

**TOWNSHIP OF MARPLE
DELAWARE COUNTY, PENNSYLVANIA
ORDINANCE NO. 2022-3**

**AN ORDINANCE OF THE TOWNSHIP OF MARPLE, DELAWARE
COUNTY, PENNSYLVANIA AMENDING THE POLICE PENSION PLAN
TO INCLUDE AN ACT 44 RETIREMENT PROGRAM.**

WHEREAS, the Township of Marple has by Ordinance enacted the Marple Township Police Pension Plan (hereinafter, the "Police Pension Plan"); and

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

WHEREAS, the Township, through collective bargaining negotiations with Delaware County Lodge No. 27 of the Fraternal Order of Police, determined it is desirable and beneficial to establish an Act 44 Retirement Program for its Police Officers who meet certain eligibility requirements.

NOW, THEREFORE, BE IT ORDAINED THAT:

SECTION I. Addition of Act 44 Deferred Retirement Option Program

The Police Pension Plan is **AMENDED** to add a new section establishing and implementing an Act 44 Deferred Retirement Option Program. Police Officer who reaches normal retirement date shall be eligible to participate under the Act 44 Deferred Retirement Option Program ("DROP" or "Act 44 Program"), subject to the following requirements.

1. **Title.** This Section shall be known as the "Marple Township Act 44 Deferred Retirement Option Program."
2. **Definitions.** When used in this Section, the below words shall have the meaning indicated.

"Township" – Township of Marple, Delaware County, Pennsylvania.

"Act 44 Deferred Retirement Option Program" – The Pension Payments Plan approved by the Pennsylvania Legislature September 18, 2009, amending Title 53 as it relates to Municipal Police Pension Plan.

"ACT 44 Program Account" – Separate account created to accept ACT 44 PROGRAM participants' monthly pension check while an ACT 44 PROGRAM participant, as well as any interest thereon.

"DROP Period" – Act 44 DROP period means the period beginning as of the participating Police Officer's written election notice as acknowledged by the

employer and continuing until that Police Officer's separation from employment as a Police Officer of the employer, but in no event to exceed thirty-six (36) months.

"Fund" or "Plan" – the Municipal Police Pension Plan.

"Participant" – a Police Officer who meets the eligibility for and has executed the proper documents for participation in the ACT 44 PROGRAM.

"Police Officers" – Police Officers of the Police Department.

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

Police Officers 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 coincident with, or following, satisfaction of the age and service requirements for a normal (superannuation) pension, as provided by the Collective Bargaining Agreement.

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

- a. A Police Officer 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 Police Officer and be notarized and submitted to the Township Secretary. The ACT 44 PROGRAM Participation Election Form shall include an irrevocable notice to the Township, by the Police Officer, that the Police Officer shall resign from employment with the Police Department 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 Police Officer shall cease to work as and may no longer be employed as a Police Officer on the officer's resignation date, unless the Township properly terminates or honorably discharges the officer 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, including the participation period of thirty-six (36) months;

2. that, as a condition of ACT 44 PROGRAM participation, the Participant foregoes active participation in the Police 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. 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 Township again.

5. Benefit Calculation. For all Pension Plan purposes, continuous service of a Police Officer 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 Township Police Pension Plan. The average monthly compensation of the Police Officer 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 Program. The pension benefit payable to the members shall increase only as a result of Cost-of-Living Adjustments in effect on the effective date of the member's participation in the ACT 44 PROGRAM or by applicable cost of living adjustments granted thereafter.

6. Accumulation of the ACT 44 PROGRAM Account. The monthly retirement benefits that would have been payable had the Police Officer elected to cease employment and receive a normal retirement benefit shall, upon the Police Officer commencing participation in ACT 44 PROGRAM, accumulate to the benefit of that Officer and be paid into that Police Officer'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 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 Police Officer 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 Police 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 Program 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 Township shall implement section 1 above.

9. **Service-Connected Disability During ACT 44 PROGRAM.** If an eligible DROP participant becomes temporarily incapacitated during his participation in the Act 44 Program, the Police Officer shall continue to participate in the Act 44 Program as if fully employed. The Police Officer shall receive disability pay in the same amount as disabled Police Officers that are not participating in Act 44 Program. In no event shall a Police Officer on temporary disability have the ability to draw from his Act 44 Program account. However, notwithstanding any other provision in this paragraph, if a Police Officer 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 officer shall be required to resign. Nothing contained in this Program shall be construed as conferring any legal rights upon any Police Officer 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 lawfully discharge a Police Officer based upon their inability to resume his or her full duties as a Police Officer. If an Act 44 Program participant becomes eligible for a service-connected disability pension and his/her 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 fifty (50%) percent as calculated at the time of entry into the Act 44 Program subject to applicable Cost-of-Living Adjustments.

10. **Death.** If an Act 44 Program participant dies, the participant's eligibility for the 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 Police Officer'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 Police Pension Fund, without interest.

12. Cost of Management for ACT 44 PROGRAM. Reasonable costs or fees associated with the implementation or their individual management of the ACT 44 PROGRAM account shall be paid directly and solely by the participant and not by the Township.

13. Amendment. Any amendments to the 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 Police Officer'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 Police Officer for just cause or to grant the Police Officer 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 will be January 1, 2024

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

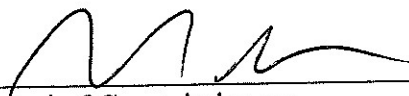
SECTION III: Any and all Ordinances and/or Resolutions, or parts thereof, conflicting herewith are repealed insofar as the matters herein are affected.

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 Township Board of Commissioners 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 Board of Commissioners of the Township of Marple.

ENACTED AND ORDAINED this 11th day of July, 2022.

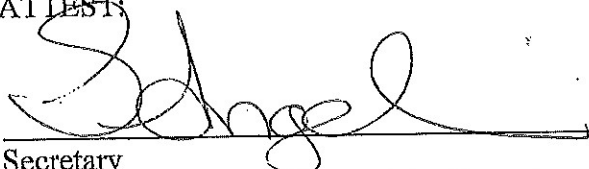
TOWNSHIP OF MARPLE



Board of Commissioners
Joseph Rufo, President

SEAL

ATTEST:



Secretary
Sharon Angelaccio, Township Secretary