

**PART 6**

**PENSIONS AND RETIREMENT**

**A. Non-Uniformed Employees Pension Plan.**

**§1-601. Establishment of Plan.**

A pension plan for the full-time non-uniformed employees of the Borough is hereby adopted and established under the terms and conditions hereinafter set forth.

(Ord. 953, 12/13/1993, §I)

**§1-602. Eligibility.**

To be a plan participant, an employee must work no less than 35 regularly scheduled hours per week.

(Ord. 953, 12/13/1993, §II)

**§1-603. Normal Retirement.**

A participant may retire after he/she has attained the age of 65 years and has completed 5 years of service, whichever comes later.

(Ord. 953, 12/13/1993, §III; as amended by Ord. 983, 5/10/1999, Art. I)

**§1-604. Early Retirement.**

A participant may retire early after he/she has attained the age of 62 years and has completed 20 years of service, whichever comes later. However, the retirement benefit available at early retirement will be reduced proportionately for each month retirement takes place prior to age 65.

(Ord. 953, 12/13/1993, §IV)

**§1-605. Disability.**

Participants who are vested in the plan and who are permanently separated from the Borough work force by any injury or condition which permanently prevents said participant from returning to full-time employment with the Borough shall be entitled to receive a reduced deferred benefit commencing on said participant's normal retirement date.

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(Ord. 953, 12/13/1993, §V)

### **§1-606. Separation from Employment.**

Any participant whose employment with the Borough ends for any reason and who later returns to employment with the Borough shall not receive credit for said participant's prior employment with the Borough.

(Ord. 953, 12/13/1993, §VI)

### **§1-607. Retirement Formula.**

A participant will be credited for each year of full-time service with the Borough. He/she will receive a credit of 2 1/2% for each year of service (maximum credit 45%) times the average salary for the sixty-month period immediately preceding retirement. For partial years of full-time service, the participant will receive no credit for partial years of employment of less than six months and full credit for partial years exceeding six months.

(Ord. 953, 12/13/1993, §VII; as amended by Ord. 983, 5/10/1999; Art. II)

### **§1-608. Vesting.**

Vesting shall occur upon completion of five years of service. No vesting shall occur prior to five years of service and the participant shall be fully vested after five years of service.

(Ord. 953, 12/13/1993, §VII; as amended by Ord. 983, 5/10/1999, Art. III)

### **§1-609. Prior Retirees.**

Any benefits being paid to any individual as a beneficiary under the Borough's prior non-uniformed pension plan shall become the responsibility of the plan created by this Part.

(Ord. 953, 12/13/1993, §IX)

### **§1-610. Funding.**

The participants shall not be required to make contributions to fund this plan.

(Ord. 953, 12/13/1993, §X)

**§1-611. Chief Administrative Officer.**

Borough Council shall, by resolution, designate an individual to act as chief administrative officer of the plan created by this Part.

(Ord. 953, 12/13/1993, §XI)

**§1-612. Consultants.**

Borough Council may retain such consultants and investment advisors as it deems necessary and appropriate and open such accounts as are required to effectuate the plan.

(Ord. 953, 12/13/1993, §XII)

**B. Police Pensions and Benefits.**

**§1-621. Definition of Terms.**

**ACCRUED BENEFIT** — a participant's accrued benefit as of any date shall be equal to the normal retirement benefit determined in accordance with §1-623(2) multiplied by the years of service to the date employment was terminated, and then divided by the number of years of service the participant would have earned if the participant continued to work to the normal retirement date, as defined in §1-623(1). [Ord. 1015]

**CONTRIBUTION** — the money paid by the Borough to the pension plan established pursuant to this Part or by a member of said plan.

**COUNCIL** — the governing body of the Borough of Philipsburg, acting in the capacity of administrator of the Police Pension Plan established pursuant to this Part.

**EMPLOYER** — the Borough of Philipsburg.

**FUTURE SERVICE LIABILITY** — the value of any participant's benefits which shall accrue by the virtue of service rendered subsequent to the enactment of this Part.

**PARTICIPANT** — every person duly appointed, from time to time, by the Borough as a full-time police officer working not less than 35 hours per week at a definite salary, subject to reasonable vacation and sick leave, to be included in the plan upon date of hire.

**PLAN** — the police pension plan established pursuant to this Part.

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**SALARY** — the amount of compensation received by a participant in each and every month, including base pay, overtime pay, longevity pay, night differential, any other such increments. The term salary shall include regular payments made for vacation time, sick time, compensation time, personal days and bereavement leave, but shall not include lump sum payments for any unused days for any of the foregoing listed benefits.

**SERVICE** — total aggregate service beginning upon date of hire. Years of service in excess of six months shall be credited as an additional year, years of service of less than six months shall be disregarded.

**TERMINATION** — the cessation of service by the participant for any reason, including disability, resignation and employer termination. Death shall not be considered a termination within the meaning of this Part. Voluntary leaves of absence without pay shall not be considered a termination for purposes of this Part, but no period of such leave shall be computed in the total service for pension benefit purposes. Leaves of absence with pay shall not be considered a termination within the meaning of this Part, but such leaves may be computed in the total service for pension benefit purposes.

**UNFUNDED LIABILITY** — the present value of any participant's benefits accrued prior to the enactment of this Part by virtue of his/her prior service.

(Ord. 969, 9/9/1996; as amended by Ord. 1015, 3/10/2003, §1)

### **§1-622. Administration.**

1. The Council shall administer the plan established pursuant to this Part by such regulations as shall, from time to time, be necessary for the effective maintenance of the plan; provided, that no regulation shall be contrary to the statutes of the Commonwealth of Pennsylvania and/or applicable Federal regulations. Borough Council shall have the authority to designate a trustee or other fund manager for the assets of said pension; provided, that it is governed by a written contract between the Borough and the trustee or fund manager, setting forth the duties and obligations of each.
2. All such reasonable expenses incurred in the administration of the plan, including actuaries, accountants and legal counsel shall be approved by the Council and may be paid from the plan; provided, that no such payment shall be contrary to the statutes of the Commonwealth of Pennsylvania.
3. No member of the Council shall incur any liability for any action or failure to act, excepting only liability for its own gross negligence or willful misconduct. The employer shall indemnify each member of the Council against any and all claims, loss, damages, expense and liability arising from any action or failure to act, except for such that is the result of gross negligence or willful misconduct of such member.

(Ord. 969, 9/9/1996)

**§1-623. Retirement Requirements and Benefits.**

1. Eligibility for Normal Retirement.
  - A. A participant in the plan may retire from active employment on the first day of the month following the attainment of age 50 or on the first day of the month following the completion of 25 or more years of service. [Ord. 1018]
  - B. A participant shall retire on the first day of the month following the attainment of age 70. [Ord. 1015]
2. Normal Retirement Benefit. A participant who shall complete the age and service requirements set forth in this Part shall receive a pension for life, payable in equal monthly installments in an amount of 50% of the average monthly salary over the last 36 months of employment.
3. Disability Benefits. In the event of any participant's total and permanent disability incurred in service, such participant shall become eligible for a monthly disability pension. Council shall have the right to require the member to submit to a medical examination by a physician selected by Council to confirm the participant's total disability and to submit to periodic reevaluations in order to establish continuing total disability. Such disability pension shall be equal to 50% of the participant's salary at the time of disability. If any participant should receive benefits for the same injury under the Social Security Act (40 Stat. 620, 42 U.S.C. §301 et seq.), the participant shall have his disability benefits offset by the amount of such benefits. [Ord. 1018]
4. Death Benefit for Retirees and Those Eligible to Retire.
  - A. Upon the death of a participant who is retired on pension or in the case of a participant who, though not retired is eligible to retire, the participant's spouse (or certain children described below) shall be entitled to receive a pension benefit. Upon the death of the spouse (or upon the death of the participant if there is no surviving spouse), the benefit will be paid to surviving children until they reach the age of 18 (age 23, if "attending college").
  - B. The amount of this death benefit shall be 50% of the pension the participant was receiving or would have been receiving had he retired at the time of his death.
  - C. Definition of "Attending College." For the purpose of this Section, "attending college" means being registered at an accredited institution of higher learning and carrying a minimum course load of seven credit hours per semester.

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[Ord. 1015]

### 5. Pre-Retirement Death Benefit.

- A. **Non-Service Related Death.** If a participant dies before his pension has vested, the participant's beneficiary shall be entitled to receive a refund of the participant's contributions to the plan with interest at the rate of 6% per annum. The beneficiary shall be the participant's surviving spouse, or if no spouse survives or if he or she survives and subsequently dies, the child or children under the age of 18 years (age 23 if "attending college"), unless the participant has designated another beneficiary to receive the benefit. [Ord. 1015]
- B. **Service Related Death.** When a participant is killed in service, the participant's spouse (or certain children described below) shall be entitled to receive a pension benefit. Upon the death of the spouse (or upon the death of the participant if there was no surviving spouse), the benefit will be paid to surviving children until they reach the age of 18 (age 23, if "attending college"). The amount of pension for participants killed in service shall be 100% of the participant's salary at the time of death. [Ord. 1018]
- C. **Definition of "Attending College."** For the purpose of this Section, "attending college" means being registered at an accredited institution of higher learning and carrying a minimum course load of seven credit hours per semester. [Ord. 1015]

### 6. Cost of Living Adjustment (COLA).

- A. A cost of living adjustment (COLA) shall be granted automatically to all retirees, on a yearly basis. Except where otherwise provided herein, the amount of said adjustment shall be equal to the percentage increase in the Consumer Price Index for the year preceding the year of the increase.
- B. The amount of the cost of living adjustment shall not exceed the percentage increase in the Consumer Price Index from the year in which the officer last worked.
- C. In no case shall the total police pension benefits exceed 75% of the average monthly salary used for computing basic retirement benefits.
- D. The total cost of living adjustment shall not exceed 30% of the retirement benefit.
- E. No cost of living adjustment shall be made that would impair the actuarial soundness of the Police Pension Plan. Prior to the implementation of any cost of living adjustment, the Fun Actuary shall submit to the Police Pension Board a written cost estimate of the funding cost of such adjustment.

[Ord. 1015]

7. Vesting. Plan participants shall be 100% vested in the accrued benefit after 12 years of service. Such vested deferred monthly benefit shall be paid to a member upon attainment of his/her retirement date as set forth in this Part. [Ord. 1015]
8. Non-Alienation of Benefits and Vesting.
  - A. No benefit under the plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge encumbrance or charge. Nor shall any benefits be in any manner liable for or subject to garnishment, attachment, execution levy or other legal process.
  - B. Further, all benefits granted herein shall vest in the participant upon completion of the requirements for eligibility and he/her benefits shall continue in the amount and in the form in which he/she first became entitled to them.

[Ord. 1015]

9. Effective Date. The effective date of this plan shall be April 28, 1996. [Ord. 1015]

(Ord. 969, 9/9/1996; as amended by Ord. 1015, 3/10/2003, §§3-7; and by Ord. 1018, 8/11/2003, §§1, 4, 5)

#### **§1-624. Contributions.**

1. Contribution of the Borough.
  - A. It shall be the liability of the Borough to fund the past service liability as determined by the actuary; provided, that such liability may be funded over a period not to exceed 10 years, such period commencing with the passage of this Part.
  - B. It shall be the liability of the Borough to fund for the future service cost of the plan.
  - C. It shall be the responsibility of the Borough to maintain the actuarial soundness of the plan.
  - D. Contributions to the plan paid by the Borough shall be at an amount determined by an annual calculation which shall be completed on a calendar year basis.
  - E. Members of the fund will contribute at a rate of 5% of their monthly wage and have the Borough deduct the same from the member's salary. [Ord. 1018]

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- F. The contributions of the members may be reduced or eliminated by the Borough by ordinance or resolution, if a study shows the fund is and will remain actuarially sound.
2. Allocation of Assets of Existing Pension Plans. Any assets of any existing pension plans for the police officers of the Borough are hereby transferred to the plan established pursuant to this Part and all liabilities of the existing plan shall also be transferred.
3. Gifts, Bequests and Grants. All other monies and property received by the plan, including gifts, bequests, devises and grants shall, unless otherwise specifically provided, be applied equally against the participant and the Borough portions of the future service cost.

(Ord. 969, 9/9/1996; as amended by Ord. 1015, 3/10/2003, §8; and by Ord. 1018, 8/11/2003, §2)

### **§1-625. Credit for Military Service.**

Any police officer of the Borough for at least six months who thereafter shall enter the military service of the United States shall have credited to his/her employment record for pension benefit purposes all of the time spent by him/her in such military service; provided, that such person returns to his/her employment with the Borough within 6 months after his/her separation from such service.

(Ord. 969, 9/9/1996)

### **§1-626. Amendments.**

The Council reserves the right to amend at any time, in whole or in part, any or all of the provisions of the plan; provided, that no such amendment shall authorize or permit any part of the plan to be used or diverted to purposes other than for the exclusive benefit of the participants, their beneficiaries or their estates, nor shall any amendments divest a participant of benefits vested by §623(7). All such amendments shall comply with the applicable statutes of the Commonwealth of Pennsylvania.

(Ord. 969, 9/9/1996)

### **§1-627. Termination of the Plan.**

Upon termination of the plan, the assets shall be distributed as follows:

- A. Sufficient funds shall be maintained to provide the pension benefits prescribed in §1-623 for all participants who have retired prior to the termina-



tion of the plan or who are eligible to retire at the time of the termination of the plan.

- B. Sufficient funds shall be maintained to provide the vested pension benefits prescribed in §1-623 for all participants who are eligible for such benefits.
- C. Contributions with interest at the rate of 6% as provided in §1-624(E) shall be refunded to any and all participants who terminate service at the time of the termination of the fund.
- D. Of the remaining funds, those which can be identified as Borough contributions or contributions other than from participants shall be distributed as the Council sees fit; provided, that such distribution is made on a uniform basis.
- E. All funds in excess of the funds described in Subsections A, B, C and D above shall be returned to the Commonwealth as unused funds.

(Ord. 969, 9/9/1996)

**§1-628. Participant's Rights and Borough's Rights to Terminate.**

- 1. Neither the establishment of the plan hereby created, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits shall be construed as giving to any participant or other person any legal or equitable right against the Borough or any officer or employee thereof or the Council, except as herein provided or as provided by law. Under no circumstances shall the plan created hereby constitute a contract for continuing employment for a participant or in any manner obligate the Borough to continue or discontinue the services of an employee.
- 2. This plan has been established and shall be maintained by the Borough in accordance with the laws of the Commonwealth of Pennsylvania. The plan shall continue for such period as may be required by such laws; provided, that the Borough may, by its own action, discontinue this plan should such laws provide and the Borough reserves the right to take such action in its sole and absolute discretion. Upon determination, the Borough shall have no liability hereunder other than that imposed by law.

(Ord. 969, 9/9/1996)

**§1-629. Construction of Plan.**

- 1. This Plan shall be constructed according to the laws of the Commonwealth of Pennsylvania and all provisions hereof shall be administered according to the laws of such Commonwealth.

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2. Should any Section, subsection, sentence, clause or phrase of this Part be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the Part in its entirety or of any part thereof other than that portion declared to be invalid.
3. Any ordinance or part of an ordinance which is inconsistent herewith is hereby repealed.
4. Wherever any words are used herein in the masculine gender, they shall be construed as though they were also used in the feminine gender in all cases where they would so apply and wherever any words are used herein in the singular form, they shall be construed as though they were also used in the plural form in all cases where they would so apply.
5. Headings of Parts and Sections 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.

(Ord. 969, 9/9/1996)