

BOROUGH OF MOUNT JOY

Lancaster County, Pennsylvania

ORDINANCE NO. 04-2022

AN ORDINANCE TO AMEND THE MOUNT JOY BOROUGH CODE OF ORDINANCES, CHAPTER 46, PENSIONS, TO REVISE PROVISIONS OF THE POLICE PENSION PLAN CONCERNING DEFINITIONS AND ADDING A DEFERRED RETIREMENT OPTION PLAN.

BE AND IT IS HEREBY ORDAINED AND ENACTED by Borough Council of the Borough of Mount Joy, Lancaster County, Pennsylvania, as follows:

Section 1. The Mount Joy Borough Code of Ordinances, Chapter 46, Pensions, Article II, Police Pension Fund, §46-20, Definitions; Word Usage, Subsection B, shall be amended by adding the definition of the term Compensation in alphabetical order:

COMPENSATION -- The total earnings, except as modified in this definition, from the Borough during any specific period. Earnings as used in this definition includes base pay, longevity pay, night differential pay, overtime pay, sick pay, vacation pay and other remuneration. For purposes of an officer's pension calculation only the amount of sick pay, vacation pay, or personal time accrued in the last 36-months is permitted.

Section 2. The Mount Joy Borough Code of Ordinances, Chapter 46, Pensions, Article II, Police Pension Fund, §46-23, Retirement Benefits, Subsection A, shall be amended to provide as follows:

The amount of pension or retirement benefits payable under this Article shall be as follows: Monthly pension or retirement benefits shall be one half of the monthly average compensation of the participant during the last 36 months of employment. Such retirement benefits shall be paid monthly during the balance of the participant's life following actual retirement. Pension payments made under the provisions of this Article shall not be a charge on any other fund of the Borough or under its control save the police pension fund.

Section 3. The Mount Joy Borough Code of Ordinances, Chapter 46, Pensions, Article II, Police Pension Funds, shall be amended to add a new §46-32, Deferred Retirement Option Plan, which shall provide as follows:

§46-32. Deferred Retirement Option Plan.

The Borough hereby establishes a Deferred Retirement Option Plan ("DROP") as part of its police pension plan in accordance with the following requirements:

A. Eligibility.

- (1) Eligibility for the DROP shall be determined by and limited to full-time police officers employed by the Borough who have completed 25 or more years of service and have attained the age of 50, who meet the following requirements:
 - (a) The officer did not retire or began receiving a normal retirement benefit or a disability benefit from the Fund prior to the implementation of this DROP or the officer's entry into the DROP, whichever is later.
 - (b) The officer reached the necessary age and service requirements (the "Superannuation Date") necessary for receiving a full retirement under the terms of the applicable collective bargaining agreement and this Article.
 - (c) The officer is not receiving and will not receive a disability benefit from the Plan or Fund or the Borough.
- (2) Officers may enter the DROP on the first day of any month upon attaining both the applicable age 50 and 25 years of service.
- (3) Participation in the DROP does not guarantee the DROP participant's employment by the Borough during the specified period of the DROP.

B. Written Election. An eligible police officer who wishes to be a participant in the DROP must signify that intention in writing as follows:

- (1) A police officer electing to participate in the DROP must complete, sign, and return the Borough a "DROP Participation Election Form" prepared by the Borough. The form must be signed by the Police Officer and be notarized prior its submission to the Borough Manager. The DROP Participation Election Form shall include:
 - (a) A binding/irrevocable notice of resignation from regular employment with the Borough, by the police officer confirming the officer's intent to retire and specifying the officer's specific retirement date and the date that the officer's DROP participation will commence, which shall be the date after the specified retirement date.
 - (b) The specification of the DROP termination date ("resignation date") which shall be no later than 48 months from the effective date of the DROP Election Form.

- (c) The police officer shall cease to work as and have the legal authority of a police officer and may no longer be employed by the Borough as a police officer on the officer's resignation date unless the Borough terminates or honorably discharges the officer prior to such resignation date. A DROP participant may resign from employment while in DROP status, which shall terminate his/her participation in DROP and employment with the Borough. Participation in a DROP does not guarantee the DROP participant's employment by the Borough during the specified period of the DROP.
 - (2) The DROP Participation Election Form shall advise the officer of the following;
 - (a) An explanation of the participant's rights and obligations while in the DROP.
 - (b) That, as a condition of DROP participation, the participant foregoes active participation in the Plan and foregoes any recalculation of pension benefits after the officer's retirement date or when the officer begins participation in the DROP, even to include any salary increases, occurring after DROP participation commences.
 - (c) That a DROP participant's service while in DROP will not count as pension service time nor will it entitle a participant to any service increment benefits to which the participant was not entitled to prior to commencing DROP participation.
 - (3) A DROP participant must also complete any and all retirement documents required by the Borough and the Plan administrator, and such documents must be filed and presented to the Borough for approval of retirement and payment of pension at least 30 days before the retirement date specified §46-32.B(1).
 - (4) Once a DROP Participation Election Form has been approved by the Borough, it is irrevocable.
 - (5) Once a DROP participant enters the DROP, the participant may not subsequently leave the DROP and then re-enter the DROP at any time, even if the retired officer separates from employment and subsequently begins employment with the Borough in another position or under another Borough pension plan.
 - (6) A retired officer who leaves the DROP may not be rehired as a Borough police officer after leaving the DROP.
- C. Benefit Calculation. For all pension benefit calculation and Plan purposes, continuous service of a police officer participating in the DROP shall remain as it existed on the effective date of commencement of the participant's participation in

the DROP. Service thereafter shall not be recognized for or used for the calculation or recalculation of the participant's pension or the determination of any benefits payable by the Plan or the Borough. The average monthly compensation of the DROP participant for pension calculation purposes shall remain, as it existed on the effective date of commencement of participation in the DROP. To the extent there are any increases in salary or compensation after an officer's DROP participation period commences, such increases shall not be recognized or used for the calculation, recalculation, or determination of any benefits payable by the Plan.

- D. Accumulation of the DROP Account. The monthly pension normal retirement benefit that would have been payable directly to the retiree/DROP participant had the retiree/DROP participant not elected to participate in the DROP and to directly receive a normal retirement benefit, shall, upon the retiree/participant commencing participation in DROP accumulate to the benefit of that retiree/participant and be accounted for on that DROP participant's DROP account. Participants shall not have the option of self-directed investment of their individual DROP account while in the DROP. Instead, the DROP account monies shall be invested in a fund to be identified and selected solely by the Borough in accordance with applicable law, including but not limited to all applicable provisions of the IRS Code and Pennsylvania pension laws, to generate a rate of return of no less than zero percent (0%) and no more than four and a half percent (4.5%).
- E. Accrual of Non-Pension Benefits. After a police officer elects to participate in the DROP, all other contractual benefits shall continue to accrue.
- F. Payout. Upon separation from employment, the DROP payout options available to the DROP participant shall be as follows:
- (1) The balance of the DROP 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.
 - (2) The balance of the DROP 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 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).
 - (3) If the DROP participant or beneficiary fails to make an election within 60 days following the date of termination of DROP participation, the Chief Administrative Officer of the Plan shall implement §46-32.H.
- G. Service-Connected Disability. If a DROP participant becomes temporarily incapacitated and unable to perform police duties due to an injury or condition suffered while in service and entitling the officer to benefits under the Workers' Compensation or Heart and Lung Acts, or both, during the DROP participation period, the DROP participant shall continue to participate in the DROP as if fully

employed. The officer shall receive disability pay in the same amount as disabled police officers that are not participating in the DROP; however, due to the unique nature of the DROP and the goals of the DROP, there shall be a rebuttable presumption after a period of 12 months that the DROP participant is permanently disabled and unable to perform his or her police duties and his or her continued employment with the Borough and participation in the DROP shall end. In no event shall a police officer on temporary disability draw from his DROP account.

- (1) If a DROP participant becomes eligible for a service-connected disability benefit from the Plan and his employment is terminated due to an inability to continue in service on grounds that render him eligible for a service-connected disability benefit, the monthly normal retirement benefit of the DROP participant shall be reclassified as being on account of a service-connected disability to the extent permitted by law. In no event shall a DROP participant's monthly retirement benefit be recalculated. The DROP participant's monthly retirement benefit shall remain as calculated at the time of entry into the DROP in accordance with the provisions of the Plan.
- (2) Notwithstanding any other provision in this §46-32.G, if an officer is disabled and has not returned to work as of the date of his required resignation as stated in the DROP participation election form, such resignation shall take precedence over all other provisions herein and said officer shall be required to resign. Such officer shall receive his or her then existing DROP account monies and continue to receive the applicable pension benefit thereafter in accordance with the provisions of this §46-32 and in the same manner as any other DROP participant.
- (3) Nothing contained in this Plan 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 DROP supersede or limit in any way the right of the Borough to discharge a police officer based upon an inability to perform his or her full duties as a police officer.

H. Death. If a DROP participant dies, the participant's eligibility for DROP shall terminate upon the date of death. In such case, if the DROP account balances have not yet been paid out, the participant's legal beneficiary under this DROP shall have the same rights and options as the participant to withdraw/roll over the account balance and the survivor provisions of the Plan shall apply if applicable.

I. Forfeiture of Benefits. Notwithstanding a police officer's status as a DROP 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 DROP account. In such a case, the participant shall only be entitled to receive the contributions, if any, made by the participant to the Fund, without interest.

J. Amendment. Any amendments to this §46-32 shall be consistent with the provisions covering 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.

K. Continued Employment. A police officer's election to participate in the DROP shall in no way be construed as a limitation on the Borough's right to suspend, discharge or terminate a police officer or to grant any officer an honorable discharge based upon a physical or mental inability to perform his or her duties.

Section 4. All other sections, parts and provisions of the Code of Ordinances of the Borough of Mount Joy shall remain in full force and effect as previously enacted and amended.

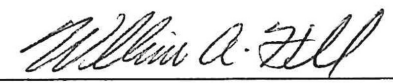
Section 5. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such invalidity, illegality or unconstitutionality shall not affect or impair the remaining provisions, sections, sentences, clauses or parts of this Ordinance, it being the intent of Borough Council that the remainder of the Ordinance shall be and shall remain in full force and effect.

Section 6. This Ordinance shall take effect and be in force from and after its enactment as provided by law. The amendments to the Police Pension Plan are effective as of January 1, 2022.

DULY ORDAINED AND ENACTED this ____ day of _____, 2020, by Borough Council of the Borough of Mount Joy, Lancaster County, Pennsylvania, in lawful session duly assembled.

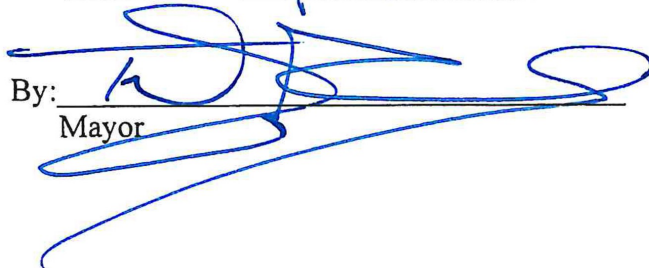
BOROUGH OF MOUNT JOY
Lancaster County, Pennsylvania

Attest: 
(Assistant) Secretary

By: 
(Vice) President
Borough Council

[BOROUGH SEAL]

Examined and approved as an Ordinance this 12 day of September, 2022.

By: 
Mayor