

# 17

MAR 13 2008



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**MEMORANDUM**

**DATE:** March 13, 2008

**TO:** Mayor and Council

**THRU:** W. Mark Pentz, City Manager  
Debra Stapleton, Director, Human Resources Division

**FROM:** Glyn Soehner, Benefit Programs Supervisor

**SUBJECT:** Recommendation to approve the addition of a loan provision to the City of Chandler's Deferred Compensation (457) plan

**RECOMMENDATION:** Amend the City's 457 plan document to allow a loan provision for all employees effective April 1, 2008.

**BACKGROUND:** City employees have requested that a loan provision be added to their 457 plan so they may more easily access their deferred compensation funds for various financial needs they may incur. City Staff met with representatives of the 457 plan and discussed in detail the specifics of the loan provision. Additionally, Human Resources staff met separately with City administration staff, the Employee Council, and members of the City's bargaining units and outlined key provisions of the loan program. Administration staff, Employee Council members, and bargaining unit representatives in attendance at these meetings unanimously approved the addition of a loan provision to the 457 deferred compensation plan. Employee meetings will be held during the month of March 2008 to educate employees on the loan program before the implementation date. The City Attorney's Office has reviewed and approved the necessary documents to move this amendment forward.

**PROPOSED MOTION:** Move to amend the 457 plan document (plan number 301601) to provide a loan provision effective April 1, 2008 by way of a City Council resolution (see attached copy of the resolution and exhibit A).

RESOLUTION NO. 4164

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, AUTHORIZING AN AMENDMENT TO THE CITY OF CHANDLER DEFERRED COMPENSATION PLAN AND TRUST ADMINISTERED BY THE ICMA RETIREMENT CORPORATION (PLAN No. 301601)

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the Employer has established the Chandler Deferred Compensation and Trust (Plan No. 301601) (hereinafter referred to as "Plan") for such employees that serves the interest of the Employer by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

WHEREAS, Resolution No. 2698 approved by the Council of the City of Chandler on September 4, 1997, resolved that the Plan would not permit loans; and

WHEREAS, the Employer has determined that permitting the Plan to make loans is in the best interests of the City of Chandler and the Plan participants;

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Chandler, Arizona, as follows:

Section 1. That the Mayor and City Council of the City of Chandler hereby amend Resolution No. 2698 to authorize an amendment to the City of Chandler Deferred Compensation Plan and Trust (Plan No. 301601) to allow the City's Deferred Compensation Plan to permit loans.

Section 2. That the Mayor and Council of the City of Chandler approve amending the Plan to permit loans under the terms of the Loan Guideline Agreement attached hereto as Exhibit A upon execution by the Mayor of Chandler.

Section 3. That the Mayor is authorized to enter into the Loan Guideline Agreement with ICMA-RC which is attached hereto as Exhibit A to establish the terms and conditions under which the City of Chandler will grant loans to participants of the Plan.

Section 4. That the Plan is hereby amended to allow loans pursuant to the terms and conditions set forth in the Loan Guideline Agreement attached hereto.

Section 5. That the various City officers and employees be and they are hereby authorized and directed to perform all acts necessary to give effect to this Resolution effect.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this \_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

### CERTIFICATION

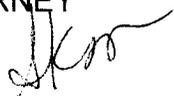
I HEREBY CERTIFY that the above and foregoing Resolution No. 4153 was duly passed and approved by the City Council of the City of Chandler, Arizona, at a regular meeting held on the \_\_\_ day of \_\_\_\_\_, 2008, and that a quorum was present thereat.

\_\_\_\_\_  
CITY CLERK

PUBLISHED:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY



Loan Guidelines Agreement

Name of Plan (please state the Employer's complete name, including state): City of Chandler, Arizona

Plan Type:  401(a) Money Purchase Plan  401 Profit-Sharing Plan  457 Deferred Compensation Plan

ICMA-RC Plan Number: 301601

**I. Purpose**

The purpose of these guidelines is to establish the terms and conditions under which the Employer will grant loans to participants. This is the only official Loan Provision Document of the above named Plan.

**II. Eligibility**

Loans are available to all active employees. Loans will not be granted to participants who have an existing loan in default. Loans will be pro-rated among all the funds in which the participant is invested at the time the loan is made.

For 401 plans only:

Loans are available from the following sources: [select one or both]

- Employer Contribution Account (vested balances only)
- Participant Contribution Accounts (pre- and post-tax, if applicable, including Employee Mandatory, Employee Voluntary, Employer Rollover, and Portable Benefits Accounts, but excluding the Deductible Employee Contribution/Qualified Voluntary Employee Contribution Account)

For all plan types:

Loans are available for the following purposes: [select one]

- All purposes
- Loans shall only be granted in the event of a participant's hardship or for the purpose of enabling a participant to meet certain specified financial situations. The employer shall approve the participant's loan application after determining, based on all relevant facts and circumstances, that the amount of the loan is not in excess of the amount required to relieve the financial need. For this purpose, financial need shall include, but not be limited to: unreimbursed medical expenses of the participant or members of the participant's immediate family, establishing or substantially rehabilitating the principal residence of the participant, or paying for a college education (including graduate studies) for the participant or his/her dependents.

**III. Frequency of loans** [select one]

- Participants may receive one loan per calendar year. Moreover, participants may have only one (1) outstanding loan at a time.
- Participants may receive one loan per calendar year. Moreover, no participant may have more than five (5) loans outstanding at one time.

**EXHIBIT A**

**IV. Loan amount**

The minimum loan amount is \$1,000.

The maximum amount of all loans to the participant from the plan and all other plans sponsored by the Employer that are qualified employer plans under section 72(p)(4) of the Code is the *lesser* of:

- (1) \$50,000, reduced by the highest outstanding balance of all loans from any 401 or 457 plans for that participant during the one-year period ending on the day before the date a loan is to be made, or
- (2) one half of the participant's vested account balance, reduced by the current outstanding balance of all 401 and 457 loans from all plans for that participant.

If a participant has any loans outstanding at the time a new loan is requested, the new loan will be limited to the maximum amount calculated above reduced by the total of the outstanding loans.

A loan cannot be issued for more than the above amount. The participant's requested loan amount is subject to downward adjustment without notice due to market fluctuation between the time of application and the time the loan is made.

**V. Length of loan**

A loan must be repaid in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years.

Loans for a principal residence must be repaid in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed Thirty (30) [state number of years] years (maximum 30 years).

**VI. Loan repayment process**

Loan repayments for active employees must be through (choose one):

- Payroll deduction only.  
PL642(2) = 2
- ACH debit only.  
PL642(2) = 0
- Employee may choose either payroll deduction or ACH debit.  
PL642(2) = 1

If payroll deduction repayment is allowed, and the employee wishes to use this method, the employee must notify the Employer so that the Employer can ensure that repayment will begin as soon as practicable on a date determined by the Employer's payroll cycle. Failure to begin payroll deduction in a timely way could lead to the employee's loan entering delinquency status. Payroll deduction should begin within two payroll cycles following the employee's receipt of the loan.

Repayments through payroll deduction will be sent via check or wire by the Employer to ICMA-RC on the following cycle (choose one):

- Weekly (52 per year)
- Bi-weekly (26 per year)
- Semi-monthly (24 per year)
- Monthly (12 per year)

If ACH debit repayment is allowed, debits from the employee's designated bank account will begin approximately one month following the date the employee's signed ACH authorization form is received and processed by ICMA-RC, or, in the case of online loans, approximately one month following the date the loan check has been cleared for payment. Debits will normally be made on a monthly basis.

## *Loan Guidelines Agreement*

Loans outstanding for former employees or employees on a leave of absence must be repaid on the same schedule as if payroll deductions were still being made unless they reamortize their loans and establish a new repayment schedule that provides that substantially equal payments are made at least monthly over the remaining period of the loan.

Loan payments, including loan payments from former employees, are allocated to the participant's current election of investment options on file with ICMA-RC.

The participant may pay off all or a portion of the principal and interest early without penalty or additional fee. Extra payments are applied forward to both principal and interest as specified in the original repayment schedule, unless the additional payment is for the balance due.

### **VII. Loan interest rate**

The rate of interest for loans of five (5) years or less will be based on prime plus 0.5%.

The rate of interest for loans for a principal residence will be based on the FHA/VA rate.

Interest rates are determined on the last business day of the month preceding the month the loan is disbursed. The interest rate is locked in at the time a loan is approved and remains constant throughout the life of the loan.

The prime interest rate is determined on the last business day of each month using [www.nfsn.com](http://www.nfsn.com) as the source. The FHA/VA interest rate is also determined on the last business day of each month using [www.bankofamerica.com](http://www.bankofamerica.com) as the source.

Loan interest rates for new loans taken in different months may fluctuate upward or downward monthly, depending on the movement of the prime and FHA/VA interest rates.

The employer may modify the manner in which loan interest rates will be determined, but only with respect to future loans.

### **VIII. Loan application procedure**

Loans must be requested using the following method (check one):

- Online only:** All loans must be requested online by employees through ICMA-RC's Account Access site at [www.icmarc.org](http://www.icmarc.org), with Employer pre-authorization as outlined in italics below.

If an employee is married at the time of application, and spousal consent is required by the Plan for the loan, the employee's spouse must consent, in writing, to the loan and the consent must be witnessed by a plan representative or notary public. Such consent must be received in writing by ICMA-RC no more than ninety (90) days before the loan request is submitted through Account Access.

The promissory note, truth-in-lending rescission notice and disclosure statement are presented to the employee online through Account Access at the time the employee submits the loan request. The employee confirms receipt and acceptance of these documents by clicking on the affirmative buttons on the Account Access program.

*The employer hereby authorizes all future loans requested through the online process via Account Access, as well as any requests that employees submit on paper forms, pending review of the application by ICMA-RC. Notice of loan issuance will be provided to the Employer via reports posted on the EZLink site.*

The loan amount will generally be redeemed from the employee's account on the same day as the employee's successful submission of the loan request through Account Access, if it is submitted prior to 4:00 p.m. ET on a business day. If not, the loan amount will be redeemed on the next business day following submission. The loan check is generally issued on the next business day following redemption, and will be mailed directly to the employee. The employee's presentment of the loan check for payment constitutes an acknowledgment that the employee has received and read the loan disclosure information provided by ICMA-RC and agrees to the terms therein.

Loan repayment will begin as soon as practicable following the employee's presentment of the loan check for payment.

ICMA - RC

- Online and through Direct Loan application:** All loans must be requested either online by employees through ICMA-RC's Account Access site at [www.icmarc.org](http://www.icmarc.org), or through the Direct Loan application, both of which require pre-authorization by the Employer as outlined in italics below.

If an employee is married at the time of application, and spousal consent is required by the Plan for the loan, the employee's spouse must consent, in writing, to the loan and the consent must be witnessed by a plan representative or notary public. Such consent must be received in writing by ICMA-RC no more than ninety (90) days before the loan request is submitted through Account Access. In the case of the Direct Loan Application, spousal consent should be sent along with the application.

The promissory note, truth-in-lending rescission notice and disclosure statement are mailed to the employee along with the issued loan check. The employee confirms receipt and acceptance of these documents and terms at the time the endorsed check is presented for payment.

*The Employer hereby authorizes all future loans requested through the online process via Account Access, as well as any requests that employees submit on paper forms, pending review of the application by ICMA-RC. Notice of loan issuance will be provided to the Employer via reports posted on the EZLink site.*

The loan amount will generally be redeemed from the employee's account on the same day as either ICMA-RC's receipt of a loan application (complete and in good order), or the employee's successful submission of the loan request through Account Access, if it is submitted prior to 4:00 p.m. ET on a business day. If not, the loan amount will be redeemed on the next business day following submission. The loan check is generally issued on the next business day following redemption, and will be mailed directly to the employee. The employee's presentment of the loan check for payment constitutes an acknowledgment that the employee has received and read the loan disclosure information provided by ICMA-RC and agrees to the terms therein.

Loan repayment will begin as soon as practicable following the employee's presentment of the loan check for payment.

- Direct Loan application only:** All loans must be requested through the Direct Loan application, which requires pre-authorization by the Employer as outlined in italics below.

If an employee is married at the time of application, and spousal consent is required by the Plan for the loan, the employee's spouse must consent, in writing, to the loan and the consent must be witnessed by a plan representative or notary public. Such consent must be received in writing by ICMA-RC along with the Direct Loan Application.

The promissory note, truth-in-lending rescission notice and disclosure statement are mailed to the employee along with the issued loan check. The employee confirms receipt and acceptance of these documents at the time the endorsed check is presented for payment.

*The employer hereby authorizes all future loans requested on paper forms, pending review of the application by ICMA-RC. Notice of loan issuance will be provided to the Employer via reports posted on the EZLink site.*

The loan amount will generally be redeemed from the employee's account on the same day as ICMA-RC's receipt of a loan application (complete and in good order).

The loan check will generally be issued from the employee's account on the next business day following redemption. The loan check will be mailed directly to the employee. The employee's presentment of the loan check for payment constitutes an acknowledgment that the employee has received and read the loan disclosure information provided by ICMA-RC and agrees to the terms therein.

Loan repayment will begin as soon as practicable following the employee's presentment of the loan check for payment.

- Loan application through the Employer:** All loans must be requested in writing on an application approved by the plan administrator. The application must be signed by the participant. The Employer must review and approve each participant's application.

The participant will be required to sign a promissory note evidencing the loan and a disclosure statement that includes an amortization schedule prior to receiving a loan check. Loan checks will generally be issued on the next business day following ICMA-RC's receipt of a complete loan application. The loan check, promissory note, disclosure statement and truth-in-lending rescission notice will be sent to the employer, who will obtain the necessary signatures and deliver the check to the participant. All executed documents must be returned to ICMA-RC within 10 calendar days from the date the check is issued.

#### **IX. Security/Collateral**

That portion of a participant's account balance that is equal to the amount of the loan is used as collateral for the loan. The collateral amount may not exceed 50 percent of the participant's account balance at the time the loan is taken. Only the portion of the account-balance that corresponds to the amount of the outstanding loan balance is used as collateral.

#### **X. Acceleration** [select one]

- All loans are due and payable in full upon separation from service.
- All loans are due and payable when a participant receives a distribution of all of his/her account balance after separation from service. The amount of the outstanding loan balance will be reported as a distribution in addition to the amount of cash distributed from the plan.
- All loans are due and payable when a participant receives a distribution of part of his/her account balance after separation from service. The amount of the outstanding loan balance will be reported as a distribution in addition to the amount of cash distributed from the plan.

#### **XI. Reamortization**

Any outstanding loan may be reamortized. Reamortization means changing the terms of a loan, such as length of repayment period, interest rate, and frequency of repayments. A loan may not be reamortized to extend the length of the loan repayment period to more than five (5) years from the date the loan was originally made, or in the case of a loan to secure a principal residence, beyond the number of years specified by the employer in Section V above.

A participant must request the reamortization of a loan in writing on a reamortization application acceptable to the plan administrator. Upon processing the request, a new disclosure statement will be sent to the employer for endorsement by the participant and approval by the employer. The executed disclosure statement must be returned to the plan administrator within 10 calendar days from the date it is signed. The new disclosure statement is considered an amendment to the original promissory note, therefore a new promissory note will not be required.

A reamortization will not be considered a new loan for purposes of calculating the number of loans outstanding or the one loan per calendar year limit.

#### **XII. Refinancing existing loans**

If a participant has one outstanding loan, that loan may be refinanced. If a participant has more than one outstanding loan, no loans may be refinanced. Refinancing means concurrently repaying an existing loan and borrowing an additional amount through a new loan. Refinancing includes any situation in which one loan replaces another loan and the term of the replacement loan does not exceed the latest permissible term of the replaced loan.

In order to refinance an existing loan, a participant must request this in writing on an application approved by the plan administrator. Such request must be made at a time when the participant is eligible to obtain a loan as defined by the employer in Section III above. The amount of the additional loan amount requested for the purpose of refinancing is subject to the loan limits specified in Section IV above.

Because a refinancing is considered a new loan, only active employees may refinance an outstanding loan.

### **XIII. Reduction of Loan**

If a participant dies prior to full repayment of the outstanding loan(s), the outstanding loan balance(s) will be deducted from the account prior to distribution to the beneficiary(ies). The unpaid loan amount is a taxable distribution and may be subject to early withdrawal penalties. The participant's estate is responsible for taxes or penalties on the unpaid loan amount, if any. A beneficiary is responsible for taxes due on the amount he or she receives. A Form 1099 will be issued to both the beneficiary and the estate for these purposes.

### **XIV. Deemed Distribution**

Loan repayments must be made in accordance with the plan document, plan loan guidelines, and as reflected in the promissory note signed by the participant. If a scheduled payment is not paid within 30, 60, and/or 90 days of the due date, a notice will be sent to both the employee and the employer.

A loan will be deemed distributed when a scheduled payment is still unpaid at the end of the calendar quarter following the calendar quarter in which the payment was due. If the total amount of any delinquent payment is not received by ICMA-RC by the end of the calendar quarter following the calendar quarter in which the payment was due, the loan is considered a taxable distribution, and the principal balance, in addition to any accrued interest, is reported as a distribution to the IRS. However, no money is paid in this distribution, because the participant already has the loan proceeds.

The loan is deemed distributed for tax purposes, but it is not an actual distribution and therefore remains an asset of the participant's account. Interest continues to accrue. The outstanding loan balance and accrued interest are reported on the participant's account statement.

Repayment of a deemed distribution will not change or reverse the taxable event.

The loan continues to be outstanding, and to accrue interest, until it is repaid or offset using the participant's account balance. An offset can occur only if the participant is eligible to receive a distribution from the plan as outlined in the plan document.

Participants are required to repay any outstanding loan which has been deemed distributed before they can be eligible for a new loan. The deemed distribution and any interest accrued since the date it became a taxable event is taken into account when determining the maximum amount available for a new loan. New loans must be repaid through payroll deduction.

The employer is obligated by federal regulation to comply with the loan guideline requirements applicable to participant loans, and to ensure against deemed distribution by monitoring loan repayments, regardless of the method of repayment, and by advising employees if loans are in danger of being deemed distributed. The tax-qualified status or eligibility of the entire plan may be revoked in cases of frequent repayment delinquency or deemed distribution.

### **XV. Fees**

Fees may be charged for various services associated with the application for and issuance of loans. All applicable fees will be debited from the participant's account balance and/or from the participant's loan repayments prior to crediting the repayment of principal and interest to the participant's account. A schedule of fees applicable to this plan is specified in ICMA-RC's current publication of *Making Sound Investment Decisions: A Retirement Investment Guide*.

*Loan Guidelines Agreement*

**XVI. Other**

The employer has the right to set other terms and conditions as it deems necessary for loans from the plan in order to comply with any legal requirements. All terms and conditions will be administered in a uniform and non-discriminatory manner.

In Witness Whereof, the employer hereby caused these Guidelines to be executed this \_\_\_\_\_ day  
of \_\_\_\_\_, 20 \_\_\_\_\_.

EMPLOYER

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Accepted: ICMA RETIREMENT CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

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

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

