

1st Reading
2ND Reading

12-12-2022

1-23-2023

City of Sunbury
ORDINANCE NO. 1328

An Ordinance of the City of Sunbury, Northumberland (County), Pennsylvania, amending the Code of Ordinances, Chapter ____, Article 11 entitled City of Sunbury Defined Contribution Pension Plan in order to reflect the administrative changes previously authorized and permitted under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE) and the Coronavirus Aid, Relief, and Economic Security Act (CARES).

WHEREAS, the City of Sunbury previously established the City of Sunbury Defined Contribution Pension Plan; and

WHEREAS, the City of Sunbury in order to reflect the administrative changes previously authorized and permitted under the Plan, desires to enact an amendment to the Plan;

NOW THEREFORE, be it ordained and enacted by the City of Sunbury that the attached amendment to the City of Sunbury Defined Contribution Pension Plan is enacted.

Jashua A Brasious as the agent of the Employer is authorized and directed to execute the attached amendment to the Plan.

SECURE AND CARES COMPLIANCE AMENDMENT TO THE CITY OF SUNBURY DEFINED CONTRIBUTION PENSION PLAN

As authorized by Section 7.2 of the City of Sunbury Defined Contribution Pension Plan (Plan) as effective January 1, 2022, the employer, City of Sunbury, hereby amends the Plan as permitted under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE) and the Coronavirus Aid, Relief, and Economic Security Act (CARES). This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment. The employer hereby amends the Plan in the following manner:

FIRST: Distribution Requirements

Section 5.2 is amended to comply with the amendments made to Internal Revenue Code ("IRC") section 401(a)(9). As amended, the amended portions of Section 5.2 shall read as follows:

Notwithstanding the provisions of this Section 5.2, in the absence of an affirmative election, a participant or beneficiary will not receive a required minimum distribution to the extent the participant or beneficiary would have been required to receive required minimum distributions in 2020 (or by a required beginning date of April 1, 2021 with respect to the 2020 calendar year) but for the enactment of IRC section 401(a)(9)(I) (2020 RMDs) and would have satisfied that requirement by receiving distributions that are either (1) equal to the 2020 RMDs, or (2) one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a period of at least 10 years (Extended 2020 RMDs). The participant or beneficiary will be given an opportunity to make an election as to whether or not to receive those distributions; however, a direct rollover will be offered only for distributions that would be eligible rollover distributions in the absence of IRC section 401(a)(9)(I).

- (c) **Death of Participant Before Distributions Begin** – If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:
- (1) If the participant's surviving spouse is the participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 72 (age 70½ with respect to participants born on or before June 30, 1949 or dying before January 1, 2020), if later. If the surviving spouse so elects, the participant's entire interest will be distributed to such surviving spouse by December 31 of the calendar year containing the tenth anniversary of the participant's death (fifth anniversary of the participant's death with respect to participants born on or before June 30, 1949 or dying before January 1, 2020). If no election is received, distributions to the surviving spouse will begin by December 31 of the calendar year in which the participant would have attained age 72 (age 70½ with respect to participants born on or before June 30, 1949 or dying before January 1, 2020), or the participant's entire interest will be distributed to such surviving spouse by December 31 of the calendar year containing the tenth anniversary of the participant's death (fifth anniversary of the participant's death with respect to participants born on or before June 30, 1949 or dying before January 1, 2020), if later.
 - (2) If the participant's surviving spouse is not the participant's sole eligible designated beneficiary, then distributions to the eligible designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died. If the eligible designated beneficiary so elects or if no election is received, the participant's entire interest will be distributed to such eligible designated beneficiary by December 31 of the calendar year containing the tenth anniversary of the participant's death (fifth anniversary of the participant's death with respect to participants dying before January 1, 2022).

- (3) If the participant's beneficiary satisfies the requirements to be a designated beneficiary, but does not satisfy the requirements to be an eligible designated beneficiary; the participant's entire interest will be distributed by December 31 of the calendar year containing the tenth anniversary of the participant's death (fifth anniversary of the participant's death with respect to participants dying before January 1, 2022).
- (4) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
- (5) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse are required to begin, this Section 5.2(c), other than Section 5.2(c)(1), will apply as if the surviving spouse were the participant.

For purposes of this Section 5.2(c) and Section 5.2(f), unless Section 5.2(c)(4) applies, distributions are considered to begin on the participant's required beginning date. If Section 5.2(c)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 5.2(c)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 5.2(c)(1)), the date distributions are considered to begin is the date distributions actually commence.

* * *

(f) Required Minimum Distributions after Participant's Death

(1) Death on or after Date Distributions Begin

- (A) Participant Survived by Eligible Designated Beneficiary** – If the participant dies on or after the date distributions begin and there is an eligible designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the longer of the remaining life expectancy of the participant or the remaining life expectancy of the participant's eligible designated beneficiary, determined as follows:
 - (i) The participant's remaining life expectancy is calculated using the age of the participant in the year of death, reduced by one for each subsequent year.
 - (ii) If the participant's surviving spouse is the participant's sole eligible designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (iii) If the participant's surviving spouse is not the participant's sole eligible designated beneficiary, the eligible designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the participant's death, reduced by one for each subsequent year.
- (B) Participant Survived by Designated Beneficiary** – If the participant's beneficiary satisfies the requirements to be a designated beneficiary, but does not satisfy the requirements to be an eligible designated beneficiary; the participant's entire interest will be distributed by December 31 of the calendar year containing the tenth anniversary of the participant's death. The life expectancy payments will not be continued after that date. This Section 5.2(f)(1)(B) shall not apply with respect to beneficiaries of participants dying before January 1, 2022.
- (C) No Designated Beneficiary** – If the participant dies prior to January 1, 2022, but on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the

participant's remaining life expectancy calculated using the age of the participant in the year of death, reduced by one for each subsequent year. If the participant dies on or after January 1, 2022, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(2) Death Before Date Distributions Begin

- (A) **Participant Survived by Eligible Designated Beneficiary** – If the participant dies before the date distributions begin and there is an eligible designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the remaining life expectancy of the participant's designated beneficiary, determined as provided in Section 5.2(f)(1).
- (B) **Participant Survived by Designated Beneficiary** – If the participant's beneficiary satisfies the requirements to be a designated beneficiary, but does not satisfy the requirements to be an eligible designated beneficiary; the participant's entire interest will be distributed by December 31 of the calendar year containing the tenth anniversary of the participant's death. This Section 5.2(f)(2)(B) shall not apply with respect to beneficiaries of participants dying before January 1, 2022.
- (C) **No Designated Beneficiary** – If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.
- (D) **Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin** – If the participant dies before the date distributions begin, the participant's surviving spouse is the participant's sole eligible designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 5.2(c), this Section 5.2(f)(2) will apply as if the surviving spouse were the participant.

(g) Definitions (IRC Section 401(a)(9) Requirements)

(1) Beneficiary

- (A) **Designated Beneficiary** – The individual who is designated as the beneficiary of the participant's interest under the plan and who is the designated beneficiary under IRC section 401(a)(9) and Regulation section 1.401(a)(9)-4.
- (B) **Eligible Designated Beneficiary** – A designated beneficiary who is an eligible designated beneficiary including the participant's surviving spouse, a person not more than 10 years younger than the participant, a child of the participant until he reaches the age of majority, a disabled person, or a chronically ill person as provided under IRC section 401(a)(9)(E)(ii).

* * *

(5) Required Beginning Date

- (A) **Non-5% Owner** – The required beginning date is April 1 of the calendar year following the later of: (i) the calendar year in which the participant attains age 72 (age 70½ with respect to participants born on or before June 30, 1949), or (ii) the calendar year in which the participant retires.
- (B) **5% Owner** – The required beginning date for a participant who is a 5% owner is April 1 of the calendar year following the calendar year in which the participant attains age 72 (age 70½ with respect to participants born on or before June 30, 1949). A participant is treated as a 5% owner for purposes of this Section 5.2(g)(5) if such participant is a 5% owner as defined in IRC section 416(i) (determined in accordance with section 416 but without regard to whether the plan is top-heavy) at any time during the plan year ending with or within the calendar year in which such participant attains the required age.

- (C) Once distributions have begun to a 5% owner under this Section 5.2(g)(5), they must continue to be distributed, even if the participant ceases to be a 5% owner in a subsequent year.

SECOND: General Payment Provisions

Section 4.3(c)(3) are amended regarding the portability of lifetime income options under IRC section 401(a)(38).

As amended, Section 4.3(c)(3) shall read as follows:

- (3) Any annuity contract distributed here from shall be transferred to an individual retirement account established by or on behalf of the participant. Prior to distribution, the ownership of an annuity contract investment shall reside with the plan.

Any dividend, refund or recovery on an annuity contract investment shall be credited to the participant or beneficiary for whom the annuity contract was purchased.

THIRD: Automatic Rollovers of Eligible Rollover Distributions

Section 4.3(d) is amended to provide for automatic rollovers where the terminated participant has made no distribution election, including accounts that are less than \$1,000 where the financial institution will accept such lesser amounts. As amended, Section 4.3(d)(5) shall read as follows:

- (5) **Automatic Rollovers** - In the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of Section 4.2(b)(2)(A), if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly in accordance with Section 4.3(e), then the plan administrator shall pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. For purposes of determining whether a mandatory distribution is greater than \$1,000, the portion of the participant's distribution attributable to any rollover contribution shall be included.

If a distribution of \$5,000 or less is made to a participant but the check remains uncashed until the issuing institution deems it stale, the plan administrator shall pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. If the distribution is \$1,000 or less, such disbursement shall be made only to the extent the financial institution will accept the amount.

FOURTH: In-Service Withdrawal

Section 4.4(b) is amended to clarify that although a participant is generally prohibited from receiving an in-service withdrawal while a loan is in default, a hardship withdrawal will still be permitted. As amended, the revised provision of Section 4.4(b) shall read as follows:

In general, no withdrawal shall be permitted if the employee has received a participant loan from this plan and such loan is in default; however, a hardship withdrawal shall be permitted, even if a loan is in default.

FIFTH: Limitations on Allocations Under IRC Section 415 -- Compensation

Section 5.1(c)(2) is amended to take into account difficulty of care payments for the purpose of compliance with IRC section 415(c)(8). As amended, Section 5.1(c)(2) shall contain an additional paragraph that shall read as follows:

For plan years beginning after December 31, 2015, compensation for a limitation year shall include amounts received by a participant as difficulty of care payments and otherwise meeting the requirements of IRC section 131(c).

SIXTH: Effective Date

These amendments are effective as of January 1, 2020, except as otherwise provided herein.

SEVENTH: Remaining Plan Provisions

All other provisions of the Plan remain in full force and effect.

Executed this 23 day of January, 2023 by the duly authorized agent of City of Sunbury.

Joshua Rosen

Title: Mayor