ withdraw ~~((it))~~ from the Plan before any payroll deduction is taken without any penalty.

Participation in the Plan is entirely voluntary.

Rule 3. Changes in Amount Deferred. You may change the amount of your deferral or stop your deferral at any time. However, the City Finance Director may decline to accept "year-end" increases in deferrals, which are presented in November and to occur only in December. (Section 2.03 of the Plan Document explains when a change takes effect.)

Rule 4. Method of Making Transfers in Investment Selections. You, or if you die, your beneficiary, may transfer funds between ~~((securities investments within an investment selection orally or by computer communication))~~ the Plan's investment options by speaking with a Plan Administrator representative in a recorded conversation or via the Plan Administrator's automated voice response system subject to written confirmation by the Plan Administrator in the manner that securities transactions are conducted under the rules of the New York Stock Exchange or of the National Association of Securities Dealers and subject to the terms and conditions for crediting participant account values in the City's contract with the Plan Administrator ~~((PEBSCO authorized by Ordinance 115914))~~. For cause the Plan Administrator may require that transfer between securities investments be authorized in writing in advance.

Transfers to or from the investment selection of the Seattle Metropolitan ~~((Federal))~~ Credit Union of Seattle may require a written authorization.

B. Deferrals

Rule 11. "Includable Compensation." To calculate your "includable compensation" for determining how much of your compensation that you can defer, the City will use wage and salary reporting forms it supplies to the United States Internal Revenue Service. Payments, which are not reported as income to you for federal income tax purposes, are excluded, e.g., retirement contributions, deferred compensation deductions, amounts((:)) which are deferred under this plan; workers' compensation payments; and dependent care assistance plan reimbursements.

~~Vacation and sick leave; and "cashout" payments if you do not use your vacation or sick leave;~~

~~Uniform, tool, meal and housing allowance;~~

~~Back pay on a reinstatement; and~~

~~Per diem and imputed income for use of City vehicles or commuting.~~

Your salary wage will first be considered "includable compensation" when it has been reported to the United States. In cases of doubt, the City Executive Services Department Director's Finance Director's determination is final.

Rule 12. Exclusions from "Includable Compensation." Your "includable compensation" excludes amounts paid to you under the Internal Revenue Code Section 403(b) (relating to annuity contracts purchased by Section 501(c)(3) organizations or public schools); Section 105(d) (relating to wage continuation plans); and/or Section 911 (relating to citizens or residents of the United States living abroad).

Rule 13. Schedule Deferrals. Unless you are using the "catch-up" provision," your total annual deferral must be not more than \$8,000.00 (or \$7,500.00 prior to January 1, 1998) or one-third or less of your "includable compensation" earned from the City

during the calendar year at the time your deferral is made. The annual deferral limit may be adjusted periodically by the Secretary of the Treasury.

Rule 14. Ranking of Payroll Deductions. Mandatory payroll deductions take precedence over deferrals: federal income tax withholdings; social security, workers' compensation, and unemployment taxes; retirement system contributions; and when applicable, union dues and garnishments. The following payroll deductions are presumed to be senior unless your payroll officer indicates otherwise: contributions to ((United Way and other)) charities, payment for U.S. Savings Bond programs, and payments to the Seattle Metropolitan ((Federal)) Credit Union. If your pay is not sufficient to cover all such deductions, the deficiency will be taken from your deferral.

Rule 15. Compensatory Offsets. If the City has deducted more or less from your pay than it should have done due to an error or a late charge, the City may, in its discretion, make a corresponding offset on your next succeeding payroll rather than revise and correct the affected payroll warrant.

C. Designation of Beneficiaries

Rule 21. Making a Designation. You are responsible for designating one or more beneficiaries to receive benefits under the Plan in the event of your death called the "primary beneficiary" and for naming a beneficiary or two or more beneficiaries to receive benefits under the Plan if your primary beneficiary should die before you or within ten days of your death. The latter are called "contingent beneficiaries." You should make your designations by completing a form supplied by the Plan Administrator and filing it with the Plan Administrator. You should make sure that the addresses of

your beneficiary(ies) are current and inform the Plan Administrator of any changes of address in writing.

Rule 22. Designation by Married People. If you are married, your spouse must give his or her written consent for you to designate anyone other than your spouse as your primary beneficiary(ies). You may change a designation of your spouse as your beneficiary only with his or her written consent. (However, you may designate a trust fund already established for your spouse rather than directly to your spouse without your spouse's consent.)

Rule 23. Naming Two or More Beneficiaries. If you name two or more primary beneficiaries, each survivor will share in the benefits equally unless you indicate otherwise. If you name two or more contingent beneficiaries, any benefits paid to the contingent beneficiaries will be apportioned equally between them unless you indicate otherwise

Rule 24. Change in Beneficiaries. You may change a primary or contingent beneficiary at any time.

D. Account Statements

Rule 31. Account Statements. You should examine your quarterly account statements promptly. You should bring any errors or omissions to the attention of the Plan Administrator, or if your account is maintained with another investment selection, to the financial institution or investment manager responsible for that selection. Your inquiry or complaint should be made within sixty (60) days. If the problem is not resolved to your satisfaction, you should then promptly notify the City Executive Services ((Finance)) Director in writing.

E. Payment of Benefits

Rule 41. Proof May Be Needed. In order to receive benefits under the Plan, you or your beneficiary may need to present proof of age, identity, ~~((or))~~ marriage, or death. The amount of proof for uniformed personnel will be measured by the evidence required by the Washington Law Enforcement Officers' and Fire Fighters' Retirement Systems, and for other City personnel by the City Employees' Retirement System.

Rule 42. Survivorship. To make sure that your beneficiary(ies) survives you for ten or more days, the City will delay making payment to a beneficiary until at least sixty-one (61) ~~((thirty (30)))~~ days after your death.

Rule 43. Payment to a Trust or Estate. Your designation of a trust as your beneficiary authorizes payment to the trustee as full satisfaction of the City's obligation; the City will not be responsible for making inquiry about the trust or for the trustee's performance. If you fail to make a designation ~~((or))~~ of beneficiary or none of your beneficiaries survive you, the City will pay the benefits to your estate if it is in probate.

Rule 44. Doubt About Payment. If the City has any doubt as to whom to make payment, the City may in its discretion pay the benefits into the registry of the court for judicial determination.

Rule 45. Distribution to participants after separation from service. After separation from service, your accumulated deferrals (your "benefits") shall be paid to you in one or more installments as selected by you pursuant to Rule 48 and 49. The value of your benefits will based on their current market value at the time of the transfer less any administrative fees or expenses due to the Plan.

Rule 46. Distribution in the event of death of participant. Should you die at any time, whether before or after separation from service, your benefits shall be paid to your beneficiary or beneficiaries designated by you pursuant to Rules 21 through 24. Your benefits shall be paid out as provided in Rule 45 through 49. If no beneficiary is designated as provided in the Plan, or if the designated beneficiary does not survive you by a period of ten days, then a lump sum shall be paid, in accordance with Rule 49(C) to your estate.

Rule 47. Distribution in event of death of beneficiary. In the event a beneficiary survives you by ten days and becomes entitled to receive benefits, benefits shall become payable to the beneficiary's estate pursuant to Rule 49(C) on the second month following the beneficiary's death, unless benefits are being paid in the form of an annuity, in which case the disposition of the remaining amount shall be determined by the annuity contract.

Rule 48. Elections regarding distribution. You (or if you die, each of your beneficiary(ies) other than an organization, an estate, or a trust) shall elect the date when you wish payout to begin (your "distribution commencement date") and the payout period (your "method of distribution ") in the following manner.

(A) Election regarding time of payment ("distribution commencement date"). You must elect your distribution commencement date not later than the sixtieth (60) day after your separation from City service (or if your beneficiary makes the

election, within 60 days after your death). Your first election of a distribution commencement date may not be revoked after the sixtieth (60) day after your separation, however, you may further postpone your elected distribution date after the first election period by exercising your second election not later than thirty (30) days before your payments would otherwise begin.

(1) Your first election of a distribution commencement date must be made in the following manner:

(a) By you not later than sixty (60) days after your separation from service from the City. Your election must be filed with the City's Executive Services Department, Benefits Unit, on forms provided for that purpose. You may change your distribution commencement date any number of times during the first election period ending sixty days after your permanent separation date, however, the last election on file on the 60th day after your separation will be your first irrevocable elected distribution commencement date. Payment may begin within the next payment cycle after the sixty first (61st) day after your permanent separation, and payment must begin within the time prescribed by Rule 49;

(b) By your beneficiary (other than an organization, estate or trust, and if you have not commenced distribution) not later than sixty (60) days after your death. Your beneficiary's election must be filed with the Plan Administrator on forms provided for that purpose. Payment may begin within the next

payment cycle after the sixty first (61) day after your death, and payment must begin within the time prescribed by Rule 49;

(2) A second election to postpone your first elected distribution commencement date may be made by you (or your beneficiary) after the period for exercising your first election. This second election must be made by you (or your beneficiary) not later than thirty (30) days before your benefit payments would otherwise begin. Only one such postponement is allowed, and once the second election is made, it is irrevocable. (You cannot change it to an earlier or a later date).

(B) Election regarding method of payment (“method of distribution”). You (or your beneficiary) upon making an election regarding the distribution commencement date, may also elect the period over which payments will be made (“the method of distribution”). The method of distribution election may be made either at the time you or your beneficiary elect a distribution commencement date or at any time not later than thirty (30) days prior to the date that payout will begin. Once having made this election of method, you (or your beneficiary, other than an organization, estate, or trust) may change the method of distribution not later than thirty days prior to the distribution commencement date. Your beneficiary may also make this election after your death where you were already receiving payments, but, as provided in Rule 49 (C), your beneficiary must receive distribution at least as rapidly as it was being distributed to you. Your beneficiary must make an election of distribution method not later than sixty days after your death, and if no election is made the Plan may begin distribution as provided in

subsection (D) of this section. Provided, if you were receiving payout in the form of an annuity contract, then the successor's right shall be limited by the terms of that contract.

(C) How elections are made. You or your beneficiary will make elections allowed under this section by completing and filing applicable payment request forms with the Executive Services Department, Benefits Unit.

(D) Consequences in absence of a timely election regarding time of payment.
Absent a timely election of a distribution commencement date, distribution will begin within the next payment cycle after the sixty-first day after your separation, and distribution will be made in a lump sum if current market value of your benefits as of the end of the election period are less than twenty-five thousand dollars, or if the current market value of your benefits are twenty-five thousand dollars or more, in equal monthly installments over a period of one hundred twenty months or such lesser period:

(1) As may be necessary under the minimum payout requirements of Section 457 (d)(2)(B)(i)(I) of the Internal Revenue Code (requiring amounts to be paid not later than as determined under Section 401 (a)(9)(G) of the Internal Revenue Code); or

(2) As may be necessary under Section 457 (d)(2)(B)(i)(II) of the Internal Revenue Code (requiring amounts not distributed to you during your life to be distributed at least as rapidly as they were being distributed as of the date of your death).

(E) Effects of certain employment changes. Transfers of your accounts from the City's deferred plan to another eligible government 457 plan will be made by the City, provided the receiving plan will accept the transfer and you notify the City not later than thirty (30) days before your benefit payments would otherwise begin and provide the

name of the 457 plan or other information to enable the City to arrange a transfer. The Internal Revenue Code does not allow transfer or rollover of your 457 plan assets to a 401(k) or other non-457 plan established under the Code. Transfers to other 457 plans are not allowed if distribution has begun under this Plan.

(F) Consequences in absence of a timely election regarding method of payment. In the absence of a timely election regarding the period of time over which payment will be made, payment will be made in the manner described in subsection (D) of this section.

(G) Payment to an organization, estate, or trust. Any amount payable to an organization, estate, or trust shall be paid in a lump sum as prescribed in Rule 49 (C)(1)(a).

Rule 49 Distribution of deferrals (benefits).

(A) General rule. Assuming a timely election is allowed and has been made pursuant to Rule 48, payment will be made in at least annual, substantially non-increasing amounts. Payments are also subject to the limitations in subsections (B) through (E) of this section.

(B) Distribution to participant. You must either receive a lump sum payment under (B)(1) or periodic payments under (B)(2):

(1) Lump sum. You must receive your entire interest prior to the latest of:

- (a) April 1st in the year following the calendar year in which you attain age seventy and one-half; or

(b) April 1st in the year following the calendar year in which you separate from service with the City, if your separation occurs after 70 1/2;

(2) Periodic payments. You must begin receiving your interest not later than the time specified in (B)(1) of this subsection and receive it over a period not longer than either:

- (a) Your life;
- (b) Your life and a beneficiary designated by you;
- (c) Your life expectancy; or
- (d) Your life expectancy and a designated beneficiary.

Payment must be sufficiently rapid to satisfy the requirements of Section 457 (d)(2)(B)(i)(I) and Section 401 (a)(9)(G) of the Internal Revenue Code. Provided, that if provision is made for the payment of a portion of the benefits to a beneficiary, the amount payable to you actuarially must exceed two-thirds of the maximum amount payable to you had no provision been made for payments to the beneficiary (determined as of the commencement of the distribution or as determined by use of tables issued by the Secretary of the Treasury).

Once payments to you begin, you may accelerate the payment schedule only in the event of an unforeseeable emergency (and subject to the provisions of the Plan or these rules regarding such emergencies).

(C) Distribution to beneficiaries. When distribution begins prior to your death, then payout must be made at least as rapidly as it was being made to you. When your beneficiary is an organization, estate or trust, then payment will be payable in a lump sum

in the next monthly payment cycle after the 61st day following your death. [IRC

410(a)(9)(B).]

(1) When distribution does not begin prior to your death, and is to be made:

(a) To an organization, estate or trust, then payment will be payable in a lump sum within the next monthly payment cycle after the sixty first day following your death;

(b) To a living beneficiary designated by you other than your surviving spouse, and, if your beneficiary elects within 60 days of your death, not to begin payments within one year of your death, then payment must be made within five years of your death;

(c) To a living beneficiary designated by you other than your surviving spouse, and, if your beneficiary elects within 60 days of your death to begin payments within one year of your death, then payment must be made within fifteen years of your death;

(d) To your surviving spouse, whether as designated beneficiary, or by default, then payment must begin prior to April 1st in the year after the end of the calendar year in which you would have attained age seventy and one-half or, if your separation date occurs after 70 1/2, prior to April 1st in the year after the end of the calendar year in which you separated from service, and payment may be made over the lifetime of your surviving spouse.

2) If your surviving spouse dies, then payment will be made to his/her beneficiary over a period not longer than the life expectancy of your surviving spouse.

(D) Computation of life expectancies. For purposes of this section, life expectancies will be computed by use of the expected return multiples in Treasury Department Regulation 1.72-9 or, if distribution is to be effected through a contract issued by an insurance company, by use of the mortality tables of such company. Where payment is being made over the joint lives of you and your surviving spouse, the life expectancy of you and your surviving spouse may be recalculated annually.

(E) Notwithstanding anything in this plan to the contrary, distributions from the plan will be made in compliance with the minimum distribution rules of Section 457 (d)(2) of the Internal Revenue Code, and in compliance with Treasury Department Regulations issued under Sections 401 (a)(9) and 457 (d)(2) of the Internal Revenue Code.

F. Ancillary Provisions

Rule 51. Powers of Attorney. If you want to give another person a power of attorney or appointment to change your beneficiaries, your investment selections, or your selection for phased payment of benefits, you must expressly authorize your agent to make those decisions for you. A general power of attorney in broad language will not be accepted as authorizing such a delegation of your decision-making on these subjects unless it is very clearly stated.

Rule 52 Domestic Relations Orders.

A. Segregation of Assets for Alternate Payees. The Plan will establish a sub-account for the former spouse of a participant (hereafter "an alternate payee" account) upon the Plan Administrator's receipt and acceptance of a non qualified domestic relations order providing for the participant's benefits under the Plan. The court order must not require the Plan Administrator to make a payout on a date when the participant is not eligible for commencement of distribution or to otherwise act in violation of the Plan, its implementing rules, Section 457 of the Internal Revenue Code or its regulations. The following rules state the requirements for acceptance and administration of the alternate payee's sub-account.

B. Acceptance of A Domestic Relations Order. No action to segregate or otherwise recognize the claim of a participant's former spouse will be taken unless the Plan Administrator is served with a certified copy of a court order providing for all of the following without reference to any separate document unless the separate document is attached:

1. The court order must state that it relates to the provision of child support, alimony, or distribution of marital property rights to a former spouse.
2. The court order must refer unambiguously to the City's Deferred Compensation Plan.
3. The court order must clearly specify the name, mailing address, and taxpayer identifying number of the participant and the name, mailing address, and taxpayer identifying number of the alternate payee.

4. The court order must specify the amount or percentage (or clearly state the method or manner in which the amount or percentage is to be determined) of the participant's account to be segregated for the separate sub-account of the alternate payee.
5. The court order must specify the date of segregation if the Participant is not yet receiving payout under the Plan, or, if the participant is currently receiving payout, the court order must specify the beginning date of transfer of the Participant's benefits and the amount or percentage (or clearly state the method by which the amount or percentage is to be determined).

C. Domestic Relations Orders Provisions Not Acceptable. The Plan

Administrator shall not accept a Domestic Relations Order that provides for any of the following:

1. The order requires immediate distribution of the assets or distribution on a date other than a date established by the Participant's separation from City service as provided by the Plan.
2. The court order requires the purchase of investments or distribution of benefits in a form or method other than those provided by the Plan.
3. The court order does not clearly specify the amount or percentage or clearly describe a method of calculating the amount or percentage to be segregated.
4. The court order specifies a tax treatment of the benefits (i.e., taxes to be paid by the alternate payee or the participant.) The order may state that the

tax characterization of the distribution may be determined by Internal Revenue Service regulations and rulings.

5. The court order assigns the benefits to the alternate payee in violation of the non-assignment provisions of the Plan.

If a domestic relations order contains any of the above provisions, the Plan Administrator may reject the order and require the Participant to obtain a new order conforming with these requirements.

D. Alternate Payee Sub-Account. When a domestic relations order has been accepted by the Plan Administrator, an alternate payee sub-account will be established in the alternate payee's name.

1. The assets will be segregated into a sub-account for the alternate payee, and the sub-account will be subject to the same terms and conditions of the Plan except the alternate payee's distribution commencement date will be established by the participant's separation from City service.
2. The alternate payee will be allowed to manage the sub-account, transfer its assets among the investment options offered by the Plan, and receive a separate account statement.
3. The alternate payee's sub-account will be subject to the same administrative fees, restrictions on investment transfers, and the ordinances and administrative rules established for the Plan.
4. The alternate payee assumes all risks inherent in participating in the Plan and its investment selections.

5. The alternate payee will be allowed to designate a beneficiary or beneficiaries for the sub-account.
6. The alternate payee may, if eligible under the Plan, receive unforeseeable hardship withdrawals or an in-service distribution.
7. The alternate payee will be responsible for keeping the Plan Administrator informed of changes in address, and the City or its Plan Administrator shall not be responsible for the failure to receive notices or the alternate payee's failure to timely exercise options under the Plan because of the alternate payee's failure to keep the Plan Administrator informed of address changes.
8. The alternate payee will be eligible to receive distribution after the separation of the Participant from City service. Unless the alternate payee exercises the election to defer distribution as provided by the Plan (see Rule 52(D)(9), the alternate payee shall receive distribution of benefits within the next payment cycle after the sixty first (61) day following the participant's permanent separation from City service, provided the alternate payee has kept the City informed of his/her current address and phone number. The alternate payee may not receive distribution at any earlier time, unless the alternate payee qualifies for a hardship withdrawal or an in-service distribution. A divorce by itself without further proof of hardship shall not be considered a emergency hardship for purposes of an emergency hardship withdrawal.
9. Upon the permanent separation of the participant from City service, the alternate payee will have sixty (60) days from the date of written notice of the

participant's separation to defer the distribution commencement date to a future fixed date.

10. If the alternate payee fails to exercise an election to defer distribution to a fixed date, the Plan Administrator will have the right to distribute the alternate payee's benefits in a lump sum to the last known address.

11. The City will comply with all applicable tax reporting and withholding requirements when complying with an order requiring segregation of benefits to the alternate payee or when making a distribution of benefits to the alternate payee pursuant to the provisions of the Plan. The order may result in income tax imposed on the participant for benefits paid to the alternate payee. The participant must seek independent tax advice concerning the tax consequences of any distribution, as the City will not be responsible for advising either party regarding the tax consequences of any particular distribution required by an otherwise acceptable domestic relations order. The City may seek tax advice or a ruling with regard to the tax characterization of the distribution, and delay distribution until a ruling is received.

12. If, subsequent to the establishment of a sub-account, the alternate payee becomes an employee of the City and enrolls in the Deferred Compensation Plan, the alternate payee's sub-account must be segregated from the alternate payee's new deferred compensation account, as the distribution date of the sub-account will be established by participant's separation from City service and a different tax characterization of the distribution may be required.

Rule 53. Election of distribution date for separated Participants. If you have already separated from City service prior to the date the Plan was amended in 1998 and you have not commenced payment of your benefits or previously elected a beginning date for commencement of your benefits, you will be required to chose a distribution commencement date within sixty (60) days of a notice sent to you from the City. If you fail to respond to the notice or the City cannot locate you, the Plan will designate the day when you reach age sixty five (65) as your distribution commencement date. If you have failed to respond to notice or have not received a notice pursuant to this rule and you wish to appeal your default distribution commencement date, you may file an written appeal with the Deferred Compensation Committee not later than thirty days before your default distribution date, and you show evidence that you have permanently separated from City service and state reasonable cause for failing to elect a distribution commencement date as required by the Plan and this rule. Reasonable cause may include the failure by you to receive or the City's failure to send notice, your absence, incapacity, or death, or other circumstance preventing your (or your beneficiary's) exercise of the election required by the Plan and this rule. All decisions of the Committee may be appealed to the Director of Personnel. The decision of the Director is final.

G. Interpretive Rules

Rule 61. Under-utilization Limitation for Earlier Years. In order to satisfy IRS §1.457-2(f)(2), under-utilization limitations, only the following years may be counted in calculating the “plan ceiling” for purposes of the “catch-up” provision in Section 4.38.204 (Plan Section 2.04):

- (a) A participant can apply the years of his or her City employment on or after November 1, 1985, while he or she was eligible to participate in the City Plan;
- (b) A participant who transferred to City employment from the State of Washington may apply the years of his or her State employment on or after July 1, 1992, while he or she was eligible to participate in the State Plan.
- (c) A participant who transferred to City employment from another governmental agency in the State of Washington may apply the years of his or her employment with that governmental agency on or after January 1, 1979, to the extent that the governmental agency had an eligible deferred compensation plan that he or she was eligible to participate in that plan, and that its plan had allowed a deferral equal or less than the limits under 26 USC §457, i.e., the limits under the City Plan.

~~**Rule 62. Minimum Distribution Requirements.** The payment of benefits pursuant to Section 4.38.404 (Plan Section 4.04) must be sufficiently rapid to satisfy the requirements of Sections 457(d)(2)(B)(i) and 401(a)(9)(G) of the Internal Revenue Code.~~

Rule 63.62. Coordination with Certain Other Deferrals. In accord with Section 457(c)(2), as to an individual who participates in two or more deferred

compensation plans in any taxable year; and upon a request from you, the City will take into account and reduce the maximum amount that you a participant may defer under the City Plan in that taxable year by the following amounts:

(a) Any amount excluded from gross income under Section 493 (b) [Annuity purchased by a Section 501(c)(3) non-profit organization or a public school];

(b) Any amount excluded from gross income under Section 402(a)(8) [contributions of an educational organization, hospital, home health service agency, health and welfare service agency, church or association of churches for employee trust];

(c) Any amount excluded from gross income under Section 402(h)(1)(B) [contributions made by an employer on behalf of an employee to an individual retirement plan or individual retirement annuity qualifying as a "simplified employee pension" as defined in 26 USC §408(k); and

(d) Any amount with respect to which a deduction is allowed by reason of a contribution to an organization described in Section 501(c)(18) [a non-discriminatory pension fund established before June 25, 1959, funded entirely by contributions of employees].

City of Seattle
Executive Services Department
City Budget Office

Anne Fiske Zuniga, Budget Director
Dwight Dively, Director, Executive Services
Paul Schell, Mayor

March 5, 1998

The Honorable Mark Sidran
City Attorney
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING DEPARTMENT: Executive Services Department

SUBJECT: AN ORDINANCE related to the City's Deferred Compensation Plan; providing for the commencement of distribution upon separation from City service and providing two elections to defer the date for commencement of distribution; adopting administrative provisions; amending and clarifying sections of the Plan in response to the 1996 amendments to Section 457 of the Internal Revenue Code; and adding, amending, repealing and recodifying various sections of Seattle Municipal Code Chapter 4.38.

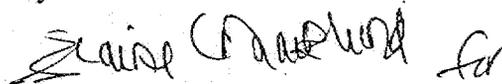
Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Elaine Marklund at 684-8053.

Sincerely,

Paul Schell
Mayor

by



ANNE FISKE-ZUNIGA
Budget Director

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Enclosure

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98-050



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SEATTLE CITY JOURNEY

ORDINANCE _____

1
2
3 AN ORDINANCE related to the City's Deferred Compensation Plan; providing for the commencement
4 of distribution upon separation from City service and providing two elections to defer the date
5 for commencement of distribution; adopting administrative provisions; amending and clarifying
6 sections of the Plan in response to the 1996 amendments to Section 457 of the Internal Revenue
Code; and adding, amending, repealing and recodifying various sections of Seattle Municipal
Code Chapter 4.38.

7 WHEREAS, amendments to the City's Deferred Compensation Plan Document to redefine the Plan
8 ceiling at SMC 4.38.204 and provide for in-service cash out at SMC 4.38.425 are authorized by
1996 amendments to Section 457 of the Internal Revenue Code ("IRC" or "Code");

9 WHEREAS, the 1996 amendments to Section 457 of the Code allows the City to create an additional
election for participants to select a payout date ("distribution commencement date") for benefits;

10 WHEREAS, adoption of an additional election to defer the distribution commencement date also
11 requires implementation of an initial election period for participants to defer their
commencement date;

12 WHEREAS, the adoption of a distribution commencement date upon separation from City service and
13 the adoption of two election periods to defer a participant's distribution commencement date
preserves the integrity of the City's plan, avoids adverse tax consequences to participants, and
improves the administration of the Plan;

14 WHEREAS, amending the Plan at SMC 4.38.401(C) as now allowed by the revised Code (IRC
15 457(d)(2) and IRC 409(a)(9)(A)(B)(C)) allows participants to defer their distribution
commencement date beyond the date currently allowed by the Plan (in SMC 4.38.404);

16 WHEREAS, amending the Plan at SMC 4.38.403 to provide a process for selection of method of
17 distribution and a default method of distribution would further clarify the Plan document;

18 WHEREAS, placing the "normal retirement age" provision (which is now in a separate section, SMC
19 4.38.402) into the "catch up" section of SMC 4.38.204 would clarify the Plan and assure
consistency with Federal Treasury regulations;

20 NOW THEREFORE,

21 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

22 Section 1. Section 4.38.010 of the Seattle Municipal Code is amended as follows:
23
24

1 **4.38.010 Adoption of Deferred Compensation Plan.**

2 The City of Seattle hereby adopts the following deferred compensation plan for City officers and
3 employees (called the "Plan Document"):

4 **THE CITY OF SEATTLE VOLUNTARY
5 DEFERRED COMPENSATION PLAN**

6 **Plan Overview**

7 If you enroll in this Plan, The City of Seattle (called the "City") will retain ("defer" paying) a part
8 of your salary or wages. The ~~((City will then deposit or invest the))~~ money retained (called the "deferred
9 amounts") will be deposited or invested in accord with agreements of the City made from time to time
10 with a custodian, Plan administrator, insurance company, investment underwriter, and/or financial
11 institution. [26 U.S.C. § 457(g).] After you leave the service of the City, retire or die, the Plan will pay
12 you, or your beneficiaries, benefits based on the invested value of the deferred amount. If you change
13 your employment to another Washington government with an eligible plan, the City may transfer your
14 amounts to your new employee's Plan. The invested value will be based on the amount deferred, less
15 administrative fees and expenses, plus gain or minus losses from market fluctuations, and, when
16 applicable deductions for withdrawal ("surrender") fees. An earlier withdrawal may only occur if you
17 suffer an unforeseeable financial emergency or if you are eligible for an in-service cash out as provided
18 by this Plan. ~~((All deferred amounts will belong to the City until benefits are paid.))~~ Your right to
19 commence payment of benefits and the manner and timing of benefit payments will be governed by the
20 provisions of this Plan, the Internal Revenue Code, its applicable regulations, and the administrative
21 rules adopted by the City which may be changed from time to time.

22 Section 2. Section 4.38.204 of the Seattle Municipal Code is amended as follows:

23 **4.38.204 Limits on annual deferrals.**

1 A. You may defer as much under the Plan in any year as Code § 457 allows for an eligible
2 deferred compensation plan. Unless the "catch-up" provision of Code § 457 applies, the most you may
3 now defer of your compensation for any taxable year prior to January 1, 1998 is the lesser of Seven
4 Thousand Five Hundred Dollars (\$7,500.00) or one-third (1/3) of your "includable compensation", and
5 for any taxable year beginning on or after January 1, 1998, the lesser of Eight Thousand Dollars
6 (\$8,000.00) or such larger amount as determined periodically by the Secretary of the Treasury, or one-
7 third (1/3) of your "includable compensation" (see ((Section 10.05))SMC 4.38.1005). This amount is
8 called the "plan ceiling."

9 B. Under the "catch-up" provision, ~~((during))~~ for one or more of your last three (3) years before
10 the year in which you reach "normal retirement age" ((-see Section 4.38.402-)), you may defer the lesser
11 of Fifteen Thousand Dollars (\$15,000.00), or the amount of the "plan ceiling" for the current year plus
12 so much of the "plan ceiling" for earlier taxable years as you failed to use. Any deferral during the year
13 you made under another eligible deferred compensation plan established under Code § 457 will be
14 counted in applying these limits. You may use the "catch-up" provision only once; you cannot invoke
15 the higher limits a second time by resetting your retirement age or returning to City service after you
16 retire [regs. § 1.457-(f)2(((e)(3)))].

17 C. "Normal retirement age" for the purpose of determining the three year "catch-up" period,
18 means a retirement age selected by you from the range of ages ending not later than when you reach
19 seventy and one-half (70 1/2) and not sooner than the time when you have the right to retire without the
20 City's consent, and to immediately receive unreduced retirement benefits under the City Employees'
21 Retirement System, the Law Enforcement Officers' and Fire Fighters' Retirement System, or the
22 Washington Public Employees' Retirement System, whichever may be applicable to you; or, if none
23

1 apply, the time you would have been eligible for unreduced retirement benefits had you joined the City
2 Employees' Retirement System. If you continue to work beyond this age, you may set a later date or
3 age; the later date or age must come not later than the last date for beginning distribution established by
4 SMC 4.38.403, provided you may only use the catch up provision once under this Plan. [Code §§ 457
5 (d)(2)(A) and 401 (A)(9)(c); Regs. § 1.457-2(f)(4)].

6 Section 3. Section 4.38.205 of the Seattle Municipal Code is amended as follows:

7 **4.38.205 Investment selections.**

8 When enrolling, you need to make an investment selection or selections from among the
9 investment alternatives offered by the Plan which shall be selected by the City. ~~((Your selection will~~
10 ~~serve as an index to measure the current value of your account (see Section 4.38.302).)) It is your~~
11 responsibility throughout your participation in this Plan to direct the investment of your deferred
12 amounts to the Plan's investment options. You may change your investment selection from time to
13 time. Your investment directions must be given according to the procedure or form required by the Plan
14 Administrator and may be subject to reasonable restrictions imposed by the Plan Administrator as to the
15 frequency with which you and all other participants may give investment directions. The City, its
16 custodian, Plan Administrator, or any person deemed to be a fiduciary of the Plan shall have no liability
17 of any kind for any damage, loss, or claim which may arise from the participant or the beneficiary's
18 investment direction or the failure of the participant or the beneficiary to exercise investment direction.

19 Section 4. Section 4.38.206 of the Seattle Municipal Code is amended as follows:

20 **4.38.206 Investment transfers.**

21 You may transfer amounts already deferred from one investment ~~((selection))~~option to another as
22 authorized by ordinance. A transfer will be based on the current value of the previous investment
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1 selection, including any gains or less any losses that had already been credited or debited to your account
2 (see Section 4.38.302) and may involve a fee or charge.

3 Section 5. Section 4.38.207 of the Seattle Municipal Code is amended as follows:

4 **4.38.207 Forms and methods.**

5 ~~((To enroll, to change or stop a deferral, or to make an investment selection, you need to sign and
6 file a written form.))~~ An ordinance, administrative rule, or the Plan Administrator will provide for the
7 manner in which enrollment, deferral changes, and investment selections are to be conducted and
8 implemented. Your authorization and your investment selection continue in effect for future pay periods
9 until you direct otherwise ((by signing and filing another written form))in the manner established by
10 ordinance, administrative rule, or by the Plan Administrator. ((An ordinance or administrative rules will
11 provide for the forms, their filing, and when authorizations take effect.))

12 Section 6. Section 4.38.208 of the Seattle Municipal Code is amended as follows:

13 **4.38.208 ~~((Transfers within an investment selection in the City's Deferred Compensation
14 Plan))Investment options and transfers between options.~~**

15 ~~((Securities (mutual funds, money market accounts annuities):))~~The Plan's investment options
16 shall include investment alternatives chosen by the City pursuant to the Plan's investment policy, and
17 may include such investment options such as securities, mutual funds, money market accounts, and
18 annuities. From time to time the City may change, add to or remove investment options from the Plan,
19 and the City may employ professional investment advisors for the purpose of reviewing the investment
20 options offered through this Plan. If an investment option is removed from the Plan, your deferred
21 amounts shall be transferred to similar replacement investment options according to administrative
22 procedures adopted for their transfer unless you direct otherwise in the manner established by the City.
23 Losses may be incurred as a result of a transfer from one investment option to another due to market

1 fluctuations, among other reasons. A participant, or after a participant's death, a beneficiary, may
2 transfer funds between the investment options offered by the Plan. ~~((securities and annuities within an~~
3 ~~investment selection orally or by computer communication subject to written confirmation))~~ Transfers
4 must be made in accordance with ordinance, administrative rule, or as required by the Plan
5 Administrator in the manner that securities transactions are conducted under the rules of the New York
6 Stock Exchange or the National Association of Securities Dealers, and subject to the terms and
7 conditions for crediting ~~((sub))~~account values in the City's contract with the Plan Administrator. For
8 cause, the Plan Administrator may require that transfers be authorized in writing in advance.

9 Section 7. Section 4.38.301 of the Seattle Municipal Code is amended as follows:

10 **Article III Administration, Accounts and Reports**

11 **4.38.301 Administration.**

12 To carry out the Plan, the City will deposit or invest the deferred amounts and any earnings from
13 them in a manner authorized by state law and the Washington Constitution. The City may in its
14 discretion assign functions to one or more City officials, establish a committee to make decisions or
15 exercise powers, contract with a plan administrator or custodian to manage day-to-day operations and
16 keep records, deposit or invest funds with an insurance company, an investment underwriter or financial
17 institution, and delegate any or all duties or responsibilities under the Plan (except making the deferral,
18 itself), to any or all of them.

19 Section 8. Section 4.38.302 of the Seattle Municipal Code is amended as follows:

20 **4.38.302 Accounts.**

21 An account will be kept for everyone who participates in the Plan. Like all others, your account
22 will be credited with a sum equal to the amounts deferred from your salary or wages; it will be adjusted
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1 to reflect the current market performance of ((as if the deferred amounts were invested according to))
2 your investment selection(s); and your account will be reduced by fees charged to your account as
3 authorized by Section 4.38.303 or emergency withdrawals under Section 4.38.407. The adjustment will
4 reflect interest, dividends, and other distributions received; gains or losses from market fluctuations;
5 investment losses; and/or any default by an investment underwriter, each if and when occurring, and, if
6 applicable, a withdrawal ("surrender") fee. The current value of your account will determine the amount
7 of benefits paid under Article IV.

8 Section 9. Section 4.38.303 of the Seattle Municipal Code is amended as follows:

9 **4.38.303 Fees.**

10 The costs of carrying out the Plan will be borne by those participating through reasonable fees set
11 by ordinance for administrative, recordkeeping, investment and other services performed and for
12 appropriate expenses incurred. Your deferred amounts will be subject to fees charged by the City, its
13 custodian, or the Plan Administrator for the administrative cost and expenses of the Plan. The
14 administrative fees charged to the participants may include the costs and expenses of services rendered
15 by a third party administrator, custodian, recordkeeper, or services rendered by a professional investment
16 advisor, accountant, or legal counsel. A fee may take the form of an assessment calculated as a
17 percentage of the current value of your account, a deduction measured by a payment or transaction,
18 and/or a fixed charge for a service, among other reasonable methods.

19 Section 10. Section 4.38.401 of the Seattle Municipal Code is amended as follows:

20 **Article IV Benefits**

21 **4.38.401 ((Earliest payment allowed.)) Timing for distribution of benefits.**

1 ((The Plan will not pay or make benefits available before the earliest of the following events: you
2 retire from City service on or after you reach "normal retirement age" (see Section 4.38.402); you make
3 a permanent separation from City service; the start of the calendar year in which you reach age seventy
4 and one-half (70½); or you die. (Section 4.38.408 provides for temporary departures.) An earlier
5 payment may be authorized for an "unforeseeable emergency" (see Section 4.38.407) [Code §
6 457(e)(9); Regs. §1.457-2(h)].))

7 **A. Earliest availability of benefits.** Except for hardship withdrawals and in-service
8 distributions allowed under Seattle Municipal Code Sections 4.38.412 and .414, the payment of your
9 benefits under this Plan shall begin not earlier than sixty one (61) days after your permanent separation
10 from City service. [Code § 457(d)(1)(A) and (e)(9); Regs. §1.457-2(h)]. Your permanent separation
11 from City service is the earliest of the following events: your resignation, retirement, the termination of
12 your employment with the City, or your death.

13 **B. Distribution commencement date.** Unless you (or your beneficiary) elect to defer your
14 distribution commencement distribution date or you transfer your account to another eligible
15 government 457 plan, your distribution commencement date under this Plan shall be sixty one (61) days
16 after the date of your permanent separation, and the actual payment of your benefits shall commence
17 within the next monthly payment cycle.

18 **C. Last date to commence distribution of benefits.** Your distribution commencement date
19 shall not be later than the last date for beginning distribution under this Plan, which shall be April 1st of
20 the calendar year following the calendar year in which you reach age 70 1/2, and, if you continue your
21 service with the City beyond age 70 1/2, your distribution commencement date shall be no later than
22
23
24

1 April 1st of the calendar year following the calendar year in which you leave City service. [Code
2 457(d)(a) and 401(a)(9)(B)(C).]

3 Section 11. Section 4.38.402 of the Seattle Municipal Code is amended as follows:

4 **4.38.402 ((Normal retirement age.))Election to defer distribution commencement date.**

5 (~~"Normal retirement age" means the range of ages ending not later than when you reach seventy~~
6 ~~and one-half (70 1/2) and not sooner than the time when you have the right to retire without the City's~~
7 ~~consent, and become eligible by age, length of service, or both to retire and receive immediate retirement~~
8 ~~benefits without actuarial or similar reduction because of retirement before some later specified age,~~
9 ~~under the City Employees' Retirement System, the Law Enforcement Officers' and Fire Fighters'~~
10 ~~Retirement System, or the Washington Public Employees' Retirement System, whichever be applicable~~
11 ~~to you; or, if none apply, the time you would have been eligible for unreduced retirement benefits by~~
12 ~~age, length of service, or both had you been eligible for and had you joined the City Employees'~~
13 ~~Retirement System. If you continue to work beyond this age, you may set a later date or age; the later~~
14 ~~date or age must come not later than the calendar year in which you reach age seventy and one-half~~
15 ~~(70 1/2) or you leave City service, which is later [Code §§ 457 (d)(2)(A) and 401 A 9 (c); Regs. § 1.457-~~
16 ~~2(f)(4)].) The Plan allows two election periods for you to postpone, but not accelerate, your distribution~~
17 commencement date.

18 **A. First election period.** You (or your beneficiary(ies)) may elect to defer your distribution
19 commencement date to a fixed future calendar date which is not later than the last date for beginning
20 distribution under SMC 4.38.401. Your election to defer the commencement of the benefit payment(s)
21 must be made in the manner designated by the City and must be received by the City not later than sixty
22 (60) days after the date of your permanent separation from City service. During this first election period

1 ending sixty (60) days after your separation, you may change your elected distribution commencement
2 date any number of times. The last election that you make within this sixty (60) day election period will
3 be considered your first election, and this election may not be revoked unless you choose to exercise
4 your second election under subsection B. [Reg. 1.457-1(b).]

5 **B. Second election.** After your first sixty (60) day election period has passed, you may have
6 one additional election to defer your distribution commencement date to a fixed future date no later than
7 the last date for beginning distribution under SMC 4.38.401(C). You may only exercise this second
8 election to defer one time, and the second election must be made in the manner designated by the City
9 and must be received by the City no later than thirty (30) days before your benefit payments would
10 otherwise begin. Once you make your second election to defer, it is irrevocable. [Code 457(e)(9)(B).]

11 Section 12. Section 4.38.403 of the Seattle Municipal Code is amended as follows:

12 **4.38.403 ((Benefit selections.)) Election of benefit distribution method.**

13 ~~((A. You may select the method of payment from among alternatives made available by~~
14 ~~ordinance in the case of your retirement or an earlier separation from City service before payment~~
15 ~~benefits commence; if you should die your beneficiary may select a death settlement from among the~~
16 ~~alternatives offered before benefits are paid.~~

17 ~~B. You (or your beneficiary) may postpone making your selection as long as your choice is made~~
18 ~~in the time and manner authorized by ordinance and before any benefits become available. You may not~~
19 ~~revoke a selection after benefits commence [Regs. § 1.457-1].))~~

20 **A. Election of method of distribution.** Your benefits may be paid in a lump sum or in periodic
21 payments or such other method allowed by administrative rule, the Code, and its implementing
22 regulations. You must elect the method of distribution of benefits in writing no later than thirty (30)

1 days before your scheduled (your elected distribution date or the default date designated by the Plan)
2 distribution commencement date. You may not revoke your election of a method of distribution after
3 payments commence, nor can you accelerate your payments after your payments commence. If your
4 beneficiary elects a method of distribution, the period of time and the manner in which the benefits are
5 distributed is governed by administrative rule. If you (or your beneficiary) do not chose a method of
6 distribution within the time specified in this section, the Plan will use the applicable default method of
7 distribution.

8 **B. Default method of distribution.** If you (or your beneficiary) do not elect a method of
9 distribution thirty (30) days before your scheduled distribution commencement date and the current
10 market value of your account is equal to or greater than twenty five thousand dollars (\$25,000), the Plan
11 will distribute your benefits in monthly installments over a period of one hundred twenty (120) months
12 or in such other periods or amounts as may be required by the minimum payout requirements of the
13 Internal Revenue Code. If you do not elect a method of distribution within the required time period and
14 the current market value of your account is less than twenty five thousand dollars (\$25,000), the Plan
15 will distribute the total amount of your benefits in one lump sum payment. If your beneficiary is an
16 estate, trust or other entity the distribution of your benefits will be governed by administrative rule.

17 **C. Minimum distribution requirements.** If your benefits are distributed in periodic payments
18 under this Plan, the amount and timing of such payments shall be governed by administrative rule and
19 the minimum distribution requirements of the Internal Revenue Code and its applicable regulations. [26
20 U.S.C. 457(d)(2) and 401(a)(9).] Your benefit payments must commence no later than the last date for
21 beginning distribution under SMC 4.38.401. The payment of benefits must be scheduled so that the
22 amounts do not increase substantially after the first year; at least one (1) payment occurs every year; and

1 most of the payments will go to you over your life expectancy or over the joint life expectancy of you
2 and your beneficiary. [Code 401(a)(9)(B).]

3 Section 13. Section 4.38.404 of the Seattle Municipal Code is repealed:

4 ~~((4.38.404 Scheduling benefits.))~~

5 ~~((Payment of benefits shall begin on or before the later of the end of sixty (60) days after the end~~
6 ~~of the calendar year in which you (a) reach (or would have reached) "normal retirement age" (see~~
7 ~~Section 4.38.402) or (b) leave City service permanently. The payment of benefits must be scheduled so~~
8 ~~that the amounts do not increase substantially after the first year; at least one (1) payment occurs every~~
9 ~~year; and most of them will go to you rather than your beneficiary. For example, at the time payment of~~
10 ~~benefits begin, the present value of scheduled payments to you over your life expectancy must exceed~~
11 ~~sixty six and two thirds percent (66 2/3%) of the total present value of all payments due [Code § 457~~
12 ~~(d)(2); Regs. § 1.457-2(I)]).)~~

13 Section 14. Section 4.38.406 of the Seattle Municipal Code is amended as follows:

14 **4.38.406 Payments to beneficiaries.**

15 If you die before drawing benefits or before all benefits are paid, benefits shall be paid to your
16 beneficiary in the manner provided by administrative rule, ((over a period of fifteen (15) years or less, or
17 if your beneficiary is your surviving spouse, for his/her life or any shorter period)) [Regs. § 1.457-
18 2(i)(3)]. Payments must be sufficiently rapid to satisfy the requirements of Code § 457(d)(2) and Code §
19 401(a)(9) [Code § 457(d)(2)]. To qualify for benefits your beneficiary must survive ten (10) days after
20 your death.

21 Section 15. Section 4.38.407 of the Seattle Municipal Code is amended as follows:

22 **4.38.407 Unforeseeable emergency.**

1 Upon application, the City may authorize a payment to you in an amount reasonably needed to
2 meet an "unforeseeable emergency." An "unforeseeable emergency" is a severe financial hardship to you
3 resulting from a sudden and unexpected illness or accident to you or a dependent, loss of your property
4 due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of
5 events beyond your control. No payment can be made to the extent that your hardship may be relieved
6 through reimbursement, compensation by insurance or otherwise; a sale of your assets without causing
7 severe financial hardship; or suspending your deferrals. The payment may not exceed the lesser of the
8 current value of your account (see Section 4.38.302) or the amount required to satisfy your emergency
9 need [Regs. § 1.457-2(h)(4-5)]. Your account will be reduced by an amount equal to any payment made;
10 and any balance remaining in your account after the payment will be paid as benefits in accordance with
11 Section 4.38.401. This is ~~((the only))~~ one of two ways in which payment of deferred amounts ~~((;-))~~ may
12 be authorized by the City prior to your permanent separation from ~~((which the City may authorize while~~
13 ~~you are below your retirement age in))~~ active City service. You may also receive an "in-service cash out
14 election" payment if the conditions of Section 4.38.425 are satisfied.

15 Section 16. Section 4.38.408 of the Seattle Municipal Code is amended as follows:

16 **4.38.408 Temporary interruption of service.**

17 Unless you declare and make your departure from City service permanent or you become
18 permanently separated from City service as defined by the Plan and/or administrative rule ~~((Section~~
19 ~~4.38.406 applies))~~, your account will continue to be maintained during the following absences although
20 your deferrals cease: A layoff of less than one year for lack of work; military service while
21 reemployment rights are maintained; or an extended authorized leave of absence ~~((;- and transfer to other~~
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1 ~~employment while you maintain your membership within the City Employees' Retirement System or the~~
2 ~~Law Enforcement Officers' and Fire Fighters' Retirement System.))~~

3 Section 17. A new Section 4.38.420 is added to the Seattle Municipal Code as follows:

4 **4.38.420 Distribution date for separated participants.**

5 A participant who has separated from the City prior to the effective date of Ordinance
6 _____ [this ordinance] and who has not commenced distribution of benefits or previously elected
7 a distribution commencement date shall elect a distribution commencement date in writing in the time
8 and manner required by the City. If the separated participant does not elect a distribution
9 commencement date as required by the City, the participant's distribution shall commence at age sixty-
10 five (65). [Treas. Reg. 1.457-2(f)(4).] Those separated participants who receive a default distribution
11 date of age sixty-five (65) may use the second election to postpone the distribution date to a future date
12 as permitted by SMC 4.38.402(B).

13 A separated participant receiving a default distribution commencement date under this section
14 may appeal the designation of a default distribution date by submitting a written appeal to the Deferred
15 Compensation Committee giving a reasonable explanation why he/she failed to elect a distribution
16 commencement date as required by this section and providing evidence that the participant is
17 permanently separated from City service. The Deferred Compensation Committee shall allow the
18 participant to elect a distribution date if the participant has stated reasonable cause for failing to elect a
19 distribution date as required by notice under this section. Reasonable cause may include the failure to
20 send or receive notice, the absence, death, or incapacity of a participant, or other circumstance
21 preventing the participant (or beneficiary) from receiving notice under this section. All decisions of the
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1 Deferred Compensation Committee may be appealed to the Director of Personnel. The decision of the
2 Director of Personnel shall be final.

3 Section 18. A new Section 4.38.425 is added to the Seattle Municipal Code as follows:

4 **4.38.425 In Service cash-out election before separation.**

5 You may elect to receive a lump sum "in-service cash out" payment prior to your permanent
6 separation from City service if you meet certain Code requirements which include the following: no
7 deferrals have been made to your account for the previous twenty-four (24) month period, your account
8 balance is less than the maximum amount allowed by Section 457 of the Code, and you have not
9 previously received an in-service cash out distribution under this Plan. Payment will be made at least
10 thirty (30) days after the City receives and approves your written request for payment. Only one in-
11 service cash out election will be made available to you during your membership in this Plan. [Code
12 §457(e)(9)(A).]

13 Section 19. Section 4.38.504 of the Seattle Municipal Code is amended as follows:

14 **4.38.504 Transfers between government plans.**

15 This Plan will accept plan-to-plan transfers of deferred compensation accounts for employees
16 who enter City service from another employer with an eligible deferred compensation plan established
17 under Code § 457. Conversely, if you leave City service to take a position with another employer with
18 an eligible deferred compensation plan under Code § 457, the City will automatically transfer your
19 account to your new employer for deposit in its plan as long as the receiving plan accepts such transfers
20 [Regs. § 1.457-2(k)]. If you wish to effect a plan to plan transfer, you must give notice to the City in
21 writing no more than sixty (60) days after your separation date and identify the state or local government
22 employer with whom you have accepted employment.

1 Section 20. Section 4.38.1005 of the Seattle Municipal Code is amended as follows:

2 **4.38.1005 Includable compensation.**

3 "Includable compensation" means your compensation from the City reported to the United States
4 Internal Revenue Service for federal income tax purposes, reduced by deferrals under this plan and
5 payments made on your behalf for retirement system purposes under Ordinance 111992 and 26 U.S.C. §
6 414(h), and other non-taxable income. It is determined without taking into account Washington's
7 community property laws [Code § 457(d)(5); Regs. § 1.457-2(e)(2)].

8 Section 21. Section 4.38.1007 of the Seattle Municipal Code is amended as follows:

9 **4.38.1007 Normal retirement age.**

10 "Normal retirement age." See Section 4.38.~~((402))~~204(C).

11 Section 22. Section 4.38.1010 of the Seattle Municipal Code is amended as follows:

12 **4.38.1010 Plan administrator.**

13 "Plan administrator" means a City official or office, a custodian appointed by the City to act as
14 Plan administrator, or an organization that manages the day to day operation of the Plan by providing
15 such services as the following: Preparing informational material, presenting the Plan to City employees,
16 enrolling participants, processing forms and keeping records and accounts, and providing information,
17 answering questions, and giving advice about the Plan, making reports to participants, coordinating with
18 investment underwriters, participating in selecting them, and overseeing their performance, and directing
19 payment of benefits. This listing illustrates the type of tasks performed; a plan administrator may
20 perform some, all, or other tasks, as determined by ordinance.

21 Section 23. Section 4.38.1011 of the Seattle Municipal Code is amended as follows:

22 **4.38.1011 Plan ceiling.**

1 "Plan ceiling" is the lesser of Seven Thousand Five Hundred Dollars (\$7,500.00) and for any
2 taxable year beginning on or after January 1, 1998, the lesser of Eight Thousand Dollars (\$8,000.00) (or
3 such larger amount as determined periodically by the Secretary of the Treasury pursuant to 26 U.S.C.
4 457(e)(15)) or one-third (1/3) of a participant's "includable compensation." See Section 4.38.204.

5 Section 24 This ordinance shall take effect and be in force thirty (30) days from and after its
6 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
7 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

8 Passed by the City Council the ____ day of _____, 1998, and signed by me in open
9 session in authentication of its passage this ____ day of _____, 1998.

10
11 _____
President _____ of the City Council

12 Approved by me this ____ day of _____, 1998.

13
14 _____
Mayor

15
16 Filed by me this ____ day of _____, 1998.

17
18 _____
City Clerk

19 (Seal)

20
21
22
23
24

TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Martin Chen

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE

STATE OF WASHINGTON - KING COUNTY

92525

-ss.

City of Seattle, City Clerk

No. ORDINANCE IN

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 118956

was published on

05/01/98

The amount of the fee charged for the foregoing publication is the sum of \$, which amount has been paid in full.

Subscribed and sworn to before me on

05/01/98

Notary Public for the State of Washington, residing in Seattle

