

Adopted 11/22/2022

CB 2022-39

## AN ORDINANCE

**AMENDING ARTICLE 169 - POLICE PENSION PLAN OF THE  
CODIFIED ORDINANCES OF THE CITY OF NEW CASTLE,  
PENNSYLVANIA BY ADDING SUBSECTION 169.15 - DEFERRED  
RETIREMENT OPTION PLAN (DROP) PROVISION.**

**WHEREAS**, City Council intends that the Plan be updated to comply with the DROP provisions found in the Police Collective Bargaining Agreement and with Act 44 of 2009; and

**WHEREAS**, any Ordinances or parts thereof which conflict with the provisions of the Ordinance shall be, and the same are hereby repealed so far as they shall affect this Ordinance; however, such repeal shall not affect any act done or any right or liability accrued under any such Ordinance which shall be hereunder repealed or superseded and all such rights or liabilities shall continue and may be enforced in the same manner as if such repeal or supersession had not been made but only to the extent otherwise permitted under the laws of the Commonwealth of Pennsylvania.

**WHEREAS**, the Plan is hereby amended by adding a new Section 169.15 Deferred Retirement Option Plan (DROP).

**WHEREAS**, effective beginning January 1, 2021, for any Qualifying Officer who shall make an irrevocable election, the City of New Castle Police Pension Fund (Fund) is amended to add a DROP pursuant to Section 169.15 which shall provide as described below. The election into this DROP and entering the DROP benefit must be made after reaching the later of twenty-five (25) Years of Credited Service and age fifty-seven (57).

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF NEW CASTLE, PENNSYLVANIA**, that ARTICLE 169 - Police Pension Plan is hereby amended as follows to add the SECTION 169.15 DEFERRED RETIREMENT OPTION PLAN (DROP):

## SECTION 169.15 DEFERRED RETIREMENT OPTION PLAN (DROP)

- (a) Definitions-Unless otherwise specifically set forth in this Section 169.15 the defined terms used herein shall have the meaning assigned to them in the remainder of Article 169.
- (1) DROP-The DROP is created as an optional form of benefit under the existing City of New Castle Police Pension Fund (Fund). The DROP shall be for a maximum three-year term.
  - (2) DROP Account-A separate account created to accumulate the DROP pension benefit for a DROP Participant.
  - (3) DROP Participant- Qualifying Officer who has elected to participate in the DROP program.
  - (4) Qualifying Officer- Shall mean any full-time active Participant who has attained an age of 57 with 25 Years of Credited Service and thus is eligible for Normal Retirement.
- (b) Eligibility-Qualifying Officers may elect to enter the DROP on the first day of any month after reaching age 57 and 25 Years of Credited Service.
- (c) Written Election-A Qualifying Officer in the Fund electing to participate in the DROP program must complete and execute a "DROP Election Form" which shall evidence the DROP Participant's participation in the DROP program, the DROP Participant's election to forego active membership in the Fund and document the DROP Participant's rights and obligations under the DROP. The form must be signed by the DROP Participant and the Chief Administrative Officer of the Fund and submitted to the Plan Administrator prior to the date on which the DROP Participant elects to enter the DROP (Election Date). Election Date must be after the later of age 57 and 25 Years of Credited Service.

## 8424 CONTINUED

The DROP Election Form shall include an irrevocable notice to the Employer by the DROP Participant that the DROP Participant shall terminate from employment with the Employer effective on a specific date not more than three years from the effective date of the DROP Participant's entry into the DROP. In addition, all retirement documents required by the City must be filed and presented to the Board for approval of retirement and commencement of the monthly pension benefit. Once the retirement application has been approved by the Board, it shall become irrevocable. A DROP Participant's participation shall become effective the day following his Election Date.

- (1) After a DROP Participant enters the DROP program, contributions to the Fund by the Participant will cease, and the amount of the monthly benefits will be frozen except for any applicable cost-of-living adjustment (COLA) increases, if any, awarded to all pension recipients.
- (2) Participants should consult a tax advisor of their choice prior to considering the DROP program, as there may be serious tax implications and/or consequences to participating in the DROP.

(d) **Limitation on Pension Accrual**-After the effective date of the DROP election, the DROP Participant shall no longer earn or accrue additional years of service for pension purposes including the calculation of any service increment. The DROP Participant shall also forego any growth in salary after the Election Date for the purpose of calculating retirement benefits under the Fund

(e) **Ineligibility for Re-enrollment in DROP** - Once a DROP Participant's DROP participation terminates, he shall be ineligible to re-enroll in the DROP even if the former DROP Participant is reemployed by the local government with renewed active membership in the Fund.

(f) **Benefit Calculation**-For all Fund purposes, service of a DROP Participant shall remain as it existed on the effective date of commencement of participation in the DROP program. Service thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Fund including any service increments that may be available. The Average 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 program. Earnings or increases in earnings thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Fund. The pension benefit payable to the Participant shall increase only as a result of cost-of-living adjustments (COLAs), if any, effective on or after the date of the DROP Participant's participation in the DROP.

(g) **Payments to DROP Account**-The monthly retirement benefits that would have been payable had the DROP Participant elected to cease employment and receive a retirement benefit shall, upon the DROP Participant commencing participation in the DROP program, be credited on the first day of each month into a separate account established by the Fund Administrator to track and accumulate the Participant's monthly pension benefits. This account shall be designated the DROP Account. The DROP Account shall not contain a guaranteed interest rate but shall be credited with interest at the actual rate earned by the DROP account but shall not be less than 0% nor greater than 4.5% and shall be compounded monthly. The DROP Account shall be a segregated account into which each DROP Participant's monthly retirement benefit shall be deposited. All earnings or losses credited to the DROP Account will be included in the final cash settlement. The DROP Account shall be invested in an insured savings account, money market account or a mutual fund invested in ultra short-term treasuries as may be selected by the Comprehensive Board of Trustees. All earnings or losses credited to the DROP Account will be included in the final cash settlement.

- (1) The DROP shall at all times comply with the annual benefit limitations of IRC §415 and the regulations thereto.

(h) **Early Termination**-A DROP Participant may withdraw from the DROP program at any time and effectuate a complete separation from service. No penalty shall be imposed for early termination of DROP participation. However, the DROP Participant shall not be permitted to make any withdrawals from the DROP Account until DROP participation has ended.

(i) **Payout** - Upon the termination date set forth in the DROP Election Form or on such date as the DROP Participant withdraws or is terminated from the DROP program, if earlier, the retirement benefits payable to the Participant shall be paid directly to the Participant and shall no longer be credited to the DROP Account. Within a period not to exceed forty five (45) days following the actual termination of a Participant's employment with the City, the DROP Participant or the DROP Participant's designated Beneficiary, where applicable, shall elect one of the following options: (1) the accumulated

balance in the DROP Account, less any withholding taxes required to be remitted to the Internal Revenue Service, shall be paid to the DROP Participant or his designated surviving Beneficiary in a single lump-sum payment; or (2) the balance of the DROP Participant's DROP Account shall be paid within 45 days directly to the custodian of an eligible retirement Fund as defined in section 402 (c)(8)(b) of the Internal Revenue Code of 1986 (IRC) or in the case of an eligible rollover distribution to the surviving spouse of a deceased DROP Participant, an eligible retirement Fund that is an individual retirement account or an individual retirement annuity as described in IRC §402(c)(9). If the DROP Participant or designated Beneficiary fails to elect a method of payment within 60 days after the DROP Participant's termination date, the DROP Participant's DROP Account shall be paid in a lump sum as provided in (2) above. All distributions of the DROP Account shall comply with IRC §401(a)(9).

- (1) Under this Subsection (i) a distributee may elect to have an eligible rollover distribution paid directly to an eligible rollover distribution paid directly to an eligible retirement Fund by way of a direct rollover. For purposes of this section a "distributee" includes a DROP Participant, a DROP Participant's designated Beneficiary, or in lieu thereof, a DROP Participant's survivor as provided by Article 169, and a DROP Participant's former spouse who is an alternate payee under a qualified domestic relations order. For purposes of this Section "eligible rollover distribution" has the meaning given the term by IRC §402(f)(2)(A) except that a qualified trust shall be considered an eligible Fund only if it accepts the distributee's eligible rollover distribution and, in the case of an eligible rollover distribution to a surviving spouse, an eligible retirement Fund is an "individual retirement account" or an "individual retirement annuity" as those terms are defined in IRC §408(a) and (b).

(j) **Death** - A DROP Participant's eligibility to participate in the DROP terminates upon the death of the DROP Participant. If a DROP participant dies on or after the effective date of participation in the DROP but before the first monthly retirement benefit due the DROP Participant for that month has been credited to his DROP Account, the Fund shall pay the monthly retirement benefit as though the DROP Participant had not elected DROP Participation and had died after the DROP Participant's effective date of retirement but before receipt of the DROP Participant's first regular retirement benefit. If a DROP Participant dies while participating in the DROP and after his monthly retirement benefits have begun to have been credited to his DROP Account, the monthly retirement benefit credited to the DROP Participant's DROP Account during the month of the DROP Participant's death shall be the final monthly retirement benefit from the Fund credited to his DROP Account.

- (1) Except for those benefits specifically payable as a result of death incurred in the course of performing a hazardous public duty, the survivors of the DROP Participant who dies shall not be eligible to receive retirement system death benefits payable in the event of the death of an active member. The DROP Participant's survivor(s) shall be eligible to receive survivor benefits normally payable in the event of the death of a retired Participant.

(k) **Disability** - If a DROP Participant becomes eligible for a disability benefit from the Fund and terminates employment, the monthly non-disability retirement benefit of the DROP Participant shall terminate.

(l) **Eligibility for Other Benefits** - Drop Participants shall be eligible for all non-pension employee benefits provided to active employees under the collective bargaining agreement in effect at the time of their enrollment as a DROP participant, except that such eligibility shall not cause, result in, or be construed to require, any growth in the salary base used for calculating the retirement benefit for such DROP participants.

(m) **Eligibility for Statutory Benefits** - A DROP Participant shall be eligible for all preretirement benefits for employees otherwise provided by law including, but not limited to the following:

- (1) "The Workers' Compensation Act" (the Act of June 2, 1915 (P.L. 736, No. 338)).
- (2) "The Enforcement Officer Disability Benefits Law" (the Act of June 28, 1935 (P.L. 477, No. 193)).
- (3) "The Unemployment Compensation Law" (the Act of December 5, 1936 (2nd Sp. Sess., 1937 P.L. 2897, No. 11)).



## 8424 CONTINUED

- (4) "The Emergency and Law Enforcement Personnel Death Benefits Act (the Act of June 24, 1976 (P.L. 424, No. 101)).
- (5) "The Public Safety Officers' Benefit Act of 1976" (Public Law 94-430, 42 U.S.C. §90 Stat. 1347).

(n) Designation of Beneficiary - A DROP Participant may designate a DROP Beneficiary who shall be entitled to apply for and receive the DROP Participant's DROP Account in the event of the DROP Participant's death while participating in the DROP. In the event that a DROP Participant does not designate a Beneficiary and dies while participating in the DROP, his DROP Account will be paid to his survivor(s) as determined under Article 169 and if no such survivors exist, then to his estate.

(o) Amendment - Any amendments to the DROP Ordinance shall be consistent with the provisions covering deferred retirement option plans set forth in any applicable collective bargaining agreement or state or federal law and shall be binding upon all future Participants and upon all DROP Participants who have balances in their DROP Accounts.

(p) Taxation, Attachment and Assignment - Except as provided in this paragraph, the right of a DROP Participant to any benefit or right accrued or accruing under the Provisions of this Section 169.15 and moneys in the DROP Participant's DROP Account are exempt from a State or municipal tax, levy and sale, garnishment, attachment, spouse's election, or any other process whatsoever. Rights and benefits under Section 169.15 shall be subject to forfeiture as provided by the Public Employees Forfeiture Act (the Act of July 8, 1978 (P.L. 752, No. 140)). Forfeitures under this paragraph or under any other provision of law may not be applied to increase the benefits that any DROP Participant otherwise would receive under this Section 169.15. Rights under this Section 169.15 shall be subject to attachment in favor of an alternate payee as set forth in a qualified domestic relations order and State law.

(q) Trust Requirement - A DROP Participant's DROP Account shall be held in trust for the exclusive benefit of Fund Participants who are or were DROP Participants and for their Beneficiaries.

(r) Severability - The provisions of this Section 169.15 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 this Article 169 shall not be affected thereby. It is hereby expressly declared as the intent of the City that this Section 169.15 has been adopted as if such unconstitutional or illegal provision or provisions have not been included herein.

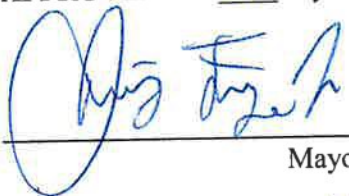
(s) Auditor General Findings - If the Auditor General issues a finding of non-compliance with the provisions of Act 44 of 2009 that govern this DROP, the City shall be authorized to reform this DROP Ordinance to bring it into compliance with the DROP within 90 days of the date the Auditor General's finding becomes final.

That this Ordinance, when adopted, shall be incorporated in and made a part of the Codified Ordinances of the City of New Castle, Pennsylvania.

INTRODUCED this 10<sup>th</sup> day of November, 2022.

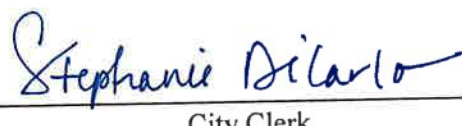
ADOPTED this 22<sup>nd</sup> day of November, 2022.

APPROVED this 29<sup>th</sup> day of November 2022.



Mayor

CERTIFIED this 29<sup>th</sup> day of November 2022.



City Clerk