

**EAST GOSHEN TOWNSHIP
CHESTER COUNTY,
PENNSYLVANIA**

ORDINANCE NO. 129-F-2023

**AN ORDINANCE AMENDING CERTAIN PROVISIONS OF
THE PENSION PLAN FOR THE GOSHEN FIRE COMPANY
WHICH WAS ESTABLISHED BY THE BOARD OF
SUPERVISORS OF EAST GOSHEN TOWNSHIP (THE
"BOARD") ON MAY 5 1987 BY ORDINANCE NO. 78 AS
AMENDED TO PROVIDE FOR AN ACT 44 RETIREMENT
PROGRAM**

WHEREAS, the Township of East Goshen did, by Ordinance create a Fire Pension Plan (hereinafter, the "Fire Pension Plan"); and

WHEREAS, on September 18, 2009, Act 44 was approved by the Pennsylvania Legislature amending Title 53 as it relates to Municipal Pension Plans; and

WHEREAS, the Township, through collective bargaining negotiations with the Goshen Fire Company representing the full-time firefighters and based on an Act 205 cost study, determined it is desirable and beneficial to establish an Act 44 Retirement Program for its firefighters who meet certain eligibility requirements, and entered into a Collective Bargaining Agreement providing for such Act 44 Retirement Program; and,

WHEREAS, to implement the terms of the collectively bargained Act 44 Retirement Program and the other terms, it is necessary for the Township to adopt an Ordinance amending its Fire Pension Plan;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD
OF SUPERVISORS OF THE TOWNSHIP OF EAST GOSHEN
THAT:**

SECTION I. Implementation of Act 44 Retirement Program

The Fire Pension Plan is amended to add a new section establishing and implementing an Act 44 Retirement Program:

1. **Title.** This Section shall be known as the "Goshen Fire Company Act 44 Retirement Program."

2. **Definitions.** When used in this Section, the below words shall have the meaning indicated.

- a. **"Township"** – Township of East Goshen, Chester County, Pennsylvania.
- b. **"ACT 44 PROGRAM"** – The ACT 44 DEFERRED RETIREMENT OPTION PROGRAM referred to in the Collective Bargaining Agreement between the Goshen Fire Company Firefighters and the Township of East Goshen.
- c. **"ACT 44 PROGRAM Account"** – Separate ledger account created to accept ACT 44 PROGRAM participants' monthly pension benefit while an ACT 44 PROGRAM participant, as well as any interest thereon.
- d. **"DROP"** – Deferred Retirement Option Program.
- e. **"Fund"** or **"Plan"** – the Fire Pension Plan.
- f. **"Participant"** – a Firefighter who meets the eligibility for and has executed the proper documents for participation in ACT 44 PROGRAM and has had such application approved by the Township.
- g. **"Firefighters"** - Firefighters of the Goshen Fire Company.

3. **Eligibility.** Eligibility for the ACT 44 PROGRAM shall be determined as follows:

- a. Firefighters who have not retired prior to the implementation of the ACT 44 PROGRAM may enter into the ACT 44 PROGRAM on the first day of any month following the attainment of their normal retirement, age 55 and the completion of 5 years of service.

4. **Written Election.** Eligible Firefighters who wish to be Participants in the ACT 44 PROGRAM must signify that intention in writing as follows:

- a. A Firefighter electing to participate in the ACT 44 PROGRAM must complete and execute an "ACT 44 PROGRAM Participation Election Form" prepared by the Township, which shall evidence the member's election to participate in the ACT 44 PROGRAM. The form must be signed by the Firefighter and be notarized and submitted to the Township Secretary and Goshen Fire Company. The ACT 44 PROGRAM Participation Election Form shall include

an irrevocable notice to the Township, by the Firefighter member, that the Firefighter shall resign from employment with the Goshen Fire Company effective on a specific date (the "resignation date") that is no later than thirty-six (36) months from the effective date of ACT 44 PROGRAM Election Form. A Firefighter shall cease to work as and may no longer be employed as a Firefighter on the resignation date, unless the Township properly terminates or honorably discharges the Firefighter prior to the resignation date. A participant may resign from employment while in ACT 44 PROGRAM status, which shall terminate his/her participation in the ACT 44 PROGRAM.

- b. In addition to the above information, the ACT 44 PROGRAM Participation Election Form shall also advise the employee of the following: (1) an explanation of the Participant's rights and obligations while in ACT 44 PROGRAM; (2) that, as a condition of ACT 44 PROGRAM participation, the Participant foregoes active participation in the Fire Pension Plan and foregoes any recalculation of pension benefits to include salary increases occurring after ACT 44 PROGRAM participation commences; and (3) that the ACT 44 PROGRAM Participant's service while in ACT 44 PROGRAM will not count as pension service nor will it entitle a participant to any service increment benefits to which the Participant was not entitled prior to commencing ACT 44 PROGRAM participation. An ACT 44 PROGRAM Participant must also complete any and all retirement documents required by the Fire Pension Plan Administrator, and such documents must be filed and presented to the Township for approval of retirement and payment of pension. Once an ACT 44 PROGRAM Participation Election Form has been approved by the Township, it is irrevocable. Likewise, once an ACT 44 PROGRAM Participant enters the ACT 44 PROGRAM, the Participant may not subsequently leave and then re-enter the ACT 44 PROGRAM, even if the employee separates from employment and subsequently begins employment with the Goshen Fire Company again.

5. **Benefit Calculation.** For all Pension Plan purposes, continuous service of a Firefighter participating in the ACT 44 PROGRAM shall remain as it existed on the effective date of commencement of participation in the ACT 44 PROGRAM. Service thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Fire Pension Plan. The average monthly compensation of the Firefighter for pension calculation purposes shall remain, as it existed on the effective date of commencement of participation in the ACT 44 PROGRAM. Earnings or increases in earnings thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Pension Plan.
6. **Accumulation of the ACT 44 PROGRAM Account.** The monthly retirement benefits that would have been payable had the Firefighter elected to cease employment and receive a normal retirement benefit, shall, upon the Firefighter commencing participation in ACT 44 PROGRAM, accumulate to the benefit of that Firefighter and be accounted for on that Firefighter's ACT 44 PROGRAM Account. Participants shall not have the option of self-directed investment of their individual ACT 44 PROGRAM Account while in the ACT 44 PROGRAM. Instead, the monies shall be invested in a fund to be identified and selected solely by the Township in accordance with applicable law so as to generate a rate of return of no less than zero percent (0%) and no more than four and a half percent (4.5%).
7. **Accrual of Non-Pension Benefits.** After a Firefighter elects to participate in the ACT 44 PROGRAM, all other contractual benefits shall continue to accrue with the exception of those provisions relating to the Fire Pension Plan.
8. **Payout.** Upon separation from employment, the ACT 44 PROGRAM payout options available to the ACT 44 PROGRAM Participant shall be as follows:
 - a. The balance of the ACT 44 PROGRAM Participant's account, less withholding taxes, if any, remitted to the Internal Revenue Service, shall be paid to the Participant or the Participant's surviving beneficiary.

- b. The balance of the ACT 44 PROGRAM Participant's account shall be paid directly to the custodian of an eligible retirement plan as defined by Internal Revenue Code Section 402(c)(8)(b), or in the case of an eligible rollover distribution to the surviving spouse of a deceased ACT 44 PROGRAM Participant, an eligible retirement plan that is an individual retirement account or an individual retirement annuity as defined by Internal Revenue Code Section 402(c)(9).
- c. If the ACT 44 PROGRAM Participant or beneficiary fails to make an election within sixty days (60) following the date of termination of ACT 44 PROGRAM participation, then the Chief Administrative Firefighter of the pension plan shall implement section 8.A. above.

9. Service Connected Disability During ACT 44 PROGRAM. If an ACT 44 PROGRAM Participant becomes temporarily incapacitated due to a service-connected injury during his participation in ACT 44 PROGRAM, that Firefighter shall continue to participate in the ACT 44 PROGRAM as if fully employed. The Firefighter shall receive disability pay in the same amount as disabled Firefighters that are not participating in ACT 44 PROGRAM. In no event shall a Firefighter on temporary disability have the ability to draw from his ACT 44 PROGRAM account. However, notwithstanding any other provision in this paragraph, if a Firefighter is disabled and has not returned to work as of the date of his required resignation, then such resignation shall take precedence over all other provisions herein and said Firefighter shall be required to resign. Nothing contained in this Plan shall be construed as conferring any legal rights upon any Firefighter or other person to a continuation of employment nor shall participation in the ACT 44 PROGRAM supersede or limit in any way the right of the Township to honorably discharge a Firefighter based upon an inability to perform his or her full duties as a Firefighter. If an ACT 44 PROGRAM Participant becomes eligible for a service-connected disability pension and his employment is terminated due to an inability to continue in service on grounds that render him eligible for a service-connected disability pension, the monthly normal retirement benefit of the ACT 44 PROGRAM Participant shall be reclassified as being on account of a service-connected disability. In no event shall an ACT 44 Participant's monthly retirement benefit be recalculated. The ACT 44 Participant's monthly retirement benefit shall remain 50% as calculated at the time of entry into the ACT 44.

10. **Death.** If an ACT 44 PROGRAM Participant dies, the Participant's eligibility for ACT 44 PROGRAM shall terminate upon the date of death. In such case, if the ACT 44 PROGRAM account balances have not yet been paid out, the Participant's legal beneficiary shall have the same rights and options as the Participant to withdraw/roll over the account balance.
11. **Forfeiture of Benefits.** Notwithstanding a Firefighter's status as an ACT 44 PROGRAM Participant, a current or former Participant who is convicted or pleads guilty to engaging in criminal misconduct which constitutes a "crime related to public office or public employment," as that phrase is defined in Pennsylvania's Pension Forfeiture Act, 43 P.S. §§ 1311-1314, shall forfeit his right to receive a pension, including any amounts currently deposited in the ACT 44 PROGRAM Account. In such a case, the Participant shall only be entitled to receive the contributions, if any, made by the Participant to the Fire Pension Fund, without interest.
12. **Cost of Management for ACT 44 PROGRAM.** The Firefighters and the Township agree that any costs or fees associated with the management of the ACT 44 PROGRAM accounts shall be paid directly by the Participants and each Participant's Act 44 retirement account.
13. **Amendment.** Any amendments to this ACT 44 PROGRAM Ordinance shall be consistent with the provisions covering Individual Retirement option plans set forth in any applicable collective bargaining agreement and shall be binding upon all future ACT 44 PROGRAM Participants and upon all ACT 44 PROGRAM Participants who have balances in their Individual Retirement option accounts. The ACT 44 PROGRAM may only be amended by a written instrument, not by any oral agreement or past practice.
14. **Construal of Provisions.** A Firefighter's election to participate in the ACT 44 PROGRAM shall in no way be construed as a limitation on the Township's right to suspend or to terminate a Firefighter for just cause or to grant the Firefighter an honorable discharge based upon a physical or mental inability to perform his or her duties.

15. **Severability.** The provisions of the ACT 44 PROGRAM shall be severable: and if any of its provisions shall be held to be unconstitutional or illegal, the validity of any of the remaining provisions of the ACT 44 PROGRAM shall not be affected thereby. It is hereby expressly declared as the intent of the Township that the ACT 44 PROGRAM would have been adopted had such unconstitutional or illegal provision or provisions not been included herein.

16. **Effective Date.** The Effective Date of the ACT 44 PROGRAM shall be January 1, 2023.

SECTION II. All elected and appointed officials are authorized to take all action necessary to ensure the implementation and effect the purpose hereof.

SECTION III. Any and all Ordinances and/or Resolutions, or parts thereof, conflicting herewith are repealed insofar as the matters herein are affected.

SECTION IV. The provisions of this Ordinance are severable, and if any clause, sentence, subsection or section hereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder but shall be confined in its operation and application to the clause, sentence, subsection or section rendered. It is hereby declared the intent of the East Goshen Township Supervisors that this ordinance would have been adopted if such illegal, invalid, or unconstitutional clause, sentence, subsection, or section had not been included therein.

SECTION V. This is effective immediately upon enactment according to law, and shall remain in effect hereafter until revised, amended, or revoked by action of the East Goshen Township Supervisors.

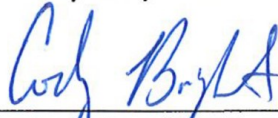
ENACTED AND ORDAINED this 20th day of June, 2023.

BOARD OF SUPERVISORS
EAST GOSHEN TOWNSHIP



John Hertzog, Chair

Michael P. Lynch, Vice Chair



Cody Bright, Member




David E. Shuey, Member



Michele Truitt, Member

ATTEST:



Township Secretary