

## MEMORANDUM

January 29, 2021

TO: Mayor John P. Kahl and Members of the City Council

FROM: Scott A. Brunton (City Attorney's Office)

SUBJECT: Resolution Revising the City's Employee Flexible Benefit Plan During COVID-19 Pandemic (Section 125 Cafeteria Plan)

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### DISCUSSION:

The City maintains a Flexible Benefit Plan (Section 125 Cafeteria Plan) for the benefit of City employees, which includes both a medical expense reimbursement plan and a dependent care reimbursement plan. As part of the federal stimulus legislation and COVID-19 related legislation adopted in 2020, the laws and regulations governing the City's Flexible Benefit Plan have been relaxed to allow for greater flexibility for employees participating in the City's Flexible Benefit Plan during the COVID-19 pandemic. Accordingly, as permitted by this federal legislation, this Ordinance provides revisions to the City's Flexible Benefit Plan that (1) extend the grace period for incurring reimbursable expenses under the Flexible Benefit Plan for a given plan year, and (2) allowing for a change in the election amount for a reimbursement plan at any time during the plan year. The grace period under the City's Flexible Benefit Plan for incurring reimbursable expenses is 75 days into the following year; this will be changed to the entire following year (365 days) for the 2020 and 2021 Plan Years. Participant elections cannot be changed during a plan year except in very limited circumstances; during the 2020 and 2021 Plan Years, participant elections can be revised at any time during that plan year on a looking-forward basis.

Additionally, under the federal legislation, the changes to the City's Flexible Benefit Plan can be made on a retroactive basis to the beginning of the 2020 Plan Year (which is January 1, 2020, for the City's Flexible Benefit Plan). Thus, this Ordinance revises the City's Flexible Benefit Plan with these changes back to the beginning of the 2020 Plan Year.

### RECOMMENDATION:

Approval of this Ordinance for the City's Flexible Benefit Plan for the 2020 and 2021 plan years.

c: Teresa Durm  
Jeff Becker

**ORDINANCE NO. 4550**

**AN ORDINANCE MODIFYING THE CITY'S  
FLEXIBLE BENEFIT PLAN (SECTION 125 CAFETERIA PLAN)  
FOR THE 2020 AND 2021 PLAN YEARS**

**WHEREAS**, the City of East Peoria, as an employer, established a Cafeteria Plan under §125 of the Internal Revenue Code for the benefit of its employees in July 2000, which has been updated from time to time thereafter (the "Flex Plan"); and

**WHEREAS**, under the Flex Plan, the City maintains a separate Medical Expense Reimbursement Plan and a separate Dependent Care Assistance Plan; and

**WHEREAS**, due to the ongoing COVID-19 pandemic, the federal government has adopted stimulus legislation (the "Federal Stimulus Acts") that allows employers maintaining flexible benefit plans under §125 of the Internal Revenue Code to provide for extended grace periods for medical and dependent care flexible spending accounts during which an employee or the employee's dependent can incur reimbursable expenses under the employee's flexible spending accounts; and

**WHEREAS**, under the Federal Stimulus Acts, the grace periods for maintaining flexible benefit plans under §125 of the Internal Revenue Code can be extended from the regular 75-day period to one full calendar year for the 2020 and 2021 plan years provided the employer updates the governing plan documents by no later than the last day of the applicable extended grace period; and

**WHEREAS**, also under the Federal Stimulus Acts, participant elections under a flexible benefit plan that could normally only be revised during the plan year in very limited circumstances can be revised during the 2020 and 2021 plan years on a prospective basis at any time during the respective plan year; and

**WHEREAS**, the provisions of the Federal Stimulus Acts cover the City's Flex Plan, thereby allowing the City to extend the grace period provided under the Flex Plan up to the one (1) calendar year maximum for the 2020 and 2021 plan years and to open the time frame for making participant elections under the Flex Plan for the 2020 and 2021 plan years; and

**WHEREAS**, the City hereby finds that it is in the best interests of the City and its employees to amend the City's Flex Plan as provided herein to allow for an extended grace period for incurring reimbursable expenses under the applicable Medical Expense Reimbursement Plan or Dependent Care Assistance for the 2020 and 2021 plan years;

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:**

**Section 1.** Effective retroactively to the beginning of the 2020 Plan Year, the following provisions of the City's Flexible Benefits Plan are hereby amended to read as follows (additions are indicated by underline; deletions by ~~strikeout~~):

**3.04 Annual Benefit Election Period.** Each Employee who is a Participant or who is eligible to become a Participant shall complete, sign, and file a Benefit Election Form during the Election Period. The elections made by the Participant on this Benefit Election Form shall, subject to Sections 3.05 through 3.133-40, be effective for the entire Plan Year beginning on the Anniversary Date. An Employee who is a Participant and who fails to complete, sign, and file a Benefit Election Form as required by this Section 3.04 shall be deemed to have elected to continue the same benefits and coverages then in effect for such Participant.

**5.04 Unused Benefits.** No current or former Participant shall have any right or interest in unused benefit credits that have not been applied to the payment of benefits elected hereunder for that Plan Year under either the Employer's Medical Expense Reimbursement Plan or Dependent Care Assistance Plan, except as expressly provided herein.

**(a) Grace Period.** Except as provided in subsection (b) herein, ~~Effective for the 2005 Plan Year and thereafter,~~ pursuant to applicable US Treasury Department and IRS Rules, this Plan shall provide a grace period extending the period of time when expenses may be incurred under either the Medical Expense Reimbursement Plan or Dependent Care Assistance Plan. Accordingly, a Participant's unused benefit credits remaining at the end of the immediately preceding Plan Year in a Participant Account under either the Medical Expense Reimbursement Plan or the Dependent Care Assistance Plan shall be allocated toward qualifying expenses incurred by a Participant under the respective Medical Expense Reimbursement Plan or Dependent Care Assistance Plan during the 2½ month period immediately after the conclusion of the preceding Plan Year. In other words, if a Participant has any unused benefit credits remaining at the end of the immediately preceding Plan Year, the 2½ month grace period shall extend the Plan Year with regards to qualifying expenses incurred by a Participant under either the Medical Expense Reimbursement Plan or the Dependent Care Assistance Plan until the March 15<sup>th</sup> immediately following the conclusion of a Plan Year. Unused benefit credits remaining in a Participant Account at the conclusion of the Plan Year may only be used for that particular qualified benefit during the grace period and cannot be converted to another qualified benefit. Further, during the grace period, if a Participant incurs any qualifying expenses under either the Medical Expense Reimbursement Plan or the Dependent Care Assistance Plan, the Participant shall receive reimbursement from unused benefit credits from the respective benefit plan for the

preceding Plan Year before receiving benefit credits from the current, new Plan Year for that respective benefit plan.

**(b) Grace Period: 2020 and 2021 Plan Years.** Pursuant to applicable US Treasury Department and IRS Rules, this Plan shall provide a grace period for the 2020 and 2021 Plan Years that extends the period of time when expenses may be incurred under either the Medical Expense Reimbursement Plan or Dependent Care Assistance Plan as set forth in this subsection (b). A Participant's unused benefit credits remaining at the end of the immediately preceding Plan Year in a Participant Account under either the Medical Expense Reimbursement Plan or the Dependent Care Assistance Plan shall be allocated toward qualifying expenses incurred by a Participant under the respective Medical Expense Reimbursement Plan or Dependent Care Assistance Plan during the 12-month period immediately after the conclusion of the preceding applicable 2020 or 2021 Plan Year. Accordingly, if a Participant has any unused benefit credits remaining at the end of the 2020 or 2021 Plan Year, the 12-month grace period shall extend the respective 2020 or 2021 Plan Year with regards to qualifying expenses incurred by a Participant under either the Medical Expense Reimbursement Plan or the Dependent Care Assistance Plan until the December 31<sup>st</sup> in the year immediately following the respective Plan Year. Unused benefit credits remaining in a Participant Account at the conclusion of the Plan Year may only be used for that particular qualified benefit during the grace period and cannot be converted to another qualified benefit. Further, during the grace period, if a Participant incurs any qualifying expenses under either the Medical Expense Reimbursement Plan or the Dependent Care Assistance Plan, the Participant shall receive reimbursement from unused benefit credits from the respective benefit plan for the preceding Plan Year before receiving benefit credits from the current, new Plan Year for that respective benefit plan.

**(cb) "Use it or Lose it"**. Any resulting excess of Participants' contributions over benefits paid plus the reasonable administrative expenses will be refunded to the Employer after the expiration of 120 days after the close of the Plan Year for both the Medical Expense Reimbursement Plan and the Dependent Care Assistance Plan. The Employer will use any such refunded amounts to pay reasonable administrative expenses incurred by the Plan, reduce the required contributions for all Participants for each respective plan for the following year on a purely per capita basis, unrelated to the current year's claims experience, or deposit into the Employer's self-funded Group Health Care Plan account for exclusive use of the Group Health Care Plan expenses.

**Section 2.** Effective retroactively to the beginning of the 2020 Plan Year, the following provision is hereby added to the City's Flexible Benefits Plan:

**3.13 Altering Benefit Elections: 2020 and 2021 Plan Years.**

During the 2020 Plan Year and the 2021 Plan Year, a Participant may make a mid-Plan Year prospective election change at any time during the respective Plan Year for that specific Plan Year, which may include reducing the Participant's election amount to zero for participation under the Medical Expense Reimbursement Plan or reducing the Participant's election amount to zero for participation under the Dependent Care Expense Plan. Further, when making such prospective election change, the Participant's election amount shall not exceed the maximum allowed annual election for the respective Medical Expense Reimbursement Benefit or Dependent Care Expense Benefit.

**Section 3.** The City's Human Resources Director is directed to update the plan documents for the revised Flexible Benefit Plan, along with making the respective revisions to the Flex Plan Informational Booklet, while making these revised documents available to all City employees and officials who participate in the Flex Plan.

**Section 4.** This Ordinance is in addition to all other ordinances on the subject and shall be construed therewith excepting as to that part in direct conflict with any other ordinance, and in the event of such conflict, the provisions hereof shall govern

**PASSED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, IN REGULAR AND PUBLIC SESSION THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021.**

**APPROVED:**

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**EXAMINED AND APPROVED:**

\_\_\_\_\_  
Corporation Counsel