

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 20, 2022 AGENDA**

Subject:	Type:	Submitted By:
AMEND MUNICIPAL RETIREMENT PLAN	◆ RESOLUTION ORDINANCE RECEIVE/FILE	KEVIN POKORNY DIRECTOR OF ADMINISTRATIVE SERVICES

SYNOPSIS

A resolution has been prepared to approve an amendment to the retirement plan for municipal employees to provide that premium pay for all full-time and part-time employees is exempt from retirement contribution. The amendment also incorporates recent changes in federal laws.

FISCAL IMPACT

N/A.

RECOMMENDATION

Approval.

BACKGROUND

On September 6, 2022, the City Council approved temporary premium pay in an amount of one thousand dollars (\$1000) for each full-time employee, to include department head staff members, for actual hours worked at a rate of \$12.50 per hour between October 23, 2022 through December 17, 2022. Because the premium pay was excluded from compensation for purposes of determining or allocating contributions to benefit plans, it is necessary to be reflected via the recommended plan amendment. The amendment also incorporates recent changes in federal laws.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA TO AMEND THE CITY OF LA VISTA GENERAL EMPLOYEES DEFINED CONTRIBUTION PENSION PLAN AND TRUST, AND TO AUTHORIZE FURTHER ACTIONS.

BE IT RESOLVED:

SECTION 1. Pursuant to Nebraska Statutes, Section 19-3501, the Mayor and City Council of the City of La Vista maintain the City of La Vista General Employees Defined Contribution Pension Plan and Trust, embodied in plan documents including an adoption agreement and basic plan document constituting an integral part thereof, as well as various amendments required by applicable law ("Plan").

SECTION 2. The Mayor and City Council are authorized and desire to amend the Plan for recent statutory changes, as set forth in the amendment presented with this Resolution titled "AMENDMENT (2022) SECURE, Bipartisan American Miners & CARES Act" ("Amendment").

SECTION 3. The Mayor and City Council do hereby approve and adopt said Amendment, effective as of the date(s) specified therein.

SECTION 4. The Mayor is authorized to execute said Amendment on behalf of the City, and the City Administrator is authorized and directed to provide the same to the Trustee (for its written acceptance, if determined necessary or appropriate), and if directed in this resolution or otherwise determined necessary or advisable, to cause said Amendment to be submitted, together with such supporting data as may be necessary or advisable and applicable application fee, to the Internal Revenue Service for ruling as to whether the same complies with the pertinent provisions of the Internal Revenue Code of the United States and, in particular, Sections 401(a) and 501(a) thereof, with authority to make any changes in or to the Amendment and other Plan documents and take such further actions as the City Administrator determines necessary or appropriate to obtain a favorable ruling or maintain the qualified status of the Plan.

PASSED AND APPROVED THIS 20TH DAY OF DECEMBER 2022.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, MMC
City Clerk

**CITY OF LA VISTA
GENERAL EMPLOYEES DEFINED CONTRIBUTION
PENSION PLAN AND TRUST**

**AMENDMENT (2022)
(including SECURE, Bipartisan American Miners & CARES Acts)**

**ARTICLE 1
GENERAL**

- 1.1 **Adoption and effective date of Amendment.** Pursuant to Nebraska Statutes, Section 19-3501, the City of La Vista, Nebraska (“City” or “Employer”) maintains the City of La Vista General Employees Defined Contribution Pension Plan and Trust embodied in plan documents including an adoption agreement and basic plan document constituting an integral part thereof, as well as various amendments required by applicable law (“Plan”). The Mayor and City Council are authorized and desire to amend the Plan as set forth in this Amendment, effective as of the dates specified below; provided, however, if a date is not specified, the provision shall be effective as of January 1, 2020.
- 1.2 **Superseding of inconsistent provisions.** Provisions of this Amendment apply notwithstanding any provisions of the Plan to the contrary. To further specify and not limit the foregoing sentence, this Amendment supersedes provisions of the Plan that are inconsistent with the provisions of this Amendment. Except as otherwise provided in this Amendment, terms defined in the Plan will have the same meaning in this Amendment.
- 1.3 **Numbering.** Except as otherwise provided in this Amendment, any use of “Article”, “Section” or similar language in this Amendment is used for organizing the Amendment and not to reference to particular articles, sections, or parts of the Plan.
- 1.4 **Intention; Construction.** This Amendment amends the Plan for changes to applicable requirements governing retirement plans maintained by employers (“Changes to Applicable Requirements”), including without limitation, changes to applicable provisions of the Internal Revenue Code (“Code”) by the Further Consolidated Appropriations Act, 2020 (and specifically Divisions M and O of that Act, known as the Setting Every Community Up for Retirement Enhancement (“Secure”) Act of 2019 and the Bipartisan American Miners Act of 2019), and the Coronavirus Aid, Relief, and Economic Security (“Cares”) Act (2020), and for certain additional changes (“Other Changes”). All provisions of the Plan shall be deemed amended and modified consistent with the provisions of this Amendment and Changes to Applicable Requirements and Other Changes, and shall be subject to any applicable regulations or other guidance, as currently in effect or as adopted or amended from time to time.
- 1.5 **Effect of subsequent restatement or amendment of Plan.** If the City restates the Plan, this Amendment shall remain in effect after such restatement unless the provisions in this Amendment are restated or otherwise become obsolete (e.g., if the Plan is restated and the restated plan document incorporates these provisions).

**ARTICLE 2
REQUIRED BEGINNING DATE**

- 2.1 **Application.** This Article 2 changes the applicable age for purposes of required minimum distributions (“RMDs”) under Internal Revenue Code (“Code”) Section 401(a)(9) from 70 ½ to 72 years of age. The changes made by this Article will apply to all plans, regardless of type, and shall be effective with regard to RMDs required to be made under Code Section 401(a)(9) after December 31, 2019, with respect to individuals who attain age 70 ½ after such date.
- 2.2 **Increase Age for Required Beginning Date to 72.** The required beginning date (“Required Beginning Date” or “RBD”) for purposes of RMDs pursuant to Code Section 401(a)(9) shall be April 1 of the calendar year following the later of :

- a. the calendar year in which the Participant attains age 72, or
- b. the calendar year in which the Participant retires.

Provided, however, Section 2.2(b) shall not apply in the case of a Participant who is a 5% owner. For this purpose, a Participant will be treated as a 5% owner if the Participant was a 5-percent owner (as defined in Code §416) with respect to the Plan Year ending in the calendar year in which the Participant attains age 72.

- 2.3 **Spousal Distributions.** Subject to any right under the Plan to elect the 10-Year Rule, if a Participant dies prior to the Participant's RBD and the Participant's sole Designated Beneficiary is the Participant's surviving spouse, then the RMDs to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 72, if later, provided the Plan, immediately before this Amendment, provided for delay of RMD to a surviving spouse to December 31 of the calendar year in which the Participant would have attained age 70½.
- 2.4 **Definitions.** Terms used in this Article shall have the meaning ascribed to them in this Article, Amendment, or applicable provisions of Code Section 401(a)(9), regulations or other guidance.

ARTICLE 3 **BENEFICIARY REQUIRED MINIMUM DISTRIBUTIONS**

- 3.1 **Application.** This Article 3 will apply to all plans other than Defined Benefit Plans. This Article will not apply to existing qualified annuities described in SECURE Act §401(b)(4)(B).
- 3.2 **Effective Date.** Except as otherwise provided in this Article, this Article will apply to distributions with respect to Participants who die on or after (i) January 1, 2020, if the Plan is not a governmental or collectively bargained plan, (ii) January 1, 2022, if the Plan is a governmental plan (as defined in Code §414(d)), and (iii) the date determined in SECURE Act §401(b)(2), if the Plan is a collectively-bargained plan,. Section 3.5 provides special rules with respect to certain Accounts under the Plan of Participants who died before the Effective Date of this Article.
- 3.3 **Death before RBD.** If the Participant dies before the Participant's RBD, the Plan will distribute or commence distribution of the Participant's Vested Accrued Benefit not later than as follows:
 - (a) **No Designated Beneficiary** If there is no Designated Beneficiary as of September 30 of the year following the calendar year of the Participant's death, the Beneficiary's entire interest will be distributed under the 5-Year Rule pursuant to Code Section 401(a)(9)(B)(ii) and applicable regulations and other guidance.
 - (b) **Eligible Designated Beneficiary.** If the distributee of a Participant's Account under the Plan is an Eligible Designated Beneficiary, the Beneficiary's entire interest will be distributed under the Life Expectancy Rule pursuant to Code Section 401(a)(9)(B)(iii), subject to any election of the 10-Year Rule if allowed under the terms of the Plan. For purposes of such an election, if the Plan immediately before this Amendment provided for a right to elect between the 5-Year Rule and Life Expectancy Rule, such provisions are amended to provide for an Eligible Designated Beneficiary to elect the 10-Year Rule in lieu of the Life Expectancy Rule, and if elected, the 10-Year Rule shall apply with respect to distributions pursuant to this Section 3.3(b). In the absence of an election, the Plan's provisions with regard to the Life Expectancy Rule will apply. An election of the 10-Year Rule must be made no later than the earlier of December 31 of the calendar year in which distribution would be required to begin under the Life Expectancy Rule, or by December 31 of the calendar year which contains the tenth anniversary of the Participant's (or, if applicable, surviving spouse's) death.
 - (c) **Other Designated Beneficiaries.** If the beneficiary of the Participant's Account under the Plan is a Designated Beneficiary who is not an Eligible Designated Beneficiary, then the beneficiary's entire interest will be distributed under the 10-Year Rule.

(d) **10-Year Rule.** If distribution of a deceased Participant's Account under the Plan is subject to the "10-Year Rule," then distribution of the Participant's entire Account will be completed by December 31 of the calendar year containing the tenth anniversary of the Participant's death.

3.4 **Death after RBD.** If the Participant dies on or after the Participant's RBD, the Participant's remaining interest will be distributed at least as rapidly as under the method of distribution being used as of the date of the participant's death using the Life Expectancy Rule, as and to the extent provided by applicable regulations and other guidance. If the Beneficiary is a Designated Beneficiary who is not an Eligible Designated Beneficiary, the Plan will distribute the remaining interest in full no later than December 31 of the tenth year following the year of the Participant's death.

3.5 **Beneficiary Death.** If an Eligible Designated Beneficiary receiving distributions under the Life Expectancy Rule dies before the Beneficiary's entire interest in the Participant's Account is distributed, the Plan will distribute the remainder of the Beneficiary's interest in full no later than December 31 of the 10th year following the year of the Eligible Designated Beneficiary's death. Similarly, if a Participant died before the Effective Date of this Article, and the Participant's designated beneficiary died after such Effective Date but prior to receiving full distribution of the beneficiary's interest, the Plan pursuant to SECURE Act §401(b)(5) will distribute that interest in full no later than December 31 of the tenth year following the year of the beneficiary's death.

3.6 **Age of Majority.** A child of the Participant who is receiving distributions under the Life Expectancy rule shall cease to be an Eligible Designated Beneficiary as of the date the child reaches the age of Majority and any remainder of the child's interest in the Participant's Account under the Plan shall be distributed within 10 years after that date, provided the child is not otherwise an Eligible Designated Beneficiary such as a disabled or chronically ill individual.

3.7 **Definitions; operating rules.** The following definitions and operating rules apply for this Article:

- (a) An "RMD" is a Required Minimum Distribution as described in Code §401(a)(9).
- (b) A Participant's "RBD" is the Participant's Required Beginning Date as described in Code §401(a)(9)(C) and the Plan and corresponding provisions of Article 2 of this Amendment.
- (c) "**Designated Beneficiary**" means any individual who is designated by a Participant or Plan terms as a beneficiary of the Participant's Account under the Plan and who is a designated beneficiary under Code §401(a)(9) and applicable regulations or other guidance thereunder.
- (d) "**Eligible Designated Beneficiary**" means a Designated Beneficiary of a Participant who is (1) the Participant's surviving spouse, (2) the Participant's child who has not reached the age of Majority, (3) disabled within the meaning of Code §72(m)(7), (4) chronically ill within the meaning of Code §7702B(c)(2), provided the requirements of subsection 7702B(c)(2)(A)(i) shall be treated as met if a certification is provided that, as of such date, the period of inability described in such subsection is an indefinite one which is reasonably expected to be lengthy in nature, or (5) any other individual who is not described in (1) through (4) of this Section 3.7(d) and is not more than 10 years younger than the Participant. Whether a Designated Beneficiary is an Eligible Designated Beneficiary shall be determined as of the date of the Participant's death. Certain trusts (or parts of certain trusts) may be treated as Eligible Designated Beneficiaries pursuant to Code §401(a)(9)(H)(iv) and (v).
- (e) "**Majority**" for purposes of the "age of Majority" of a Participant's child shall be determined under Code §401(a)(9)(F) and applicable regulations or other guidance issued thereunder.
- (f) The "**Life Expectancy Rule**" for distributing RMDs is described in Code §401(a)(9)(B)(iii) and is further described in the Plan.

(g) The “**5-Year Rule**” for distributing RMDs is described in Code §401(a)(9)(B)(ii) and is further described in the Plan.

(h) The “**10-Year Rule**” is described in Section 3.3(d).

(i) **Separate share rule.** A Participant’s Account under the Plan and a Beneficiary’s interest in that Account will be applied separately as provided in Code §401(a)(9)(H)(iv), or as provided by provisions of Treas. Reg. §1.401(a)(9)-8, Q&A 2 or 3 that are not contrary to Code §401(a)(9)(H)(iv) or other applicable laws or regulations.

ARTICLE 4 **SUSPENSION OF 2020 RMDS; EXTENSION OF 5-YEAR RULE FOR RMDS – CARES §2203**

4.1 **Application.** This Article applies only to defined contribution plans, which generally are retirement plans adopted by an employer pursuant to Code Section 401(a) or 403(b) that are not defined benefit plans. This Article does not apply to defined benefit plans. It is effective January 1, 2020 pursuant to Code Section 401(a)(9)(I).

4.2 Suspension of 2020 RMDS; Extension of 5-Year Rule by One Year.

(a) **Suspension of Required Minimum Distributions for 2009.** A Participant or Beneficiary who would have been required to receive required minimum distributions in 2020 (or paid in 2021 for the 2020 calendar year for a participant with a required beginning date of April 1, 2021) but for the enactment of Code Section 401(a)(9)(I) (“2020 RMDs”), and who would have satisfied that requirement by receiving distributions that are either (i) equal to the 2020 RMDs or (ii) one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the Participant, the joint lives (or joint life expectancy) of the Participant and the Participant’s Designated Beneficiary, or for a period of at least 10 years (“Extended 2020 RMDs”), will not receive those distributions for 2020 unless the Participant or Beneficiary, as the case may be, chooses to receive such distributions. Participants and Beneficiaries described in the preceding sentence will be given the opportunity to elect to receive the distributions described in the preceding sentence; and

(b) **Direct Rollovers.** For purposes of applying the direct rollover provisions of the Plan, a direct rollover will be offered only for distributions that would be eligible rollover distributions without regard to Code Section 401(a)(9)(I).

4.3 **Extension of 5-Year Rule.** The 5-year period described in Code Section 401(a)(9)(B)(ii) shall be determined without regard to calendar year 2020, resulting in an additional year to distribute RMDs under the 5-Year Rule, unless a beneficiary otherwise elects to the contrary. A beneficiary of an Applicable Participant Account may elect to include calendar year 2020 for purposes of the 5-Year Rule and not extend the deadline to distribute the account by an additional year. If a beneficiary fails make an election to extend the distribution, calendar year 2020 will not be counted and the 5-Year Rule for RMDs of the Applicable Participant Account will be extended an additional year.

4.4 Definitions. The following definitions apply for this Article:

- (a) “**RMDs**” means required minimum distributions described in Code §401(a)(9).
- (b) The “**5-Year Rule**” for distributing RMDs is described in Code §401(a)(9)(B)(ii) and corresponding Plan provisions .
- (c) “**Applicable Participant Account**” means the remaining account of a Participant who died during the years 2015-2019, to the extent the account is subject to the 5-Year Rule.

ARTICLE 5 **UPDATED LIFE EXPECTANCY TABLES – TREAS. REG. §1.401(a)(9)-9**

- 5.1 **Application.** This Article shall apply to all plans and is effective for distribution calendar years beginning on or after January 1, 2022.
- 5.2 **New RMD Tables.** Any Plan provisions referencing or requiring use of any life expectancy table under Code Section 401(a)(9) or Treas. Reg. §1.401(a)(9) shall mean the tables published and adjusted from time to time under Treas. Reg. §1.401(a)(9)-9.

ARTICLE 6 DIFFICULTY OF CARE PAYMENTS – SECURE §116

- 6.1 **Application.** This Article will apply only if the Plan is a Defined Contribution Plan or a 403(b) Plan. It is effective for Plan Years beginning after December 31, 2015. For purposes of this Amendment, “Defined Contribution Plan” means a plan that is intended to satisfy the requirements of Code Section 401(a), except for a defined benefit plan.
- 6.2 **Inclusion in 415 Compensation.** Participant Compensation for purposes of determining the limit on annual additions under Code §415(c)(1)(B) shall include any Difficulty of Care Payments any Employer makes to a Participant. Any Difficulty of Care Payments shall be included for purposes of making any contributions or allocations under the Plan if the Plan expressly provides that Difficulty of Care Payments will be included for such purposes.
- 6.3 **Definition.** A “Difficulty of Care Payment” is a payment described in Code §131 made in connection with qualified foster individuals.

ARTICLE 7 403(b) TERMINATION DISTRIBUTIONS – SECURE §110

- 7.1 **Application.** This Article only shall apply to the Plan if it is intended to satisfy the requirements of Code Section 403(b) Plan. It is effective January 1, 2009.
- 7.2 **Custodial Accounts.** In connection with distributions upon termination of the Plan, the Plan may treat the delivery of a custodial account as a distribution, pursuant to Rev. Rul. 2020-23.

ARTICLE 8 OTHER

I. Subsection 7.12.1(c) of the Plan is deleted and replaced in its entirety with following:

- “(c) Distributee: A distributee includes an Employee or former Employee. In addition, the Employee’s or former Employee’s surviving spouse and the Employee’s or former Employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2008, a distributee also includes the Participant’s nonspouse Beneficiary designated under the Plan. In the case of a nonspouse designated Beneficiary, the direct rollover may be made only to a traditional IRA or Roth IRA established on behalf of the nonspouse designated Beneficiary and treated as an inherited IRA pursuant to Code section 402(c)(11).”
- II. Effective October 1, 2022, Premium Pay paid to Employees pursuant to City Ordinance No. 1458 for actual hours worked during the time period beginning October 23, 2022 through December 17, 2022 shall be excluded from compensation for purposes of determining or allocating contributions or benefits under the Plan.

III. Effective as of January 1, 2023, the following is added at the end of subsection B.(5) of the Plan Adoption Agreement:

“If any Employee who is participating in this Plan becomes eligible and begins participating in the City of La Vista Management Exempt Employees Defined Contribution Plan and Trust (“Management Exempt Employees Plan”) pursuant to subsection B.(5)(h) of the Management Exempt Employees Plan Adoption Agreement, (i) the Employee shall cease participating in this Plan pursuant to subsection B.(5) above, effective immediately before the Employee begins participating in the Management Exempt Employees Plan, (ii) all vested or nonvested amounts credited to Accounts for the benefit of the Employee under this Plan shall be transferred to and become part of the Accounts held for the benefit of the Employee under the Management Exempt Employees Plan, and (iii) such transferred amounts immediately shall be subject to and governed by the terms and conditions of such Management Exempt Employees Plan, as amended from time to time. Notwithstanding anything in this Plan or the Management Exempt Employees Plan to the contrary, the accrued benefit of any Employee under this Plan, and the nonforfeitable interest of the Employee in such benefit, shall not be decreased solely by reason of the Employee’s commencement of participation under the Management Exempt Employees Plan or transfer of amounts or Accounts pursuant to this paragraph.”

This Amendment is hereby executed this 20th day of December 2022.

CITY OF LA VISTA, a Nebraska municipality

By: _____
Douglas Kindig, Mayor