

ORDINANCE O-2021-

A BILL FOR AN ORDINANCE AMENDING SECTION 3.04.885 OF THE LONGMONT
MUNICIPAL CODE ADOPTING AN AMENDMENT TO THE CITY OF LONGMONT
POLICE EMPLOYEES' PENSION PLAN AND TRUST AGREEMENT

THE COUNCIL OF THE CITY OF LONGMONT, COLORADO, ORDAINS:

Section 1

The Council finds:

Pursuant to sections 4.9 and 4.10 of the Home Rule Charter, the Longmont City Council has, by section 3.04.885 of the Longmont Municipal Code, previously adopted certain pension plans and trust agreements for City employees promulgated by the City and its pension attorneys; and

The City and its pension attorneys have amended the City of Longmont Police Employees' Pension Plan and Trust Agreement; and

The Council has determined to adopt the amendments to the City of Longmont Police Employees' Pension Plan and Trust Agreement now before the Council.

Section 2

In this Ordinance, ellipses indicate material not reproduced as the Council intends to leave that material in effect as it now reads.

Section 3

The Council approves and authorizes execution of the amendments of the City of Longmont Police Employees' Pension Plan and Trust Agreement as described herein.

1 Section 4

2 Effective November 10, 2021, the Council amends Articles I, II, III, IV, V and XI, of the
3 City of Longmont Police Employees' Pension Plan and Trust Agreement by adding the italicized
4 language and deleting the struck language to read as follows:

5 ARTICLE I

6 NAME AND PURPOSE OF PLAN AND TRUST

7 The Plan is created for the exclusive benefit of the Employer's eligible employees
8 who qualify as Participants and their Beneficiaries. The Plan is intended to qualify
9 under the applicable provisions of Section 401(a) of the Internal Revenue Code of
10 1986, as amended ("Code"), and the Trust created pursuant to the Plan is intended
11 to be exempt under the applicable provisions of Section 501(a) of such Code and
12 all provisions of this Plan shall be construed in accordance with this intention.
13 Since the Employer is a municipal government, it is not the intention of the
14 Employer for this Plan to qualify under Section 401(a) of the Code after the
15 enactment of the Employee Retirement Income Security Act of 1974 ("ERISA")
16 to the extent that the requirements of ERISA are not applicable to the government
17 plans. This Plan was adopted as a replacement for the Colorado Fire and Police
18 Pension Association ("FPPA") Plan for police officers of Longmont who were
19 hired after April 7, 1978. The assets of such plan were transferred to this Plan.

20 *Effective as of November 10, 2021, participation in this Plan shall be frozen, and*
21 *all employees of the Employer who meet the definition of Member under Colorado*
22 *Revised Statutes section 31-31-102 and who are hired or rehired on or after*

1 *November 10, 2021 shall not be eligible for this Plan and shall participate in the*
2 *FPPA Defined Benefit System.*

3
4 *Further, effective as of December 27, 2021, the Employer will transfer the Plan*
5 *account of any then-current Participant who made an irrevocable election to*
6 *transfer to the FPPA Defined Benefit System in accordance with the election*
7 *process conducted by the Administrator pursuant to applicable Colorado law.*
8 *This Plan shall be continued for those eligible employees who commenced*
9 *participation in this Plan prior to November 10, 2021 and who did not make an*
10 *irrevocable election to transfer to the FPPA Defined Benefit System.*

11 ARTICLE II

12 DEFINITIONS

13 When used herein, the following words shall have the following meanings, unless
14 the context clearly indicates otherwise:

15 ...

16 Section 2.6 -- *“Covered Employment”* means the employment category for which
17 the Plan is maintained, which is sworn police officers of Longmont who were
18 hired after April 8, 1978, *and before November 10, 2021*, and police officers who
19 have elected to participate in this Plan who were once participants in the City of
20 Longmont “Old Hire” Police Officers’ Pension Plan as specified in Section 3.1.
21 *Notwithstanding the foregoing, Covered Employment shall not include*
22 *employment by sworn police officers of Longmont who were hired before*
23 *November 10, 2021 and who properly elected to cease participation in this Plan*

1 *and transfer to the FPPA Defined Benefit System effective as of December 27,*
2 *2021.* Effective January 1, 1987, excluded are “leased employees,” as defined in
3 Section 2.8. The term "Covered Employment" excludes any person who is not
4 classified by the City on its payroll records as an employee. This exclusion
5 applies, but is not limited, to a person classified as an independent contractor,
6 even if such classification is determined to be erroneous or is retroactively revised
7 (such as by a governmental agency or court order). If a person who was excluded
8 from the definition of "Covered Employment" is later determined to have been
9 misclassified, the person shall continue to be treated as excluded from "Covered
10 Employment" for all periods prior to the date the classification of the person is
11 revised for purposes of the Plan.

12 ...

13 Section 2.8 -- “Employee” means any person *whose Covered Employment with*
14 *the Employer commenced prior to November 10, 2021,* ~~now or hereafter in the~~
15 ~~employ of the Employer,~~ but excluding all elected officials and independent
16 contractors. *Effective as of November 10, 2021, participation in the Plan shall be*
17 *frozen and any Employee who was not a Plan Participant prior to this date shall*
18 *not become eligible to participate. Any Participant in the Plan as of November*
19 *10, 2021 shall continue to accrue benefits under this Plan, unless such*
20 *Participant made the election described in Section 3.1(a).* Effective January 1,
21 1987, excluded as Employees are “leased employees,” as defined in this Section.
22 The term “leased employee” means any person (1) who is not an Employee of the
23 Employer, and (2) who pursuant to an agreement between the Employer and any

1 other person (a “leasing organization”) has performed services for the Employer
2 on a substantially full-time basis for a period of at least one (1) year, as such
3 services are performed under primary direction or control by the Employer.
4 Notwithstanding the foregoing, if “leased employees” constitute less than twenty
5 percent (20%) of the Employer’s nonhighly compensated workforce within the
6 meaning of Code section 414(n)(5), a person who is covered by a money purchase
7 pension plan maintained by the leasing organization which provides a non-
8 integrated employer contribution rate of at least ten percent (10%) of
9 compensation, immediate participation, and full vesting shall not be considered a
10 “leased employee.”

11 ...

12 Section 2.11 -- “Entry Date” means the date on which an employee is permitted to
13 become a Participant after he or she has fulfilled the age and service requirements.
14 The Entry Date is the date of employment in the case of a permanent full-time
15 sworn police officer and the date the Employee becomes a permanent full-time
16 sworn police officer in the case of a part-time or temporary police officer.

17 *Effective as of November 10, 2021, participation in this Plan is frozen and no*
18 *Employee shall enter the Plan on or after this date.*

19 ...

20 ARTICLE III

21 PARTICIPATION OF EMPLOYEES

22 Section 3.1 -- Eligibility to Participate.

1 a. Who May Participate. Each permanent full-time police officer of the
2 Employer *hired prior to November 10, 2021* shall become a Participant on his or
3 her date of employment or such later date as may be approved by the Employer
4 provided such police officer is in Covered Employment. A sworn police officer
5 who is not a permanent full-time Employee shall become a Participant on the date
6 he or she becomes a permanent full-time sworn police officer provided *that date*
7 *is prior to November 10, 2021 and* such police officer is in Covered Employment.

8 Any Employee who is eligible to participate in this Plan who is a Participant in
9 any other retirement plan maintained by the City must elect to either continue to
10 participate in such other plan or plans or become a Participant in this Plan. Such
11 other plan Participants shall become Participants in this plan after electing to
12 participate in this Plan and completing the necessary election forms. Participants
13 who elect to participate in this Plan and who were once participants in the City of
14 Longmont “Old Hire” Police Officers’ Pension Plan shall be referred to as the Old
15 Hire Participants.

16 *Notwithstanding the foregoing, no full-time police officer hired or rehired on or*
17 *after November 10, 2021 shall become eligible for this Plan. Further,*
18 *Participants in Covered Employment as of November 10, 2021 shall be permitted*
19 *to make an irrevocable election to transfer their participation to the FPPA*
20 *Defined Benefit System pursuant to a process conducted by the Administrator.*
21 *Any such Participant who timely completes such an election to prospectively*
22 *transfer their participation to the FPPA Defined Benefit System shall cease to be*
23 *a Participant in this Plan effective as of December 27, 2021.*

b. Effect of Re-Employment on Eligibility. If a Participant terminates his or her employment with the Employer, he or she shall be eligible to again become a Participant on the date of hire or his or her re-employment, *provided such date is prior to November 10, 2021. If reemployment occurs on or after November 10, 2021, the Employee shall be enrolled in the FPPA Statewide Defined Benefit Plan.*

...

ARTICLE IV

CONTRIBUTIONS

Section 4.1 -- Contributions by the Employer. The Employer shall contribute and pay into the Trust Fund for each pay period to the credit of the Employer Contributions Account of each Participant an amount equal to eight percent (8%) of such Participant's Compensation for such pay period commencing with the first pay period ending after January 1, 1985, an amount equal to ten percent (10%) for pay periods ending after December 31, 2006, and an amount equal to twelve percent (12%) for pay periods ending after December 31, 2021 (the "Base Employer Contribution").

For years beginning on and after January 1, 2022, in addition to the Base Employer Contribution, the Employer shall make an additional contribution to the Employer Contribution Accounts of each Participant in this Plan as described in this paragraph. This additional Employer Contribution shall equal the Employer-paid portion of the “Additional Required Rate for Reentry Employers” that the Employer will be required to contribute to the FPPA Defined Benefit

System into which former Participants in this Plan transfer pursuant to the election described in Section 3.1(a). The formula for determining the additional Employer Contribution under this paragraph is as follows:

<i>Applicable Calendar Year</i>	<i>Percentage of Additional Required Rate for Reentry Employers under the Statewide Hybrid Plan that Employer will contribute to the Employer Contribution Accounts of Participants in this Plan</i>	<i>Maximum Additional Employer Contribution under this Plan (expressed as a percentage of a Participant's Compensation)</i>
<i>2022</i>	<i>100%</i>	<i>1.7%</i>
<i>2023</i>	<i>100%</i>	<i>1.7%</i>
<i>2024 and beyond</i>	<i>50%</i>	<i>0.85%</i>

The Employer shall make payment of its contributions for each pay period in one sum within thirty (30) days after the end of such pay period. Such contribution shall be made in cash.

...

ARTICLE V

DETERMINATION AND VESTING OF PARTICIPANTS' INTERESTS

...

1 Section 5.5 -- Vesting of Participants' Interests.

2

...

b. Employer Contributions Account. A Participant's interest in his or her Employer Contributions Account, and the earnings, losses and changes in fair market value thereof, shall become vested to the extent of the following percentages based upon the number of years of service with the Employer by such Participant, determined pursuant to Section 5.6 below:

8	Years of Service	Percentage
9	With Employer	of Vesting
0	Less than 3	0%
1	3	60%
2	4	80%
3	5 or more	100%

4 *Notwithstanding the foregoing, the Plan account of any Participant who makes an*
5 *irrevocable election to transfer to the FPPA Defined Benefit System effective as of*
6 *December 27, 2021 shall become immediately vested upon the transfer of such*
7 *account from this Plan to the applicable FPPA Defined Benefit System plan and*
8 *trust, without regard to the length of his or her service with the Employer.*

9 ...

0 ARTICLE XI

1 MISCELLANEOUS

2 Section 11.1 -- Transfers Between Qualified Plans. The Trustee, at the direction
3 of the Administrator, is authorized to receive and add to the interest of any

1 Participant his or her vested interest in the assets held under any other qualified
2 Employee retirement plan or individual retirement account if such transfer
3 satisfies the requirements under law for transfers between qualified plans or
4 rollover contributions. In such event the assets so received shall be fully vested
5 and shall be held in a separate account and shall be administered and distributed
6 pursuant to the provisions of this Plan and Trust concerning Employer
7 contributions. The Trustee is also authorized, at the direction of the Administrator,
8 to transfer such Participant's vested interest which has become distributable under
9 Article VII hereof, directly to another qualified plan or an individual retirement
10 account, provided such transfer satisfies the requirements under law for such
11 transfers.

12 *As soon as administratively practicable on or after December 27, 2021, the*
13 *Trustee, at the direction of the Administrator, shall transfer the account of any*
14 *Participant who makes an irrevocable election to transfer to the FPPA Defined*
15 *Benefit System pursuant to Section 3.1(a) into the applicable FPPA Defined*
16 *Benefit System trust. Upon the transfer of such Participant's account from this*
17 *Plan to the applicable FPPA Defined Benefit System trust, the Participant's*
18 *account shall become fully vested, and the transfer shall satisfy the requirements*
19 *under law for similar transfers.*

20 ...

21 Section 5

22 The Council amends paragraph A of section 3.04.885 of the Longmont Municipal Code,
23 by adding italicized material, to read as follows:

1 3.04.885 Pension plans adopted by reference.

2 Under sections 4.9 and 4.10 of the Home Rule Charter, the city council adopts the
3 following, all as promulgated by the City of Longmont and its pension attorneys:

4 A. The City of Longmont Police Pension Plan and Trust Agreement (as amended
5 and restated effective January 1, 1997, and as amended by the first amendment,
6 effective January 1, 2001, and as amended and restated effective January 1, 2001,
7 and as amended and restated effective January 1, 2002, and as amended by the
8 first amendment, effective January 1, 2003, and as amended and restated effective
9 January 1, 2006, and as amended and restated effective January 1, 2007, and as
10 amended effective January 1, 2008, by Ordinance 2008-09, and as amended
11 effective January 1, 2008, by Ordinance 2008-93; and again as amended effective
12 January 1, 2012, by Ordinance O-2011-92), and as amended effective January 1,
13 2013; and as amended and restated effective January 1, 2014; and as amended and
14 restated effective January 1, 2015; *and as amended effective November 10, 2021;*
15 and as amended effective December 27, 2021; and

16 ...

17 Section 6

18 To the extent only that they conflict with this ordinance, the Council repeals any
19 conflicting ordinances or parts of ordinances. The provisions of this ordinance are severable, and
20 invalidity of any part shall not affect the validity or effectiveness of the rest of this ordinance.

21 Introduced this _____ day of _____, 2021.

22 Passed and adopted this _____ day of _____, 2021.

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MAYOR

ATTEST:

CITY CLERK

NOTICE: THE COUNCIL WILL HOLD A PUBLIC HEARING ON THIS ORDINANCE AT
7:00 P.M. ON THE _____ DAY OF _____, 2021, AT THE
LONGMONT CITY COUNCIL MEETING.

APPROVED AS TO FORM:

CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

CA File: 21-001410