

**CHAPTER 5.09 - DEFERRED
COMPENSATION PLAN**

(Chapter added by Ordinance No. 176183, effective
January 1, 2002.)

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5.09.005 Title.

(Amended by Ordinance Nos. 179417, 182168, 185726, 186746 and 187574, effective February 10, 2016.)

- A.** The City of Portland, Oregon (City), maintains a deferred compensation plan authorized by Section 457 of the Internal Revenue Code of 1986, as amended (“IRC”) that was originally adopted by City Council on December 17, 1981 and became effective January 1, 1982.

- B.** Name of Plan. This Plan shall be known as the City of Portland Governmental 457(b) Plan.

- C. **Effective Date.** The effective date of this Plan, as amended, shall be February 10, 2016.
- D. **Service Providers.** As of August 11, 2005, the service providers offered by the Plan are:
 - 1. Voya Retirement Insurance and Annuity Company
 - 2. Advantis Credit Union

5.09.010 Definitions.

(Amended by Ordinance Nos. 179417, 182168, 183900, 185726, 186746 and 187574, effective February 10, 2016.) As used in this Chapter, unless the context otherwise requires:

- A. **“Account”** means the bookkeeping account or accounts maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains or losses attributable to the investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expense charged against such Participant's Deferred Compensation, which are maintained by the Participant's Investment Providers. Account also includes the Participant's Roth Account, and appropriate rollover accounts under Sections 5.09.150 and 5.09.155 that must be segregated.
- B. **“Acknowledgement”** means the document that highlights some of the terms of the Plan and contains the Participant's acknowledgement and understanding of the terms of the Plan.
- C. **“Beneficiary”** means the person(s) designated by the Participant to receive any benefits payable under the plan in the event of the Participant's death. The term Beneficiary may also include the Participant's estate.
- D. **“Beneficiary Designation”** means a document specifying the Beneficiary/Beneficiaries who is/are to receive any part of the Participant's Account in the event of the Participant's death.
- E. **“Committee”** means the Deferred Compensation Committee which makes recommendations for Council to approve regarding plan design, Service Providers, and consultative support on behalf of the Plan.
- F. **“Compensation”** means the total annual remuneration for employment payable by the City that would be included in the Federal gross income of the Participant but for the Participant's election to participate in the Plan.
- G. **“Deferred Compensation”** means the amount of Compensation otherwise payable to the Participant that the Participant and the City mutually agree shall be deferred in accordance with the provisions of the Plan.

- H.** “**Employee**” means an elected official of the City, or a full-time or part-time City Employee who is eligible for benefits offered by the City or a benefit eligible employee of the Portland Development Commission. Independent contractors and leased employees are not eligible.
- I.** “**Includable Compensation**” means the remuneration for service performed for the City which is currently includable in gross income (such amount will not include any amounts excluded from gross income pursuant to this Chapter). Severance pay is excluded. Pay for unused vacation, comp time, and holiday pay is included if deferred prior to a severance from employment and pursuant to this Chapter.
- J.** “**Normal Retirement Age**” means age 70-1/2 or that age selected in writing by a Participant in accordance with this Subsection. A Participant’s Normal Retirement Age determines the period during which a Participant may defer those amounts described in Subsection 5.09.050 C. Once a Participant has to any extent utilized the “catch up” provisions of Subsection 5.09.050 C., the Participant’s Normal Retirement Age may not be changed. As an alternative to age 70-1/2, a Participant may, at any time prior to Severance from Employment or prior to utilization of the “catch up” provisions of Subsection 5.09.050 C., designate his or her Normal Retirement Age to be any of the following:
- 1.** Any age which is:
 - a.** Not earlier than the earliest age at which the Participant has the right to retire and receive immediate and unreduced retirement benefits from the pension plan of which the Participant is a member (i.e., the Fire and Police Disability, Retirement and Death Benefit Plan for fire fighters and police officers who are members of that Plan and the Public Employee's Retirement System (PERS) for all other Participants); and
 - b.** Not later than the date the Participant attains age 70-1/2.
- K.** “**Participant**” means any Employee who fulfills the eligibility and enrollment requirements of this Chapter.
- L.** “**Participating Employer**” means the Portland Development Commission (PDC), or any entity that has adopted the City of Portland Governmental 457(b) Plan, and is legally related to the City of Portland. For employees of a “Participating Employer”, wherever this Chapter references the “City” with respect to the employment relationship, services performed and compensation paid, the term “City” shall also mean the “Participating Employer”.
- M.** “**Participation Agreement**” means an agreement between the City and a Participant, on a form prescribed by the City, that provides for the deferral of Compensation due a Participant to a future date for service currently rendered by the Participant to the City.

- N. **“Plan”** means the program established by this Chapter which has as its purposes the deferral of Compensation to Participants using pre and/or post tax deferrals.
- O. **“Plan Administrator”** means the Bureau of Human Resources Director, or his or her designee, who prepares and provides documents, materials and support services required to administer the Plan on behalf of Participants.
- P. **“Plan Year”** means a calendar year.
- Q. **“Records”** means the materials and forms maintained in files for each Participant in the Deferred Compensation Plan.
- R. **“Roth Account”** means the portion of the Participant Account established and maintained by the Administrator for each Participant with respect to his or her Roth Deferrals including any amounts transferred into the Plan.
- S. **“Roth Deferrals”** means Deferred Compensation which is designated irrevocably as a Roth Deferral by the Participant at the time the deferral election is made, and which is included in the Participant’s taxable income at the time the Participant would have received such amount in Compensation. All Roth Deferrals will be made in compliance with Internal Revenue Code Section 402A.
- T. **“Service Providers”** means the financial institutions that have contracts with the City to provide investment services to Participants consistent with the terms of the Plan.
- U. **“Severance from Employment”** means the severance of the Participant’s employment with the City. A Participant shall be deemed to have severed his or her employment with the City when, in accordance with the established practices of the City, the employment relationship is considered to be terminated.
- V.
1. **“Unforeseeable Emergency”** means severe financial hardship to the Participant resulting from
 - a. a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in IRC Section 152a) of the Participant, or a designated beneficiary,
 - b. loss of the Participant's property due to casualty, or
 - c. the need to pay for the funeral expenses of the participant's spouse or dependent (defined in IRC Section 152(a),) or
 - d. other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

2. The circumstances that will constitute an Unforeseeable Emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved;
 - a. Through reimbursement or compensation by insurance or otherwise;
 - b. By liquidation of the Participant's assets to the extent the liquidation of such assets would not itself cause severe financial hardship; or
 - c. By cessation of deferrals under this Chapter.

Examples of what are not considered to be unforeseeable emergencies include the need to send a Participant's child to college or the desire to purchase a home.

- W. “Withdrawal Agreement”** means an agreement between the City and a Participant on a form prescribed by the City that allows the Participant to elect and change the manner in which the value of the Participant’s Account is paid.

5.09.020 Purpose.

(Amended by Ordinance No. 182168, effective October 3, 2008.) The purpose of this Chapter is to establish a program that has as its purpose the deferral of Compensation to eligible Employees and the deferral of income taxation on the Deferred Compensation. The program established by this Chapter is limited to the terms contained in the Chapter, and as such no other plan provisions are to be implied or assumed, even if such provisions would be permissible under the IRC. Except as specifically set forth otherwise, in the event the terms or provisions of any Component Plan, summary or description of this Plan or of any other instrument are interpreted as being in conflict with the provisions of this Plan, the provisions of this Plan shall be controlling.

5.09.030 Administration.

(Amended by Ordinance Nos. 176426, 179417, 182168, 185341, 185726, 186746 and 187574, effective February 10, 2016.) This Chapter shall be administered by the Bureau of Human Resources Director, or his or her designee, with the assistance of the Deferred Compensation Committee. The Committee shall consist of the Chief Administrative Officer of the Office of Management and Finance, the Director of the Bureau of Human Resources, and the City Treasurer or their respective designees. The Committee shall study all matters connected with providing a deferred compensation plan on the best basis possible with relation both to the welfare of the Participants and the City. The Committee shall have authority to devise specifications for deferred compensation plans, advertise for responses and bids, and analyze responses. The Bureau of Human Resources Director, or his or her designee, at the direction of the Committee, is authorized to negotiate and execute all contracts, including contracts with Service Providers. The terms of any contract with the Plan may authorize the assessment of fees to be charged against Service Providers or other contractors that may be necessary to fund the administration of the Plan. The Bureau of Human Resources Director, or his or her designee, at the direction of the Committee, is further authorized to prepare and provide any other documents, materials and support services that may be required to administer the Plan. The Committee members may

participate in the Plan established herein if otherwise eligible, but shall not be entitled to participate in decisions relating solely to their own participation.

5.09.035 Education.

(Amended by Ordinance Nos. 186746 and 187574, effective February 10, 2016.) All promotional and City-sponsored employee marketing and education efforts relating to the Plan may be coordinated with other similar efforts sponsored by the Health and Financial Benefits Office within the Bureau of Human Resources. The Committee shall not offer investment advice to employees or plan Participants.

5.09.040 Participation in the Plan.

(Amended by Ordinance Nos. 179417, 182168, 183900, 185726, 186746 and 187574, effective February 10, 2016.)

- A. Eligibility. Employees shall be eligible to enroll as Participants in the Plan, as provided in this Section, on the first day of the month following the month in which they will have completed 30 days in a paid status. A Participant who terminates his or her employment with the City and then returns to City employment after the expiration of 12 calendar months following said termination date must comply with the eligibility waiting period applicable to such person upon his or her return before being eligible to participate in the Plan again. A Participant's right to participate and to have his or her salary reduced in connection with the Plan shall cease in the event the Participant takes a leave of absence without pay, but any such Participant may continue full participation in the Plan upon returning to pay status with the City. A Participant's right to participate and to have his or her salary reduced in connection with the Plan shall cease while the Participant is receiving distributions in accordance with, and subject to, the restrictions of Sections 5.09.070, 5.09.080, 5.09.090, and 5.09.100.
- B. Enrollment in the Plan. An eligible Employee may become a Participant and defer Compensation not yet earned by executing a Participation Agreement, and submitting it to the Bureau of Human Resources, Health and Financial Benefits Office in an acceptable format. Compensation will be deferred for any calendar month only if a Participation Agreement providing for such deferral has been entered into by the 15th of the preceding month.
- C. The Participation Agreement shall be in a format provided by the City, which shall include the following:
 - 1. The Participant's name;
 - 2. The dollar amount or percent of Compensation to be deferred;
 - 3. Other relevant statements necessary and appropriate for carrying out the purposes of this Chapter; and
 - 4. The investment or deposit preference shall be made in a format provided by the City.

- D.** When an eligible Employee executes a Participation Agreement, an Acknowledgement and a Beneficiary Designation shall also be completed. A Participant may change the Beneficiary Designation at any time by completing a new Beneficiary Designation and submitting it to the Bureau of Human Resources, Health and Financial Benefits Office. A change of Beneficiary Designation shall become effective on the date received by the Bureau of Human Resources, Health and Financial Benefits Office, and must be received prior to the date of death.
- E.** The City, upon the request of an eligible Employee, will reduce each pay period the salary of the eligible Employee by an amount of money designated by that Employee in the Employee's Participation Agreement. The City shall pay that amount to the Service Provider designated in the Employee's Participation Agreement.
- F.** Once per month, a Participant may modify his or her Participation Agreement as to the amount of Compensation not yet earned to be deferred during each Plan Year. Any modification as to the amount of Compensation to be deferred by a Participant must be submitted in a format provided by the City, and received by the Bureau of Human Resources, Health and Financial Benefits Office, by the 15th of the month prior to the month in which said modification is to become effective.
- G.** A Participant may revoke the Participation Agreement at any time with respect to any pay period by submitting notification in a format provided by the City, which must be received by the Bureau of Human Resources, Health and Financial Benefits Office, prior to the date upon which the Participant desires the revocation to be effective.
- H.** Prior to severance from employment with the City, a Participant may make a special election to be processed within their final paycheck of their vacation, comp, and/or holiday pay-out. A Participant must submit a Participation Agreement before they sever employment and before the amount is available to the employee. The election can be made as a dollar or percentage amount. This election will only apply once on the final paycheck issued. The maximum deferral limits shall apply in accordance with Sections 5.09.050 and 5.09.055. If not previously elected during the calendar year, the participant may elect the 3-year catch-up provision pursuant to Section 5.09.055.
- I.** A Participant who has severed his or her employment or who has revoked the Participation Agreement may again participate in the Plan, provided that he or she is eligible, by submitting a new Participation Agreement.
- J.** For purposes of Plan administration, a revocation of a Participation Agreement will be considered a Participation Agreement modification. The most recent Participation Agreement shall be controlling with respect to all accounts, including amounts deferred under prior agreements.
- K.** Automatic Enrollment in the Plan.

1. **Collective Bargaining Agreements requiring Automatic Enrollment.**
 - a. If the City and a labor organization representing a unit of City employees agree in collective bargaining, the Eligible Employees in such bargaining unit will be automatically deemed to have executed a Participation Agreement. With respect to then currently Eligible Employees such deemed executed Participation Agreement will be effective commencing with the payroll period designated in such collective bargaining agreement. If no payroll period is designated in the collective bargaining agreement, the Participation Agreement will be effective the first payroll period after the effective date of such collective bargaining agreement.
 - b. New Eligible Employees who are covered by such a collective bargaining agreement will be automatically deemed to have executed a Participation Agreement effective for the first payroll period in which they could complete a Participation Agreement, unless another date is specified in the applicable collective bargaining agreement.
 - c. Notwithstanding the preceding in this Section, the deemed executed Participation Agreement will not be effective prior to the time described in the required notice described in Subsection 5.09.040 K. 2.
2. **Advance Notice.** An Eligible Employee will be provided the required advance notice of automatic enrollment pursuant to IRC Section 414(w), including the amount of contributions that will be made, the employee's right to elect to not have automatic contributions made, a description of how the contributions will be invested, and when such contributions may be distributed. The notice shall be provided within a reasonable period before each Plan Year or before such other time when the automatic provision will first become applicable to an Eligible Employee.
 - a. **Opting Out of Automatic Enrollment.** A Participant shall have the right to opt out of automatic enrollment at any time by completing a Participation Agreement or by providing notice of the election to not have any amount withheld from his or her Compensation.
 - b. **Deferral Amount.** The amount deferred from an Eligible Employee's Compensation shall be the amount specified in the applicable collective bargaining agreement, provided that the requirements of IRC Section 414(w) are satisfied, including the requirement that the percentage of pay deferred will be uniform for employees with the same years of employment, and the applicable minimum and maximum deferral percentages.

5.09.050 Compensation Deferral.

(Amended by Ordinance Nos. 182168, 186746 and 187574, effective February 10, 2016.)

- A. The amount of Compensation which may be deferred by a Participant shall be subject to the following limits:
 - 1. The minimum amount deferred shall not be less than \$10 per pay period per plan election;
 - 2. The maximum amount of Compensation which may be deferred during a plan year shall not exceed the lesser of the dollar amount provided under IRC sections 457(e)(15) and 415(d).

5.09.055 Catch-up Provisions

(Amended by Ordinance Nos. 179417, 182168, 186746 and 187574, effective February 10, 2016.)

- A. **Three year catch-up provision:** Notwithstanding the language of Subsection 5.09.050 A.2., during each of a Participant's last three (3) taxable years ending before the Participant attains Normal Retirement Age, the maximum amount deferred shall be the lesser of:
 - 1. the maximum allowed under Subsection 5.09.050 A. 2. for the current taxable year plus so much of the maximum established for purposes of Subsection 5.09.050 A.2. for prior taxable years as has not previously been deferred under Subsection 5.09.050 A.2.; or
 - 2. Two times the applicable dollar amount under Subsection 5.09.050 A.2. above.

For the purposes of this section, a prior year shall be taken into account only if such year began after December 31, 1981, and the participant was eligible to participate in the plan during all or a portion of the year. For purposes of counting prior years, only years of service with the City may be considered. Participant may only make this election once with respect to any IRC section governmental 457(b) deferred compensation plan of the employer based on the Participant's basic defined benefit plan of the State.

- B. **Age 50 catch-up provision:** All Participants who are eligible to make elective deferrals under the Plan and who have attained age 50 before the close of the calendar year shall be eligible to make catch-up contributions subject to the limitations of IRC Sections 414(v) and 414(v)(6)(c). Additional deferrals under this section of the Plan may be made except during the three (3) years prior to normal retirement age while utilizing the catch-up provision provided for in Subsection 5.09.055 A. of the Plan. Age 50 catch-up contributions will not be taken into account for purposes of determining a participant's underutilized amounts under the three year catch-up provision. The Participant must select the catch-up

which results in the higher contribution amount. The amount shall be administered to reflect changes in accordance with the IRC Section 457(e)(15) and 415(d).

- C. Coordination with other plans.** If a Participant participates in more than one deferred compensation plan authorized under IRC Section 457, the maximum deferral under all such plans shall not exceed the applicable deferral limits described in Section 5.09.050, as adjusted by the Secretary of the Treasury (subject to modification by the catch-up limitations described in Section 5.09.055), which also shall apply to all IRC Section Governmental 457(b) Plans in which the Participant participates. If a Participant participates in a plan described in IRC Section 403 (b), 401 (k), 408 (k) or 501 C (18), amounts deferred by the Participant to such plan(s) and excluded from the Participant's gross income in any taxable year under such plan(s) shall not reduce the limitation described in Section 5.09.050 of this Section and the catch-up limitation described in Section 5.09.055.
- D. Uniform Service Provision.** This Plan shall be administered in accordance with Section 414(u) of the IRC for employees who return to work after absences from employment due to military service. Accordingly, notwithstanding the provisions of this section limiting the amount of compensation which may be deferred under the Plan, a Participant who is entitled to reemployment pursuant to the terms of the Uniformed Services Employment and Reemployment Act of 1994 (USERRA) may defer an additional amount under the Plan as provided in that Act for the years of his or her service in the uniformed services (as defined in USERRA). Any such deferrals will not be subject to the annual limits on deferrals set forth in this section in the year in which deferred, but shall be subject to the limits for the year to which such deferrals relate. This subsection shall apply retroactively to December 12, 1994.

5.09.056 Excess Deferrals.

(Added by Ordinance No. 179417; amended by Ordinance Nos. 182168 and 186746, effective August 6, 2014.) A Participant who participates in the Plan and another Governmental 457(b) Plan of another employer shall be responsible for complying with the deferral limits. In the event of an excess amount, the Participant shall notify the Plan Administrator so that the excess and the proportionate earnings on the excess as determined by the Plan Administrator in accordance with IRC Section 457 may be distributed as soon as practicable after the Plan Administrator determines that the amount is an excess deferral.

5.09.060 Deferred Compensation Records.

(Amended by Ordinance Nos. 182168, 186746 and 187574, effective February 10, 2016.)

- A.** The City shall maintain records necessary and appropriate to the efficient administration of this Chapter, and such records shall be maintained by the City until a Participant or his or her designated Beneficiaries have received the payment of such amounts as they are entitled to receive under the terms of the applicable Withdrawal Agreement.
- B.** All amounts of Compensation deferred pursuant to this Chapter, shall be held in a trust, custodial account or contract described in IRC Section 457(g). Any change in

the net value of the assets of a Participant invested under the Plan shall result in a commensurate change in the total amount distributable to the Participant or the Beneficiary of the Participant and shall not result in any increase or decrease in the net worth of the City.

- C.** As to those amounts held in trusts, notwithstanding any contrary provision of the Plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of Participants and Beneficiaries under the Plan. Any trust under the Plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the State of Oregon. All amounts of compensation deferred under the Plan shall be transferred to a trust established under the Plan within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.
- D.** As to those amounts held in annuity contracts, notwithstanding any contrary provision of the Plan, including any annuity contract issued under the plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more annuity contracts, as defined in IRC Section 401(g), issued by an insurance company qualified to do business in the State of Oregon, for the exclusive benefit of Participants and Beneficiaries under the Plan. For this purpose, the term "annuity contract" does not include a life, health or accident, property, casualty, or liability insurance contract. All amounts of compensation deferred under the Plan shall be transferred to an annuity contract described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.
- E.** As to those amounts held in custodial accounts, notwithstanding any contrary provision of the Plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the Plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more custodial accounts for the exclusive benefit of Participants and Beneficiaries under the Plan. For purposes of this paragraph, the custodian of any custodial account created pursuant to the Plan must be a bank as described in IRC Section 408(n), or a person who meets the nonbank trustee requirements of paragraphs (2)-(6) of Section 1.408-2(e) of the Income Tax Regulations relating to the use of nonbank trustees. All amounts of compensation deferred under the Plan shall be transferred to a custodial account described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of Participants.
- F.** When a Participant agrees to participate in the Plan, the Participant may indicate his or her preference with respect to the investment or deposit option to be used in investing or depositing the Participant's deferred income.

- G. If a Participant newly enrolls in the Plan using the Employee Self Service (ESS) system or the written EZ Enroll form, and does not otherwise designate an investment or deposit preference, the Participant will be defaulted into the Plan's Target Date Fund based on their year of birth.

5.09.070 Payment Options.

(Amended by Ordinance Nos. 186746 and 187574, effective February 10, 2016.)

- A. Subject to the restrictions on the distribution of benefit payments appearing in Sections 5.09.080, 5.09.090, and 5.09.100, the options available to a Participant or Beneficiary for distributing the value of the Participant's Account are:
 - 1. Lump Sum
 - 2. Substantially equal monthly, quarterly, semi-annual or annual installments until the Account is exhausted.
 - 3. Substantially equal monthly, quarterly, semi-annual or annual payments for a designated period.
 - 4. Periodic payments for the life of the Participant with continuation of the payments or a percentage of the payments for the lifetime of the Participant's spouse.
 - 5. Payments equal to payments made by the issuer of a retirement annuity policy.
 - 6. Such other option as the Participant chooses, and as authorized by this Plan.

5.09.080 Distribution of Benefits Generally.

(Amended by Ordinance Nos. 177367, 179417, 182168, 185341, 185726, 186746 and 187574, effective February 10, 2016.)

- A. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2002, the Plan will apply the minimum distribution requirements of IRC Section 401(a)(9) in accordance with the regulations under IRC Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under IRC Section 401(a)(9) or such other date as may be specified in guidance published by the Internal Revenue Service.
- B. Distribution of a Participant's Account to a Participant or a Beneficiary shall be made in accordance with the manner and method of payments selected in the Withdrawal Agreement, which election may be changed by a Participant or Beneficiary, subject to the restrictions of the Plan.
- C. At the time distribution to a Participant commences, such distribution shall be made in a manner in which the Participant will receive a minimum portion of the amount

payable with respect to the Participant during the life expectancy of the Participant (as determined as of the commencement of the distribution). Therefore, distributions to a Participant must be made in accordance with the distribution tables promulgated by the Secretary of the Treasury pursuant to IRC Section 457(d)(2)(B)(i)(I).

- D.** A minimum amount shall be distributed during each calendar year. The required minimum distribution for each calendar year shall be determined by dividing the Account balance (as determined under Section 1.104(a)(9)-1, Q&A F-5 of the proposed Federal income tax regulations or any successor to such regulations) by the lesser of the applicable life expectancy (as determined under Q&A F-1A(d) of Section 1.104(a)(9)-1 of the proposed Federal income tax regulations or any successor to such regulations) or the applicable divisor (as determined under Q&A-4 of Section 1.104(a)(9)-2 of the proposed Federal income tax regulations or any successor to such regulations).
- E.** Notwithstanding the provisions of Subsection D., distribution of a Participant's Account may be made through an annuity contract that is purchased from an insurance company, with funds from the Participant's Account. Any annuity contract so purchased must satisfy the applicable minimum distribution requirements of Section 1.401(a)(9)-1 of the proposed Federal income tax regulations (and any successor regulations) and the applicable minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the Federal income tax regulations (and any successor regulations). In the event such an annuity contract is purchased, the amount of the annuity payments shall be determined under the annuity contract.
- F.** In no event shall the distribution of a Participant's Account commence earlier than:

 - 1. the calendar year in which the Participant attains his or her Normal Retirement Age as defined in Subsection 5.09.010 K.,
 - 2. the Participant's Severance from Employment, or
 - 3. when the Plan Administrator or designee approves a distribution pursuant to an Unforeseeable Emergency of a Participant.
- G.** Distribution of a Participant's Account to a Participant may commence no later than April 1 of the calendar year following the calendar year in which the Participant attains age 70-1/2 or actually severs from employment.
- H.** Notwithstanding Subsection 5.09.080 J., distributions of a Participant's Account shall cease if the Participant is re-employed by the City.
- I.** All distributions hereunder shall be made in accordance with the regulations under IRC Section 401(a)(9), including Section 1.401(a)(9)-2 of the Federal income tax regulations and such other provisions as are prescribed by the Commissioner of

Internal Revenue. Accordingly, no distribution shall be made under any option that does not satisfy IRC Section 401(a)(9), including Section 401(a)(9)(G).

- J. Participants may elect changes to election dates and/or payment amounts, except for selections made pursuant to Subsection 5.09.070 A.5.
- K. Voluntary In-Service Distribution: Notwithstanding anything in this chapter to the contrary, a Participant who is an active employee of the City shall receive a distribution of the total amount payable to the Participant under the Plan if the following requirements are met:
 - 1. the total amount payable to the Participant under the Plan does not exceed \$5,000 (or the dollar limit under IRC Section 411(a)(11), if greater),
 - 2. the Participant has not previously received an in-service distribution of the total amount payable to the Participant under the Plan pursuant to Subsection 5.09.080 I.
 - 3. no amount has been deferred under the Plan with respect to the Participant during the two-year period ending on the date of the in-service distribution; and
 - 4. the Participant elects to receive the distribution.
- L. Distribution of a Participant's Account shall commence no earlier than Severance from Employment.

5.09.090 Qualified Domestic Relations Orders (QDRO).

(Replaced by Ordinance No. 177367; amended by Ordinance Nos. 179417 and 182168, effective October 3, 2008.)

- A. Effective January 1, 2002, court ordered distributions in the form of QDROs are recognized and allowed by the Plan. The Plan or the Plan's designee shall adopt reasonable procedures to determine the qualified status of domestic relations orders and to administer the distributions hereunder. QDROs must be submitted in a form acceptable to the Plan or its designee, and may order Participant Plan assets be divided into a separate account for the benefit of an Alternate Payee. Distribution of those assets may be allowed as provided in Subsection 5.09.090 B. and C. All state and federal taxes on distributions from the Alternate Payee's account will be the responsibility of the Alternate Payee and not to the Plan Participant. The Alternate Payee's account shall be subject to the IRC and Regulations, state law, and the Plan.
- B. If administered by the Plan, the responsibility for the fees provided for under ORS 243.507 shall be apportioned to the Participant and the Alternate Payee based on the fraction of the plan assets received by the Participant and the Alternate Payee at the time the Alternate Payee's interest in the Plan is established. The apportioned fees shall be immediately paid to the Plan out of the distributions to the Participant

and out of the distributions to the Alternate Payee until their respective obligations are paid.

- C. Any QDRO submitted to and accepted by the Plan or its designee may provide that an Alternate Payee may take an immediate distribution of some or all of the assets established in the separate account or make any distribution election from the payout options available to Plan Participants, or may elect to leave the separate account in the Plan, in which case, the Alternate Payee shall have the same rights as a participant under the Plan.

5.09.100 Determination of Benefits Upon Death

(Replaced by Ordinance No. 179417; amended by Ordinance Nos. 182168, 186746 and 187574, effective February 10, 2016.)

- A. Upon the death of a Participant, Former Participant or Alternate Payee, the Plan Administrator shall direct that the deceased Participant's, Former Participant's or Alternate Payee's Participant Account, be distributed to the Beneficiary in accordance with the provision of this Section 5.09.100.
- B. The designation of a Beneficiary shall be made in a manner that is satisfactory to the Plan Administrator. A Participant, Former Participant, or Alternate Payee may at any time revoke his or her designation of a Beneficiary or change his or her Beneficiary by submitting notice prior to the date of death of such revocation or change with the Plan Administrator. In the event no valid designation of Beneficiary exists at the time of the Participant's, Former Participant's, or Alternate Payee's death, the death benefit shall be payable to the Participant's, Former Participant's, or Alternate Payee's estate.
- C. The Plan Administrator may require such proper proof of death and such evidence of the right of any person to receive payment of the value of the Participant Account of a deceased Participant, Former Participant, Alternate Payee or Beneficiary, as the Plan Administrator may deem appropriate. The Plan Administrator's determination of death and of the right of any person to receive payment shall be conclusive.
- D. Death benefits payable to a Beneficiary shall be made in a form as selected by the Beneficiary in accordance with the available options. In the event a Beneficiary fails to make an election as to a benefit distribution option, any benefit payable to such Beneficiary shall be distributed in a lump sum payment in accordance with IRC Section 401(a)(9) and any applicable State of Oregon law or statute. The terms of any annuity contract purchased and distributed by the Plan to a Beneficiary shall comply with the requirements of the Plan.
- E. Notwithstanding any provision in the Plan to the contrary, distributions upon the death of a Participant or Former Participant, shall be made in accordance with the requirements in Subsections F. through J. and shall otherwise comply with IRC Section 401(a)(9) and the Regulations thereunder.

- F.** In accordance with the Beneficiary's election, if minimum payments under IRC Section 401(a)(9) have not begun upon the death of a Participant or Former Participant and the designated Beneficiary is not the Participant's surviving spouse, death benefit payments must:
1. begin to be distributed to the designated Beneficiary no later than the December 31 of the calendar year immediately following the calendar year of the Participant's or Former Participant's death payable over a period not to exceed the life expectancy of the Beneficiary; or
 2. be distributed no later than the December 31 of the calendar year containing the fifth anniversary of the Participant's or Former Participant's death.
- G.** In accordance with the Beneficiary's election, if the designated Beneficiary is the Participant's or Former Participant's surviving spouse and minimum payments under IRC Section 401(a)(9) have not begun upon the death of a Participant or Former Participant, minimum payments to the surviving spouse as the designated Beneficiary must begin by the later of:
1. December 31 of the calendar year immediately following the calendar year in which the Participant or Former Participant dies, or
 2. December 31 of the calendar year in which the Participant or Former Participant would have attained 70 ½.
- The payments to the surviving spouse as the designated Beneficiary must be made over a period not to exceed the surviving spouse's life expectancy. Notwithstanding the foregoing, for purposes of this subsection, an Alternate Payee who is a spouse or former spouse will be treated as a Participant's or Former Participant's surviving spouse.
- H.** If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's or Former Participant's death, the Participant's or Former Participant's entire interest will be distributed according to State of Oregon law or statute by December 31 of the calendar year containing the fifth anniversary of the Participant's or Former Participant's death.
- I.** If the Participant or Former Participant dies on or after the date distributions begin and there is a designated Beneficiary, distributions shall be based on the longer of the remaining life expectancy of the Participant or Former Participant or the remaining life expectancy of the Participant's or Former Participant's designated Beneficiary.
- J.** Life expectancies calculations will be computed using the factors in the Single Life Table set forth in IRC Section 1.401(a)(9)-9, A-1, as follows:

1. The Participant's or Former Participant's remaining life expectancy is calculated using the age of the Participant or Former Participant in the year of death, reduced by one for each subsequent year.
2. If the Participant's or Former Participant's surviving spouse is the Participant's or Former Participant's sole, primary designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's or Former Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
3. If the Participant's or Former Participant's surviving spouse is not the Participant's or Former Participant's sole, primary designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's or Former Participant's death, reduced by one for each subsequent year.
4. If the Participant or Former Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's or Former Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's or Former Participant's death is the quotient obtained by dividing the Participant Account by the Participant's or Former Participant's remaining life expectancy calculated using the age of the Participant or Former Participant in the year of death, reduced by one for each subsequent year.

5.09.110 Distribution Commencing After Death of Participant.

(Repealed by Ordinance No. 179417, effective August 11, 2005.)

5.09.120 Unforeseeable Emergency.

(Amended by Ordinance Nos. 179417, 182168 and 186746, effective August 6, 2014.) A Participant may apply on a form supplied by the Bureau of Human Resources Director, or his or her designee, for payment prior to Severance from Employment or Retirement from City employment but such applications may be granted only if the Participant is experiencing an Unforeseeable Emergency which would cause undue hardship if payment were denied. If the Bureau of Human Resources Director, or his or her designee, finds that a Participant is experiencing an Unforeseeable Emergency, he or she may approve an amount reasonably needed to satisfy the unforeseen emergency be made to the Participant. Payment will be made within 90 days of the date of such approval. Participants who request and are granted a hardship withdrawal from their deferred compensation account may not have their salaries reduced under the terms of this Chapter for a period of six (6) months following such hardship withdrawal. If the Bureau of Human Resources Director, or his or her designee, denies the application for payment, said denial shall be in writing. A

Participant may appeal the decision to the Committee. An appeal must be in writing and received by the Plan Administrator within 30 days of the date of denial. The Committee shall issue a written decision within 90 days of receipt of the appeal by the Plan Administrator. Any decision of the Committee is final.

5.09.130 Non-Assignability.

(Amended by Ordinance Nos. 177367, 182168 and 186746, effective August 6, 2014.) Neither the Participant, nor the Participant's Beneficiary shall have any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payment which may be due the Participant under the plan, which payments and rights thereto are expressly declared to be nonassignable and nontransferable. Nor shall any amounts deferred pursuant to this Chapter be subject to attachment, garnishment, or execution or be transferable by operation of law in the event of bankruptcy or insolvency unless otherwise required by law. The preceding paragraph prohibiting the assignment or alienation of benefits shall not apply to Qualified Domestic Relations Orders as set forth in Section 5.09.090 which may be issued pursuant to a court decree of annulment or dissolution of marriage or of separation, or the terms of any court order or court approved property settlement agreement incident to any court decree of annulment or dissolution of marriage or of separation which is determined by the Bureau of Human Resources Director or his or her designee to satisfy the requirements of ORS 243.507. The Bureau of Human Resources Director or his or her designee shall establish written procedures to determine whether the above described decrees or the property settlement agreements incident to such decrees satisfy ORS 243.507 and to administer distributions under such orders.

5.09.140 Amendment and Termination.

(Amended by Ordinance Nos. 182168 and 186746, effective August 6, 2014.)

- A. The City may terminate the Plan provided for in this Chapter at any time. Upon such termination, the Participants in the Plan will be deemed to have withdrawn from the Plan as of the date of such termination and their full Compensation on a non-deferred basis will be thereupon restored. In the event the City terminates the plan, the value of all Accounts shall be distributed to the Participants or their Beneficiaries in accordance with the method of payment designated by the Participant on a Withdrawal Agreement.
- B. The City may amend the provisions of this Plan at any time, provided, however, that all amendments are in compliance with the IRC and that no amendment shall affect the rights of any Participant or Beneficiary to the receipt of benefits accrued under the Plan prior to such amendment.

5.09.150 Transfers from other Code Section 457(b) Plans.

(Amended by Ordinance Nos. 179417 and 182168, effective October 3, 2008.) This Plan shall accept for transfer those amounts of compensation previously deferred by a Participant pursuant to another eligible plan of deferred compensation maintained under IRC Section 457, by another employer.

5.09.155 Rollovers to the Plan.

(Replaced by Ordinance No. 182168; Amended by Ordinance Nos. 185726 and 186746, effective August 6, 2014.)

- A. Amounts that are considered Eligible Rollover Distributions as defined in IRC Section 402(c)(4) may be rolled over by a Participant, from an Eligible Retirement Plan. The amounts rolled over from an Eligible Retirement Plan other than an IRC Section 457(b) plan maintained by an Employer shall be allocated to the Participant Non-457 Rollover Account. The amounts rolled over from another IRC Section 457(b) plan maintained by an Employer shall be allocated to the Participant 457 Rollover Account. Amounts in the Participant Non-457 Rollover Account shall be accounted for separately from amounts in the Participant 457 Rollover Account.

- B. For purposes of this Section, the term “Participant” means the Participant, the Participant’s surviving spouse beneficiary or an Alternate Payee (who is a spouse or former spouse). “Eligible Retirement Plan” means any other IRC Section 457(b) plan maintained by an employer, an IRC Section 403(b) program, a IRC Section 401(a) plan, an individual retirement account as described in IRC Section 408(a), and an individual retirement annuity as described in IRC Section 408(b), and a Roth individual retirement account under IRC Section 408(a). For purposes of this Section, the term “amounts rolled over from an Eligible Retirement Plan” means:
 - 1. amounts rolled to the Plan directly from another Eligible Retirement Plan on behalf of an Eligible Individual; and
 - 2. Eligible Rollover Distributions as defined in IRC Section 402(c)(4) received by an Eligible Individual from another Eligible Retirement Plan that are rolled over by the Eligible Individual to the Plan within sixty (60) days, following his or her receipt thereof.

- C. A Participant may choose to receive a distribution from his or her 457(b) Rollover Account and Participant Non-457(b) Rollover Account at any time, whether he or she is otherwise entitled to a distribution from the Plan.

5.09.156 Rollovers From the Plan.

(Added by Ordinance No. 182168, effective October 3, 2008.)

- A. Notwithstanding any provision of the Plan to the contrary, a Participant who is entitled to a distribution under the Plan shall be permitted to elect to have any Eligible Rollover Distribution (as defined in IRC Section 402(c)(4)) paid directly to an Eligible Retirement Plan (as defined in Subsection 5.09.155 B.) specified by the Participant. The Participant shall, in the time and manner prescribed by the Employer, specify the amount to be rolled over and the Eligible Retirement Plan to receive such rollover. Any portion of a distribution which is not rolled over shall be distributed to the Participant.

- B. The election described in Subsection A. also applies to the surviving spouse who is the designated Beneficiary of the Participant or a spouse or former spouse who is

the Alternate Payee, provided that such spouse, former spouse or Alternate Payee directs the transfer of an Eligible Rollover Distribution (as defined in Subsection 5.09.155 B.) in which such spouse, former spouse or Alternate Payee is a participant. Effective for distributions made on or after May 16, 2008, a non-spouse beneficiary is permitted to make a direct rollover of death benefits to an inherited IRA.

5.09.157 Purchase of Service Credits.

(Added by Ordinance No. 179417; amended by Ordinance No. 182168, effective October 3, 2008.) Prior to Severance from Employment, a Participant may elect to allow the Plan to transfer assets from the Participant's account with the Plan to a designated government defined benefit plan for the purchase of permissible service credits pursuant to IRC Section 457(e) (17), provided, however, that the designated defined benefit plan will accept such a transfer of assets.

5.09.160 Unclaimed Assets.

In the event the Plan has assets of Participants or their Beneficiaries who, after the Participants' Severance from Employment, cannot be located so as to properly distribute assets to the Participant or Beneficiary under the terms of the Plan, the Plan Administrator shall make all reasonable efforts to locate said Participants and Beneficiaries. If after such efforts, the Participant or Beneficiary cannot be located, the Plan Administrator shall designate such assets as unclaimed property, and thereby abandoned, and shall transfer said assets to the State of Oregon according to the Uniform Disposition of Unclaimed Property pursuant to ORS 98.302, et seq., as amended, if such assets remain unclaimed for two years after said designation.

5.09.170 Disclaimers.

- A. Neither the City nor the Committee shall be liable for the investment decisions made by Participants.
- B. Neither the City nor the Committee manages the Participants' Accounts, and is therefore not responsible or liable for the performance and accuracy of Participant's Accounts.