

TITLE 3

EMPLOYEE'S RETIREMENT AND DEFERRED COMPENSATION PLAN

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Chapter 3.04

ESTABLISHING PLAN; DEFINITIONS

Sec. 3.04.010. Reserved.

Editor's note—Ord. No. 8-1987, § 1, repealed former § 2-100, relative to the establishment of the employee's retirement plan and trust, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-100)

Sec. 3.04.020. Definitions.

For the purposes of this Title 3 of this Code, the following definitions shall apply:

(a) *Annuity contract* shall mean only a contract that is nontransferable and that does not continue beyond the combined life expectancy of the participant and his or her spouse, based on acceptable actuarial tables for an ordinary, joint life and last survivor annuity. This option is available only to law enforcement personnel.

(b) *City* shall mean the City of Aspen, a Colorado municipal corporation.

(c) Reserved.

(d) *Compensation* shall mean the rate of base earnings in effect for an employee at the time of reference, exclusive of overtime, bonuses and amounts identified by the city as payment toward business expenses incurred by the employee without direct reimbursement.

(e) *Continuous service* shall mean the period of an employee's continuous employment by the City and shall include all past service (as defined in Section 3.16.070), whether or not in fact continuous.

(f) *Director of Finance* shall mean the duly appointed and acting Director of Finance of the City who shall administer the deferred compensation plan as provided herein.

(g) *Early retirement date* shall mean the December 31 after which a participant reaches age sixty (60) and completes ten (10) years of continuous service or reaches age fifty-five (55) and completes fifteen (15) years of continuous service or reaches age fifty (50) and completes twenty (20) years of service or completes twenty-five (25) years of continuous service.

(h) *Funds* shall mean all property held by the Director of Finance under the terms of the trust hereby established.

(i) *Normal retirement date* shall mean any December 31 after which a participant reaches age sixty-five (65) and has five (5) years of continuous service with the City.

(j) *Total and permanent disability* shall mean a disability of a potentially permanent nature which prevents an employee from engaging in any occupation for wage or profit and which results from illness or injury which is not self-inflicted and does not result from alcoholism or the use of narcotics.

(k) *Deferred compensation plan* shall mean the *deferred* compensation plan selected by an administrative selection committee made up of the City Manager, Assistant City Manager, Personnel Director, Finance Director and City Attorney. (Code 1971, § 2-101; Ord. No. 3-1976, § 2; Ord. No. 1-1980, § 1; Ord. No. 88-1981, § 1; Ord. No. 8-1987, § 2)

Chapter 3.08

PARTICIPATION

Sec. 3.08.010. Eligibility requirements.

Every officer and employee who is employed by the City on a regular, full-time basis, excluding elected officials, police officers, firemen and any person who is customarily employed for less than twenty (20) hours in one (1) week or less than five (5) months in any calendar year, shall be eligible to participate in the City deferred compensation plan on the first day of employment. (Code 1971, § 2-200; Ord. No. 3-1976, § 2; Ord. No. 88-1981, § 2; Ord. No. 8-1987, § 3)

Sec. 3.08.020. Initial participation.

An eligible officer or employee shall become a participant hereunder upon signifying in writing, his or her acceptance of the terms and provisions of the plan, including a stipulation as to the date on which such officer's or employee's most recent period of continuous employment commenced. An eligible officer or employee shall become a participant in the deferred compensation plan as of the date upon which he or she first becomes eligible if he or she signifies his or her acceptance on or prior to such date. (Code 1971, § 2-201; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 4)

Sec. 3.08.030. Optional participation.

Participation in the deferred compensation plan is optional for all eligible employees. Eligible employees shall make their participation selection on the first day of employment or prior to April 1 of each calendar year. (Code 1971, § 2-202; Ord. No. 3-1976, § 2; Ord. No. 1-1980, § 2; Ord. No. 88-1981, § 3; Ord. No. 8-1987, § 5)

Sec. 3.08.040. Leaves of absence.

Any participant who is granted a leave of absence shall remain a participant during the period of his or her leave of absence. Leaves of absence may be granted uniformly for absences due to illness, military service, temporary layoffs and other good reasons. During the period that any participant is granted a leave of absence, he or she shall share in net earnings or losses of trust funds in the same manner and subject to the same conditions as if he or she were not on leave of absence. For purposes of computing the length of service of a participant, a leave of absence shall be considered a period of regular employment. (Code 1971, § 2-203; Ord. No. 3-1976, § 2)

Sec. 3.08.050. Reemployment after termination of employment.

Any officer or employee reemployed after termination of employment shall be considered a new employee and his or her or her eligibility and length of service with the City shall be determined as if he or she were first employed by the City as of the date of his or her or her most recent employment. (Code 1971, § 2-204; Ord. No. 3-1976, § 2)

Chapter 3.12

CONTRIBUTIONS

Sec. 3.12.010. Contributions by city.

Subject to the right of the City to alter, amend or discontinue the deferred compensation plan, the City shall contribute for each eligible employee an amount equal to three percent (3%) of the compensation received by each eligible employee to the deferred compensation plan according to the following:

(a) Participant in deferred compensation plan — City contribution is to the deferred compensation plan;

(b) Nonparticipant in deferred compensation plan — City contribution is to the deferred compensation plan.

The City will contribute three percent (3%) of compensation according to the above of each eligible employee employed by the City ten (10) years or less and five percent (5%) of compensation according to the above for each eligible employee employed by the City more than ten (10) years. (Code 1971, § 2-300; Ord. No. 3-1976, § 2; Ord. No. 8-1977, § 1; Ord. No. 1-1980, § 3; Ord. No. 88-1981, § 4; Ord. No. 8-1987, § 6)

Sec. 3.12.020. Compensation.

Compensation shall mean the participant's total compensation for the period in question, including vacation and holiday pay, but exclusive of:

(a) Compensation for any hours in excess of forty (40) per week;

(b) Any overtime or other premium whether or not paid in respect of hours referred to in Subsection (a) above;

(c) Any compensation received for services rendered prior to date of participation; and

(d) Any payment received under this plan or other retirement, disability, health, supplemental unemployment benefit or similar plan.

In the case of a participant whose employment terminates on account of retirement at or after early retirement date, death or total and permanent disability as a result of physical or mental infirmity, the compensation of such a participant for the year in which such event occurs shall be compensation of such participant up to his or her or her termination date. (Code 1971, § 2-301; Ord. No. 3-1976, § 2)

Sec. 3.12.030. Contributions by eligible employees.

Each eligible employee may elect to contribute from zero percent (0%) of employee's compensation for the period that the employee is a participant in the deferred compensation plan up to and including the maximum allowed by the Internal Revenue Code for the period that the employee is a participant in the deferred compensation plan, which maximum amount allowed also includes City contributions. This election must be submitted in writing to the Finance Director prior to the standard payroll deadline per pay period. (Code 1971, § 2-302; Ord. No. 3-1976, § 2; Ord. No. 8-1977, § 2; Ord. No. 1-1980, § 4; Ord. No. 88-1981, § 5; Ord. No. 8-1987, § 7)

Sec. 3.12.040. Reserved.

Editor's note—Ord. No. 8-1987, § 8, repealed former § 2-303, relative to discriminatory contributions, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-303)

Chapter 3.16

ACCOUNTING PROVISIONS AND ALLOCATIONS

Sec. 3.16.010. Individual funds.

The deferred compensation fund shall consist of individual funds in which each participant's share shall consist of employee and City contributions and accumulated earnings. (Code 1971, § 2-400; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 9)

Sec. 3.16.020. Receipts by participants.

Prior to the time that distributions are to be made hereunder, the participants, their spouses, beneficiaries, heirs at law or legal representatives shall have no right to receive cash or other thing of value, from the Plan Administrator except as specifically stated per plan provisions under withdrawals. (Code 1971, § 2-401; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 10)

Sec. 3.16.030. Determination of value of trust fund and of net earnings or losses.

As of December 31st of each year, the Director of Finance shall determine for that period then ended the sum of the net earnings or losses of the individual funds which shall reflect:

(a) Interest, dividends, the annual increment on U.S. Savings Bonds and similar securities, gains, realized from the sale, exchange or collection of assets, other income received and appreciation in market value of assets, and

(b) Losses realized from the sale, exchange or collection of assets, depreciation in market value of assets, administration expenses, taxes and charges paid.

In determining market value, the Director of Finance shall use the most recent valuation of a pooled fund in which the trust fund is invested, current market prices or quotation, if available, but otherwise the Director of Finance shall use market value as he or she deems fair and his or her or her judgment with reference thereto shall be conclusive upon all persons. (Code 1971, § 2-402; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 11)

Sec. 3.16.040. Allocation of new earnings or losses.

As of December 31st of each year, the net earnings or losses of the individual funds for the year then ended shall be allocated to the accounts of all participants having credits in their fund based on the performance of the investment mode that the employee has selected, which is reflected in annual statements provided by the plan administrator. (Code 1971, § 2-403; Ord. No. 3-1976, § 2; Ord. No. 8-1977, § 3; Ord. No. 8-1987, § 12)

Sec. 3.16.050. Allocation of City's contributions.

The account of each participant shall be credited with the amount contributed by the City for his or her or her benefit as provided in Section 3.12.010 of this Title. (Code 1971, § 2-404; Ord. No. 3-1976, § 2)

Sec. 3.16.060. Participants' accounts.

For each participant there shall be maintained a separate account which shall be:

- (a) Credited with the following items:
 - (i) The participant's own contributions;

(ii) Participant's City's contributions made on his or her or her behalf;

(iii) The participant's proportionate share in the net earnings attributable to his or her or her contributions and City contributions made on his or her or her behalf; and

(b) Charged with the following items:

(i) The participant's proportionate share of net losses attributable to his or her or her contributions and City contributions made on his or her or her behalf;

(ii) Distribution to a participant or his or her or her beneficiary, whether made in cash or in kind.

(Code 1971, § 2-405; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 13)

Sec. 3.16.070. Reserved.

Editor's note—Ord. No. 8-1987, § 14, repealed former § 2-406, relative to past service credits, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-406)

Sec. 3.16.080. Reserved.

Editor's note—Ord. No. 8-1987, § 15, repealed former § 2-407, relative to forfeitures, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-407)

Chapter 3.20

RETIREMENT DATES AND DISTRIBUTIONS

Sec. 3.20.010. Normal retirement.

The normal retirement age for each participant shall be on his or her or her sixty-fifth (65th) birthday after five (5) years of continuous service (defined as the normal retirement date). In the event that the retirement of any participant is deferred by the City, during the deferment the participant may continue to participate in the deferred compensation plan. Such period of deferment may be terminated and retirement effected at the end of any full year of deferment by either the participant or the City by notice of one to the other at least ninety (90) days prior to the close of the year. (Code 1971, § 2-500; Ord. No. 3-1976, § 2, Ord. No. 8-1987, § 16)

Sec. 3.20.020. Early retirement.

Any participant may retire as of the last day of the year in which his or her or her sixtieth (60th) birthday occurs and upon completing ten (10) years of continuous service with the City or in which his or her or her fifty-fifth (55th) birthday occurs upon completing fifteen (15) years of continuous service with the City or in which his or her or her fiftieth (50th) birthday occurs and upon completing twenty (20) years of continuous service with the City or on the last day of the year in which he or she completes twenty-five (25) years of continuous service with the City, which dates shall be the early retirement dates for all participants. (Code 1971, § 2-501; Ord. No. 3-1976, § 2)

Sec. 3.20.030. Reserved.

Editor's note—Ord. No. 8-1987, § 17, repealed former § 2-600, relative to employee retirement plan vesting, which derived from Ord. No. 3-1976, § 2; Ord. No. 8-1977, § 4; and Ord. No. 88-1981, § 6. (Code 1971, § 2-600)

Sec. 3.20.040. Manner of distribution on retirement.

When a participant contemplates retirement or termination, he or she shall elect the manner of distribution of his or her or her account within sixty (60) days after retirement or termination. Subject to the approval of the employer, he or she shall be entitled to receive the entire balance of this account in any of the following ways or combinations thereof:

- (a) In a one-time lump sum;
- (b) In a specific amount on a regular basis until the account is exhausted;
- (c) Over a specific number of years in monthly, quarterly, semi-annual or annual payments;
- (d) Payments of an irregular amount or frequency; or
- (e) Through the purchase of a lifetime annuity. (Code 1971, § 2-601; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 18)

Sec. 3.20.050. Total and permanent disability.

As of the date of death of any participant, his or her beneficiary or his or her estate shall be entitled to receive the entire balance of his or her account in one (1) of the methods set forth in Section 3.20.040 above or any combination thereof. As of the date any participant shall be determined to have become totally and permanently, disabled because of physical or mental infirmity, he or she shall be entitled to receive the entire balance of his or her account in one (1) of the methods set forth in Section 3.20.040 above or any combination thereof. (Code 1971, § 2-602; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 19)

Sec. 3.20.060. Reserved.

Editor's note—Ord. No. 8-1987, § 20, repealed former § 2-603, relative to resignation and dismissal for other than gross misconduct or dishonesty, which derived from Ord. No. 3-1976, § 2 and Ord. No. 1-1980, § 5. (Code 1971, § 2-603)

Sec. 3.20.070. Reserved.

Editor's note—Ord. No. 8-1987, § 21, repealed former § 2-604, relative to dismissal for gross misconduct or dishonesty, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-604)

Sec. 3.20.080. Reserved.

Editor's note—Ord. No. 8-1987, § 22, repealed former § 2-605, relative to the method of payout, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-605)

Chapter 3.24

BENEFICIARIES

Sec. 3.24.010. Beneficiaries.

Any participant may designate as his or her beneficiary in case of death the person or persons to whom his or her share in his or her account shall be paid. The designation shall be in such written form as the Plan Administrator requires and may include contingent or successive beneficiaries. In the event of a participant's death, payment shall be made of the share in his or her account to which his or her beneficiary or beneficiaries named in the most recent designation which has been properly completed and filed with the Plan Administrator by such participant. The beneficiary or beneficiaries designated by a participant may be changed at any time and from time to time, at the election of the participant but only by his or her filing with the Plan Administrator a new designation revoking all prior designations. If a participant files no designation of beneficiary or has revoked all such designations or if his or her designated beneficiary or beneficiaries shall predecease him or having survived him shall die prior to the

final and complete distribution of the participant's share, the share or undistributed portion of the share of such deceased participant shall be paid to the executor or administrator of the estate of such deceased participant. Any payment made by the trustee in accordance with this Section shall fully acquit and discharge the trustee from all further liability on account thereof. (Code 1971, § 2-700; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 23)

Sec. 3.24.020. Reserved.

Editor's note—Ord. No. 8-1987, § 24, repealed former § 2-701, relative to minors and other persons under legal disability, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-701)

Chapter 3.28

INVESTMENT FUNDS

Sec. 3.28.010. Investments authorized.

The Plan Administrator is hereby appointed the trustee of the funds and is authorized to invest the plan funds, without distinction between principal and income, in such bonds, notes, debentures, mortgages, equipment trust certificates, real property and in loans secured by first mortgages (except as hereinafter specified) on real property, in participation guarantee agreements with life insurance companies, other types of investment agreements, preferred or common stock and such other investments or securities as may be allowed by law, within the State, dependent upon the investment modes the employee has selected and notified the Plan Administrator of accordingly. (Code 1971, § 2-800; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 25)

Sec. 3.28.020. Reserved.

Editor's note—Ord. No. 8-1987, § 26, repealed former § 2-801, relative to insurance contracts, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-801)

Sec. 3.28.030. Reserved.

Editor's note—Ord. No. 8-1987, § 27, repealed former § 2-802, relative to personal loans to employees, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-802)

Sec. 3.28.040. Reserved.

Editor's note—Ord. No. 8-1987, § 28, repealed former § 2-803, relative to liability with respect to investments, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-803)

Sec. 3.28.050. Reserved.

Editor's note—Ord. No. 8-1987, § 29, repealed former Div. 9, §§ 2-900—2-908, relative to the powers and duties of the retirement plan and trust committee, which provisions derived from Ord. No. 3-1976, § 2. (Code 1971, Ch. 2, Div. 9, §§ 2-900—2-908)

Chapter 3.32

ACCOUNTING REPORT

Sec. 3.32.010. Annual report to participants.

Annually within ninety (90) days following the close of the preceding year, the Plan Administrator shall report to each participant itemizing the participant's contributions, City's contributions made for each participant and the earnings and fund changes attributable to the amounts, a description of all investments and other property purchased and sold and all receipts, disbursements and evidence of all other transactions occurring with reference to the fund during said year and listing the investments and other

property held in the trust fund at the end of such year. (Code 1971, § 2-1000; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 30)

Sec. 3.32.020. Reserved.

Editor's note—Ord. No. 8-1987, § 31, repealed former § 2-1001, relative to approval of the director's account, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-1001)

Sec. 3.32.030. Reserved.

Editor's note—Ord. No. 8-1987, § 32, repealed former § 2-1002, relative to the report of participants, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-1002)

Chapter 3.36

AMENDMENT OR TERMINATION

Sec. 3.36.010. Amendment to conform with law.

The City reserves the right to make by amendment such changes in, additions to and substitutions for the provisions of this plan, to take effect retroactively or otherwise as may be necessary or advisable for the purpose of conforming the plan to Section 457 of the Internal Revenue Code or to any other present or future federal law relating to trusts and plans of this or similar nature. (Code 1971, § 2-2000; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 33)

Sec. 3.36.020. Other amendments and termination.

The City also reserves the right to amend this plan at any time and from time to time in any manner which it deems desirable including, but not by way of limitation, the right to increase or diminish contributions to be made by it hereunder, to terminate permanently its agreement and obligation to make any contributions hereunder, to change or modify the method of allocation of its contributions and to change any provision relating to the administration of the plan. (Code 1971, § 2-2001; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 34)

Sec. 3.36.030. Form of amendment.

Any such amendment shall be made by an instrument in writing, signed by a duly authorized officer or officers of the City certifying that said amendment has been authorized and filed with the Plan Administrator and the Director of Finance. (Code 1971, § 2-2002; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 35)

Sec. 3.36.040. Reserved.

Editor's note—Ord. No. 8-1987, § 36, repealed former § 2-2003, relative to limitations on amendments, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-2003)

Sec. 3.36.050. Reserved.

Editor's note—Ord. No. 8-1987, § 37, repealed former § 2-2004, relative to vesting upon termination and liquidation of trust, which derived from Ord. No. 3-1976, § 2. (Code 1971, § 2-2004)

Chapter 3.40

MISCELLANEOUS PROVISIONS

Sec. 3.40.010. No guarantee of employment, etc.

Neither the creation of this plan nor anything contained in this agreement shall be construed as giving any participant hereunder or other employee of the City any right to remain in the employ of the City. It is understood that the rights and interest of the participants and their beneficiaries hereunder shall be limited to the contributions actually paid by such participants and by the City to the Plan Administrator. (Code 1971, § 2-3000; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 38)

Sec. 3.40.020. Rights of participants and others.

To comply with the Internal Revenue Service regulations, the City is the legal owner of the plan funds and employee rights are limited to that of a general creditor, until funds are paid to the employee. Distributions to participants, their beneficiaries, spouses, heirs-at-law or legal representatives, excepting minors and persons under legal disability, shall be made only to them and upon their personal receipts or endorsements and no interest in the plan funds or any part thereof, shall be assignable in anticipation of payment either by voluntary or involuntary act or defaults of such participants, their beneficiaries, spouses or heirs-at-law. (Code 1971, § 2-3001; Ord. No. 3-1976, § 2; Ord. No. 8-1980, § 1; Ord. No. 8-1987, § 39)

Sec. 3.40.030. Internal Revenue Service qualification.

This plan is subject to the condition precedent that it shall be approved and qualified by the Internal Revenue Service Code of 1954 and regulations issued thereunder with respect to the tax exempt status of the plan and if the Internal Revenue Service rules that this plan is not qualified, the City and the participants shall recover all contributions which have been made by them respectively prior to the initial determination as to qualification. (Code 1971, § 2-3002; Ord. No. 3-1976, § 2; Ord. No. 8-1987, § 40)