

TOWNSHIP OF WEST HEMPFIELD

Lancaster County, Pennsylvania

ORDINANCE NO. 04-23

AN ORDINANCE OF THE TOWNSHIP OF WEST HEMPFIELD, LANCASTER COUNTY, PENNSYLVANIA, AMENDING AND RESTATING CHAPTER 25, SECTION 25.16.1 OF THE CODE OF ORDINANCES OF WEST HEMPFIELD TOWNSHIP, ESTABLISHING A DEFERRED OPTION RETIREMENT PLAN

WHEREAS, by Ordinance No. 8-08, enacted on December 2, 2008, West Hempfield Township implemented a Deferred Option Retirement Plan as part of its Police Pension Plan, which Ordinance has been codified in the Code of Ordinances of West Hempfield Township at Chapter 25 Pensions, Article II Police Pensions, Section 25-16.1 DROP Provisions (the “DROP Program”).

WHEREAS, subsequent to its adoption, the DROP Program was amended by Ordinance No. 2-09, enacted on September 1, 2009.

WHEREAS, with the agreement of the West Hempfield Township Police Association, the Township desires to amend the DROP Program in compliance with Chapter 11 of the act of December 18, 1984 (P.L. 1005, No. 205), known as the Municipal Pension Plan Funding Standard and Recovery Act, 53 P.S. §§ 895.101 *et seq.*

BE AND IT IS HEREBY ORDINANCED AND ENACTED by the Board of Supervisors of the Township of West Hempfield, Lancaster County, Pennsylvania, as follows:

SECTION 1. AMENDED AND RESTATED DROP PROVISIONS. The Code of Ordinances of the Township of West Hempfield, Chapter 25 thereof, Pensions, Article II, Police Pensions, Section 25-16.1, DROP Provisions, shall be amended by striking Section 25-16.1 in its entirety and replacing it with the following amended and restated DROP Provisions:

A. **DEFINITIONS.** For the purposes of this Chapter, the following terms shall have the meanings indicated:

ASSOCIATION

The West Hempfield Township Police Association, the duly recognized collective bargaining unit representing all eligible full-time police officers of the West Hempfield Township Police Department.

BENEFICIARY or BENEFICIARIES

The individual or individuals identified by a DROP Participant to receive the balance of such DROP Participant's DROP Account in the event of the death of the DROP Participant during the DROP Participation Period.

COLLECTIVE BARGAINING AGREEMENT

The applicable collective bargaining agreement then in effect between the Association and the Township.

DROP

Deferred Retirement Option Plan.

DROP ACCOUNT

A separate, interest-bearing, subsidiary Participant account established for each DROP Participant. DROP Accounts shall be established as ledger accounts within the Township's pension trust fund, and shall be accounted for separately, but need not be physically segregated from other pension trust fund assets.

DROP NOTICE

The form prescribed by the Township and Association upon which a Member or Officer informs the Township of his or her irrevocable intent to participate in the DROP Program. Once submitted to the Township and approved by the Township, the DROP Notice is irrevocable, except as otherwise provided herein.

DROP PARTICIPANT or PARTICIPANT

A Member or Officer who has properly submitted a DROP Notice to participate in the DROP, which has been approved by the Township's Board of Supervisors, and who has commenced his or her DROP Participation Period.

DROP PARTICIPATION PERIOD

The period of time from the commencement of a Participant's participation in the DROP as stated in the Participant's DROP Notice, which has been approved by the Township, until the Participant's separation from employment as a police officer of West Hempfield Township (i.e., Resignation Date as defined below), which in no event shall exceed thirty-six (36) months.

DROP PERIOD

The period of time during which a Member or Officer can participate in a DROP, which in no event shall exceed thirty-six (36) months.

DROP PROGRAM

The program implemented by the Township and Association pursuant to which Members of the Township's Police Department may establish DROP Accounts while continuing to provide police service for the Township as described herein. The DROP Program is an integral component of the Plan.

MEMBER or OFFICER

A duly sworn full-time police officer employed by the Township.

PENSION PLAN

The West Hempfield Township Police Pension Plan.

RESIGNATION DATE

The date specified in the Participant's irrevocable DROP Notice approved by the Township on which the Participant shall resign from employment with the West Hempfield Township Police, which shall be no more than thirty-six (36) months from the commencement of the Participant's DROP Participation Period.

RETIREMENT DATE

The day before the commencement of the DROP Participation Period.

TOWNSHIP

The Township of West Hempfield, Commonwealth of Pennsylvania, including its elected and appointed officials.

B. ELIGIBILITY. Any Officer who has fulfilled the age and service requirements for Normal Retirement under the Plan shall be eligible to participation in the DROP Program after providing at least thirty (30) days written notice to the Township.

C. ELECTION TO PARTICIPATE IN DROP PROGRAM.

- (1) Drop Notice. An Officer electing to participate in the DROP must complete and execute a DROP Notice. The DROP Notice shall include irrevocable notice to the Township that the Officer shall resign from employment with the West Hempfield Township Police Department effective on a specific date (the Resignation Date), which shall be no more than thirty-six (36) months from the commencement of the Officer's DROP Participation Period. The Drop Notice shall detail a DROP Participant's rights and obligations under the DROP Program, and include an agreement by the Participant to forego: (a) active participation in the Plan; (b) any growth in the salary base used for calculating the normal retirement benefit under the Plan; and (c) any additional benefit accrual for retirement purposes, including length-of-service increments.
- (2) Submission of DROP Notice. The DROP Notice must be submitted to the Township at least thirty (30) days prior to the date on which the Officer wishes to commence the DROP Participation Period, which shall be specified on the DROP Notice. Once an Officer submits a DROP Notice to the Township, the Officer's resignation date shall be irrevocable. Once an Officer commences participation in DROP, the Officer may not choose to end participation in DROP and resume contributions to the Pension Plan. An Officer electing DROP participation must also complete any and all retirement documents required by the Pension Plan Administrator.

D. RETIREMENT STATUS AND PENSION CONTRIBUTION.

- (1) Status Under Pension Plan. For purposes of calculating pension benefits, an Officer's Retirement Date under the Pension Plan shall be the day before the effective date of the Officer's DROP Participation Period.
 - (a) For all Pension Plan purposes, continuous service of an Officer participating in the DROP Program shall remain as it existed on the Participant's Retirement Date. Service thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Pension Plan.
 - (b) The average monthly compensation of the Participant for pension calculation purposes shall remain as it existed on the Participant's Retirement Date. 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. The monthly pension benefit payable to the members shall increase only as a result of Cost of Living Adjustments required by the Police Pension Plan.
- (2) Officer Pension Contributions. Once an Officer's DROP Participation Period commences, the Officer shall not be required to make any contributions to the Pension Plan.
- (3) Accrual of Non-Pension Benefits. A DROP Participant shall continue to receive all other employee benefits and programs as set forth in the Collective Bargaining Agreement, with the exception of vacation. Vacation accrual shall be frozen at the days accrued as of the date the DROP Participation Period commences.

E. DROP ACCOUNT.

- (1) Benefit Accrual. The monthly retirement benefit that would have been payable had the Participant elected to cease employment and receive a normal retirement benefit, and interest thereon, shall be credited to the Participant's DROP Account in the Pension Plan trust fund.
- (2) Interest Rate. Interest shall be compounded and credited monthly at the actual rate earned by the DROP Account and shall not be less than zero percent (0%) and no more than four and a half percent (4.5%).
- (3) Access to DROP Benefits. A Participant may not draw from the Participant's DROP Account during the DROP Participation Period. Participants shall not have the option of self-directed investment of their DROP Account.

F. DROP TERMINATION.

- (1) Early Resignation. A DROP Participant may change the Participant's Resignation Date to an earlier date, and no penalty shall be imposed for early termination of DROP participation.
- (2) Separation of Employment. Upon the Participant's Resignation Date, including an early resignation, the Participant shall be separated from employment with the Township.
- (3) No Re-enrollment. A DROP Participant shall be ineligible to re-enroll in the DROP Program thereafter, even if the former Participant is reemployed by the Township with renewed active membership in the Pension Plan.

G. PAYMENT OF DROP BENEFITS. Upon a Participant's Resignation Date, including an early resignation, participation in the DROP shall cease and the Pension Plan shall calculate and pay to the Participant the total accumulated DROP benefits in the Participant's DROP Account.

- (1) Payout Election. The DROP Participant or, if deceased, the Participant's Beneficiary, shall elect on a form provided by the Pension Plan to receive payment of the DROP benefits in accordance with one of the following options:
 - (a) The balance in the DROP Participant's DROP Account, less withholding taxes, if any, remitted to the Internal Revenue Service, shall be paid within forty-five (45) days by the Pension Plan to the DROP Participant or Beneficiary.
 - (b) The balance in the DROP Participant's DROP 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 DROP 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).
- (2) Failure to Elect. If the DROP Participant or Beneficiary fails to make an election within sixty (60) days of the Participant's Resignation Date, the Pension Plan shall pay the balance as a lump sum as provided in Section 25-16.1C(1)(a).
- (3) Compliance with Internal Revenue Code. The form of payment selected by the DROP Participant or Beneficiary shall comply with the minimum distribution requirements of the Internal Revenue Code of 1986.

H. DISABILITY DURING DROP PARTICIPATION PERIOD.

- (1) Temporary Disability or Incapacitation. If a DROP Participant is temporarily incapacitated due to a service-connected injury during the DROP Participation Period, the Participant shall continue to participate in the DROP Program as if fully employed. The Participant shall receive disability pay in the same amount as disabled Officers that are not participating in the DROP Program. In no event shall a Participant on temporary disability have the ability to draw from the Participant's DROP Account. If a Participant is disabled and has not returned to work as of the date of the Participant's Resignation Date, then such resignation shall take precedence over all other provisions herein and the Participant shall be required to resign.
- (2) Total and Permanent Disability. If a DROP Participant is totally and permanently disabled due to a service-connected injury during the DROP Participation Period, and the Participant becomes eligible for a service-connected disability pension, the Participant shall be retired. Participation in the DROP Program shall terminate and the Officer shall receive normal retirement benefits under the Plan in the amount calculated when the Officer become a DROP Participant. The Officer shall not be entitled to any other disability payment or monthly disability pension benefit from the Township or the Plan.

I. DEATH DURING DROP PARTICIPATION PERIOD.

- (1) Named Beneficiary. If a DROP Participant dies during the DROP Participation Period, the Participant's Beneficiary shall be entitled to apply for and receive the benefits accrued in the Participant's subsidiary DROP Participant Account.
- (2) Final Benefit. The monthly retirement benefit accrued in the DROP Account during the month of a DROP Participant's death shall be the final monthly retirement benefit credited for DROP participation.
- (3) Termination of DROP Participation. A Participant's eligibility to participate in the DROP terminates upon the death of the Participant. If a Participant dies on or after the effective date of participation in the DROP, but before the monthly retirement benefit of the Participant accruable for the month has accrued in the DROP Account, the Township shall pay the monthly retirement benefits as though the Participant had not elected DROP participation and had died after the Participant's effective date of retirement, but before receipt of the retired Participant's first regular retirement benefit.

- (4) Survivors Ineligible for Active Member Death Benefit. Except for those benefits specifically payable as a result of death incurred in the course of performing a hazardous public duty, the survivors of a DROP Participant who dies shall not be eligible to receive Pension Plan death benefits payable in the event of the death of an active Member (to the extent such death benefits exist under the Pension Plan at the time of a Participant's death). For purposes of pension benefits, a DROP Participant ceases to be an active Member on the Officer's Retirement Date.
- (5) Survivors Eligible for Retired Member's Death Benefit. A DROP Participant's survivor shall be eligible to receive Pension Plan death benefits normally payable in the event of the death of a retired Member.

J. TAXATION, ATTACHMENT AND ASSIGNMENT OF DROP BENEFITS.

- (1) Exemption from Tax, Levy, and Garnishment. Except as provided in Subsections 25-16.1(J)(2), (3) and (4) below, the right of a DROP Participant to any benefit or right accrued or accruing under the provisions of this chapter and the moneys in the Participant's DROP Account are exempt from any State or municipal tax, levy and sale, garnishment, attachment, spouse's election or any other process whatsoever.
- (2) Forfeiture of DROP Benefits. Rights under this chapter shall be subject to forfeiture as provided by the act of July 8, 1978 (P.L. 752, No. 140), known as the Public Employee Pension Forfeiture Act, 43 P.S. §§ 1311-1314. Forfeitures under this subsection or under any other provision of law may not be applied to increase the benefits that any DROP Participant otherwise would receive under this Chapter.
- (3) Attachment Under Qualified Domestic Relations Order. Rights under this Chapter shall be subject to attachment in favor of an alternate payee as set forth in a qualified domestic relations order (QDRO).

K. COSTS TO PARTICIPANTS. The Association and the Township agree that any costs or fees associated with the operation and administration of the DROP Program shall be paid directly from the police pension fund and not by the Township.

L. INTERPRETATION OF PROVISIONS.

- (1) Governing Law. The provisions of this Chapter shall be interpreted under the laws of the Commonwealth of Pennsylvania.
- (2) Continuation of DROP. This Chapter, except as it revises the West Hempfield Township Deferred Option Retirement Plan, is intended as a continuation of that plan.

- (3) Pension Benefits. Nothing provided hereunder shall be construed as a change to the parties' practice of calculating pensionable compensation, and except for the ability to establish a DROP Account and participate in the DROP Program, nothing herein is intended to create new pension benefits of any kind which did not exist as of December 31, 2008.
- (4) Employment Rights and Obligations. Nothing provided hereunder shall guarantee any Officer or DROP Participant a specific term of employment. Except as provided in this Chapter, all DROP Participants shall be considered to be employees of the Township and subject to the same terms and conditions of employment, policies, directives, orders, rules, regulations and disciplinary procedures as other Officers and Members who are not DROP Participants. An Officer's election to participate in the DROP Program shall in no way be construed as a limitation on the Township's right to suspend or terminate the Officer for just cause or to grant the Officer an honorable discharge based upon a physical or mental inability to perform the Officer's duties.
- (5) Headings. Headings of sections and paragraphs of this instrument are inserted for convenience of reference. They constitute no part of this plan and are not to be considered in the construction thereof.

M. AMENDMENT. Any amendments to the DROP Program shall be consistent with the provisions covering deferred retirement option plans set forth in any applicable collective bargaining agreement and shall be binding upon all future DROP Participants and upon all DROP Participants who have balances in their DROP Accounts. The DROP Program may only be amended by a written instrument, signed by an authorized representative of the Township and the Association, not by any oral agreement or past practice.

N. SEVERABILITY. In the event any provision, section, sentence, clause or part of this Chapter shall be held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such invalidity, illegality, or unconstitutionality shall not affect or impair the remaining provisions, sections, sentences, clauses or parts of this Ordinance, it being the intent of the Board of Supervisors that the remainder of the Ordinance shall be and shall remain in full force and effect.

SECTION 2. AUTHORITY. All elected and appointed officials of West Hempfield Township are authorized to take all action necessary to ensure the implementation and effect the purpose hereof.

SECTION 3. REPEALER. This Ordinance is intended as an amendment, revision and restatement of Ordinance No. Ordinance No. 8-08, enacted December 2, 2008, as amended by Ordinance No. 2-09, enacted September 1, 2009. All other sections, parts and provisions of the Code of Ordinances of the Township of West Hempfield shall remain in full force and effect as previously enacted and amended.

SECTION 4. EFFECTIVE DATE. This Ordinance is effective immediately upon enactment according to law, and shall remain in effect hereafter until revised, amended, or revoked by action of the West Hempfield Board of Supervisors.

DULY ORDAINED AND ENACTED this **5th** day of **December, 2023**, by the Board of Supervisors of the Township of West Hempfield, Lancaster County, Pennsylvania, in lawful session duly assembled.

TOWNSHIP OF WEST HEMPFIELD
Lancaster County, Pennsylvania

Attest: Adwst
(Assistant) Secretary

By: David M. Jumper
(Vice) Chairman
Board of Supervisors

[TOWNSHIP SEAL]

