

## Chapter 1

### ADMINISTRATION AND GOVERNMENT

#### Part 1

#### COMPENSATION OF SUPERVISORS

**§ 1-101. Compensation for the Supervisors of Sandy Township, Elected or Appointed.** [Ord. 1995-7, 12/20/1995, § 1; as amended by Ord. 1991-9, 1/4/1999, §§ 1 – 3]

1. Each Supervisor of Sandy Township elected or appointed to office on or after the effective date of this Part shall receive compensation as a Supervisor in the annual amount of \$3,250 per year.
2. Such compensation shall be paid in monthly installments.
3. This Part shall be effective January 9, 1999.

#### Part 2

#### TOWNSHIP MANAGER

**§ 1-201. Creation of Office of Township Manager.** [Ord. 1985-13, 9/23/1985, § 1; as amended by Ord. 1997-1, 2/5/1997]

Pursuant to the Act known and cited as the Second Class Township Code, as amended, the Office of Township Manager of Sandy Township is hereby created.

**§ 1-202. Creation of Office.** [Ord. 1985-13, 9/23/1985, § II; as amended by Ord. 1997-1, 2/5/1997]

The Office of Township Manager shall be filled by one person appointed to said office by a majority vote of the Supervisors.

**§ 1-203. Removal of Township Manager.** [Ord. 1985-13, 9/23/1985, § III; as amended by Ord. 1997-1, 2/5/1997]

The person elected Township Manager shall be subject to removal by the Supervisors by majority vote of the Board of Supervisors.

**§ 1-204. Term of Office.** [Ord. 1985-13, 9/23/1985, § IV; as amended by Ord. 1997-1, 2/5/1997]

The person appointed to the Township Manager Office shall, unless removed in accordance with § 1-203 above, or unless said person resigns, serve until his successor is appointed and qualified. The Township Manager need not be a resident of the Township or of the State of Pennsylvania at the time of his appointment, but as soon as possible thereafter he shall become, and during his tenure as Township Manager shall remain, a resident of the Township. No Township Supervisor or Township Department Head shall be appointed as Township Manager during the term for which he was elected or appointed Supervisor, nor within one year after the expiration of said term. The Township Manager shall have no personal interest, direct or indirect, in contacts with the Township.

**§ 1-205. Duties of Township Manager.** [Ord. 1985-13, 9/23/1985, § V; as amended by Ord. 1997-1, 2/5/1997]

1. The Township Manager will be subject to instructions issued by the Board of Supervisors. Subject to recall by ordinance, the powers and duties of the Township Manager shall include the following:
  - A. He shall supervise and be responsible for the activities of all Township departments.
  - B. He shall issue such administrative and personnel rules and regulations not in conflict with existing statutes or ordinances to properly carry out the duties contained in this Part. Such rules and regulations are to be subject to revocation, revision and/or modification by the Board of Supervisors, by majority vote of its members at any regular public meeting.
  - C. Provided that prior approval is received from the Board of Supervisors, and provided that all rules and regulations as are or may hereafter be established, he shall hire, and when necessary, shall suspend or otherwise discipline all employees.
  - D. The Township Manager shall submit to the Supervisors a recommended budget for the ensuing fiscal year in sufficient time such that said Board may review, amend and/or adopt the budget prior to the close of the current fiscal year. Said budget is to be accompanied by an explanatory message setting forth a summary of projected revenues and proposed expenditures, together with any supporting data as may be required to enable the Board of Supervisors to decide upon and adopt the necessary taxation and appropriate legislation. He shall, upon adoption of the budget by the Board of Supervisors, be responsible for the efficient administration thereof so that the various appropriations are not exceeded, except as may be authorized by the Board according to law.
  - E. He shall execute and enforce the laws of the Commonwealth of Pennsylvania, and such ordinances and resolutions of the Township as the Board of Supervisors may prescribe.
  - F. He shall attend all meetings of the Township Board of Supervisors and of its committees, with the right to take part in the discussion, and he shall receive notice of all regular and special meetings of the Board of Supervisors and its committees.
  - G. He shall prepare and coordinate the agenda for each meeting of the Board of Supervisors and supply facts pertinent thereto.
  - H. He shall keep the Board of Supervisors informed as to the conduct of the Township affairs, submit periodic reports on the condition of the Township finances and such other reports as the Board of Supervisors shall request, and shall make such recommendations to the Board of Supervisors as he deems necessary and advisable for the welfare of the Township.
  - I. He shall see that the provisions of all franchises, leases, permits and privileges granted by the Township are observed, are promptly paid and that the proper proceedings are taken for the security and collection of all claims of the Township.

- J. He shall be the purchasing officer of the Township and he shall supervise and coordinate, in accordance with the provisions of the Second Class Township Code, the purchase of all supplies and equipment for the various agencies, boards, departments and other offices of the Township as authorized by the Board of Supervisors in their annual operating budget. He shall keep an account of all purchases and shall periodically, or when directed by the Board of Supervisors, make a full written report thereof.
- K. He shall perform such other duties and fill such other offices as may be required by the Board of Supervisors not inconsistent with the Second Class Township Code or other statutes or ordinances of the Township.

**§ 1-206. Absence of Township Manager.** [Ord. 1985-13, 9/23/1985 § VI; as amended by Ord. 1997-1, 2/5/1997]

In case of illness or absence of the Township Manager, the Board of Supervisors shall designate a qualified individual to perform the duties of the Township Manager during his absence or disability, subject to § 1-204 of this Part.

**§ 1-207. Township Manager Shall Be Bonded.** [Ord. 1985-13, 9/23/1985, § VII; as amended by Ord. 1997-1, 2/5/1997]

The Township Manager shall post bond with corporate surety to the Township in the amount determined by the Supervisors conditioned upon the faithful performance of his duties. Said bond to be paid by Sandy Township.

**§ 1-208. Compensation of Township Manager.** [Ord. 1985-13, 9/23/1985, § VIII; as amended by Ord. 1997-1, 2/5/1997]

The rate of compensation of the Township Manager shall be set by resolution by the Board of Supervisors.

**Part 3  
FIRE DEPARTMENT**

ARTICLE A.  
**Firemen's Relief Association.**

**§ 1-301. Recognition of Firemen's Relief Association.** [Ord. No. 2005-7, 12/19/2005]

1. The following association is hereby recognized as actively engaged in providing fire protection and/or emergency services in the Township of Sandy.
1. Sandy Township Volunteer Firemen's Relief Association.

The above named association has been formed for the benefit of [its/their] members and their families in case of death, sickness, temporary or permanent disability or accident suffered in the line of duty.

2. The above named Association of the Township is designated the proper association to

receive such funds as are due and payable to the Township Treasurer by the Treasurer of the State of Pennsylvania from the tax on premiums from foreign fire insurance companies.

**§ 1-302. Certification to Auditor General.** [Ord. No. 2005-7, 12/19/2005]

The Board of Supervisors shall annually certify to the Auditor General of the Commonwealth, the name(s) of the active associations and the percentage of service they contribute to the protection of the Township. Such certification shall be on forms prescribed by the Auditor General.

**§ 1-303. Annual Appropriation.** [Ord. No. 2005-7, 12/19/2005]

There is annually appropriated from the Township Treasury all such sums of money that may hereafter be paid into the Township Treasury by the Treasurer of the State of Pennsylvania on account of taxes paid on premiums of foreign fire insurance companies in pursuance of the Act of December 18, 1984, No. 205, § 701 et seq., as hereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania. Such monies received by the Township Treasurer from the State Treasurer shall be distributed to the duly recognized association(s) within 60 days of receipt. The funds shall be distributed on the basis of the percentage of service established in the certification to the Auditor General and with other provisions of the Act.

ARTICLE B.  
**Fire Department Chief.**

**§ 1-311. Appointment of Fire Department Chief.** [Ord. 1993-1, 1/4/1993, § 1]

The Board of Supervisors shall appoint a person to be the Fire Department Chief for the Township of Sandy from a list of candidates provided by the Fire Department. The appointment of the Fire Chief shall be made at the organizational meeting of the Sandy Township Supervisors and the person so named shall serve in accordance with the provisions of this Part and shall serve under the direction of the Board of Supervisors of the Township of Sandy.

**§ 1-312. Term.** [Ord. 1993-1, 1/4/1993, § 2]

The term of the Fire Department Chief shall be two years.

**§ 1-313. Qualifications.** [Ord. 1993-1, 1/4/1993, § 3]

The Fire Department Chief shall be technically qualified by training and experience and shall have at least five years experience as a line officer with the Sandy Township Fire Department. In addition, the person shall be a Township resident or live within one mile of the Township boundary line and shall have the ability to command persons and hold their respect and confidence.

**§ 1-314. Duties.** [Ord. 1993-1, 1/4/1993, § 4]

The Fire Department Chief shall have full charge of the Fire Department of Sandy Township at all fires and other emergencies. The Fire Department Chief shall be responsible for the training of the members of the Fire Department, shall be responsible for the periodic testing of all

equipment and for the maintenance of all proper records of the Fire Department. The Fire Department Chief shall be responsible for maintenance of all of the apparatus of the Sandy Township Fire Department.

**§ 1-315. Removal.** [Ord. 1993-1, 1/4/1993, § 5]

The Fire Department Chief can be removed for just cause. The removal must have the recommendation of the Fire Department Board of Directors and must be approved by the Sandy Township Supervisors at a public hearing held for that purpose.

**§ 1-316. Vacancy.** [Ord. 1993-1, 1/4/1993, § 6]

Whenever a vacancy occurs in the position of Fire Department Chief for any reason, the Board of Supervisors are hereby empowered to fill said vacancy at a regular or special meeting of the Board of Supervisors.

**Part 4  
AUTHORITIES, BOARDS AND COMMISSIONS**

**ARTICLE A.  
Municipal Authority.**

**§ 1-401. Municipal Authority.** [Res. 1/16/1960, 1/16/1990, § 1]

1. Creation of Authority. That it is the desire of the Board of Supervisors of the Township of Sandy, in the County of Clearfield, and Commonwealth of Pennsylvania, and the said Board of Supervisors hereby signifies its intention to organize an Authority under the Municipality Authorities Act of May 2, 1945, P.L. 382, as amended.
2. Articles of Incorporation. That in pursuance of said desire and intention, and in conformity with the terms and provisions of said Municipality Authorities Act and its amendments, the proposed Articles of Incorporation are hereby set forth in full, as follows:

**ARTICLES OF INCORPORATION  
SANDY TOWNSHIP MUNICIPAL AUTHORITY**

To the Secretary of the Commonwealth of Pennsylvania, Harrisburg, Pennsylvania:

In compliance with the requirement of the Municipality Authorities Act of 1945, approved the second day of May, 1945, P.L. 382, as amended, and pursuant to a resolution adopted by the Sandy Township Municipal Authority in the County of Clearfield, and Commonwealth of Pennsylvania, that a Municipal Authority be established under the provisions of the aforementioned law, the Township of Sandy desiring that a Municipal Authority be established and that a Certificate of Incorporation be issued to said Authority, does hereby certify:

- A. The name of the Authority shall be "The Sandy Township Municipal Authority."
- B. The Authority is formed under the Act of May 2, 1945, P.L. 382, as amended.
- C. No other Authority is in existence within said Township.
- D. The name of the incorporating municipality is "Township of Sandy, County of Clearfield,

Commonwealth of Pennsylvania."

- E. The names and address of the Board of Supervisors of the Township of Sandy are as follows: [here followed the names and address of Township officials in office at the time of adoption of this Part].
  - F. The names and addresses and terms of office of the first members of the Board of said Authority are as follows: [here followed the names and addresses and terms of office at the time of adoption of this Part].
3. Intention to File. The said proposed Articles of Incorporation of said Authority shall be executed by and on behalf of the Township of Sandy, by the Chairman of the Board of Supervisors of said Township and the seal of said Township shall be thereto affixed, attested by the Secretary of the Board of Supervisors of said Township, and filed with the Secretary of the Commonwealth. The Solicitor is hereby authorized and directed to cause to be published the notice of intention to file the Articles of Incorporation with the Secretary of the Commonwealth as required by the aforementioned Act.

**ARTICLE B.  
Water and Sewage Authority.**

**§ 1-411. Intent.** [Ord. 2001-3, 7/2/2001, § 1]

It is the intent of the Township of Sandy to organize an Authority under the Municipality Authorities Act of 1945, 53 P.S. § 301 et seq., (1982) as thereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania.

**§ 1-412. Name of Authority.** [Ord. 2001-3, 7/2/2001, § II]

The name of the Authority shall be the "Sandy Township Water and Sewage Authority."

**§ 1-413. Articles of Incorporation.** [Ord. 2001-3, 7/2/2001, § III]

- 1. The proposed Articles of Incorporation of the Authority are as follows:
  - 1. SANDY TOWNSHIP WATER AND SEWAGE AUTHORITY ARTICLES OF INCORPORATION TO THE SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA
  - 2. In compliance with the Municipality Authorities Act of 1945, the Township of Sandy, Clearfield County, Pennsylvania desiring to incorporate an Authority does hereby certify that:
    - A. The name of the Authority shall be –Sandy Township Water and Sewage Authority.
    - B. Said Authority is formed under the Municipality Authorities Act of 1945, as thereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania.
    - C. The name of the incorporating municipality is the Township of Sandy.

- D. The names and addresses of the members of the Board of Supervisors of the Township of Sandy, and its Manager, are as follows: [Here followed the names and addresses of the members at the time of adoption of this Part.]
- E. No other Authority organized under the Municipality Authorities Act of 1945, as amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania, is in existence in or for the incorporating municipality, except for the one identified as the Sandy Township Municipal Authority.
- F. The following persons whose names and addresses and terms of office are listed below, are appointed the first members of the Board of the Water and Sewage Authority formed hereby:

Dan Stover, RD 4, Box 657, DuBois, PA 15801	Five-year term
David B. Lukehart, 1537 Treasure Lake, DuBois, PA 15801	Four-year term
Paul J. Sekula, 265 Old Woods Road, DuBois, PA 15801	Three-year term
Blaise J. Ferraraccio, RD 4, Box 669, DuBois, PA 15801	Two-year term
Patrick D. Corbet, 220 Treasure Lake, DuBois, PA 15801	One-year term

- G. The Township of Sandy has retained the right which exists under the Municipality Authorities Act of 1945, as thereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania, to approve any plan of the Authority, in the case of an Authority created for the purpose of making business improvements or providing administrative services, if appropriate.

**§ 1-414. Authority to Effect the Incorporation of the Authority.** [Ord. 2001-3, 7/2/2001, § IV]

The officers of the Township of Sandy are authorized and directed to execute under its corporate seal the Articles of Incorporation of the proposed Authority in substantially the form set forth in this Part, and such officers are authorized to do all acts necessary or appropriate to effect the incorporation of the proposed Authority.

**§ 1-415. Projects Authorized.** [Ord. 2001-3, 7/2/2001, § V]

- 1. The project or projects authorized to be undertaken by the proposed Authority shall be as follows. The Authority shall be, for the purpose of financing working capital and of acquiring, holding, constructing, financing, improving, maintaining and operating, owning leasing, either in the capacity of lessor or lessee, projects of the kind and character described in the following subsections and for the purpose of providing financing for insurance reserves:
  - A. Sewers, sewer systems or parts thereof.
  - B. Sewage treatment works, including works for treating and disposing of industrial waste.
  - C. Waterworks, water supply works, water distribution systems.

- D. All other purposes as authorized by the Municipality Authorities Act of 1945, as thereafter amended, supplemented, modified or reenacted by the General Assembly of Pennsylvania.

**Part 5**  
**POLICE PENSION PLAN**

**§ 1-501. Definitions.** [Ord. 2000-6, 12/27/2000, Art. I; as amended by Ord. 2004-5, 8/2/2004, § II; Ord. 2005-3, 5/16/2005; and by Ord. No. 2014-2, 10/6/2014]

The following words and phrases as used in this Plan shall have the meaning set forth in this article, unless a different meaning is otherwise clearly required by the context:

**ACCRUED BENEFIT** — As of any given date, the benefit determined under § 1-504.2, calculated on the basis of final monthly average salary as of the date of determination and multiplied by a fraction, the numerator of which shall be the participant's aggregate service determined as of such date and the denominator of which shall be the projected aggregate service of the participant as if the participant continues in employment until attainment of normal retirement age. Notwithstanding anything contained herein to the contrary, in no event shall the fraction exceed one. The accrued benefit shall include any service increment to which the participant is entitled but shall not exceed the maximum limitation, determined as of the date of computation, provided under § 1-504.7. All accrued benefits are subject to all applicable limitations, reductions, offsets, and actuarial adjustments provided pursuant to the terms of the Plan prior to the actual payment thereof.

**ACCUMULATED CONTRIBUTIONS** — The total amount contributed by any participant to this Fund or its predecessor by way of payroll deduction or otherwise, plus interest credited at 6% per annum. Interest shall be credited in the form of a compound interest rate from the midpoint of the Plan year during which the contributions were paid to the first day of the month preceding the date that a distribution of accumulated contributions under §§ 1-506.3 or 1-507.2 shall be paid or payment of benefits shall commence.

**ACT** — The Municipal Pension Plan Funding Standard and Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. § 895.101 et seq.

**ACTUARIAL EQUIVALENT** — Two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the UP-1984 Mortality Table and 7% interest unless otherwise specifically provided herein.

**ACTUARY** — The person, partnership, association or corporation which at any given time is serving as actuary; provided that such actuary must be an "approved actuary" as defined in the Act.

**AGGREGATE SERVICE** — The total period or periods of the participant's employment with the employer whether or not interrupted. Notwithstanding the preceding sentence, should any such participant receive a distribution of accumulated contributions with respect to a period of employment, such period of employment shall not be included in aggregate service thereafter unless, at the commencement of the next period of employment, the participant repays to the Fund the amount of such distribution with interest. For purposes of this definition, interest shall accrue as of the date the employee receives a distribution of accumulated contributions and shall



be computed at the same rate and in the same manner as described in the definition of "accumulated contributions."

**ATTENDING COLLEGE** — The eligible children are registered at an accredited institution of higher learning and are carrying a minimum course load of seven credit hours per semester.

**BENEFICIARY** — The person or entity designated by the participant to receive a distribution of the participant's accumulated contributions should the participant die prior to becoming entitled to a retirement benefit. In the event that a participant does not designate a beneficiary or the beneficiary does not survive the participant, the beneficiary shall be the surviving spouse, or if there is no surviving spouse, the issue, per stirpes, or if there is no surviving issue, the estate; but if no personal representative has been appointed, to those persons who would be entitled to the estate under the intestacy laws of the Commonwealth of Pennsylvania if the participant had died intestate and a resident of Pennsylvania.

**BOARD** — The Board of Supervisors of the Township of Sandy.

**CHIEF ADMINISTRATIVE OFFICER** — The person designated by the Township who has the primary responsibility for the execution of the administrative affairs for the Plan.

**CODE** — The Internal Revenue Code of 1986, as amended.

**COMMITTEE** — The Police Pension Committee as determined pursuant to § 1-508.2.

**COMMONWEALTH** — The Commonwealth of Pennsylvania.

**COMPENSATION** — The total remuneration of the employee, whether salary or hourly wages, including overtime pay, holiday pay, longevity pay and any other form of remuneration, excluding reimbursement for expenses, paid by the employer for police services rendered. Compensation shall be limited on an annual basis to the amount specified for government plans pursuant to Code Section 401(a)(17), as adjusted under Code Section 415(d).

**DISABILITY DATE** — The date when a participant is determined by the Plan Administrator to be incapacitated due to total and permanent disability, or the date when the participant's employment terminates due to such total and permanent disability, if later.

**EMPLOYEE** — Any individual employed by the employer on a regular, full-time basis as a police officer of the employer's police force.

**EMPLOYER** — The Township of Sandy, Clearfield County, Pennsylvania.

#### **EMPLOYMENT**

1. Shall mean, for the purpose of determining aggregate service:
  - A. The period of time for which an employee is directly or indirectly compensated or entitled to compensation by the employer for the performance of duties as a police officer;
  - B. Any period of time for which an employee is paid, either directly by the employer or through a program to which the employer has made contributions on behalf of the employee, a fixed, periodic amount in the nature of salary continuation payments for reasons other than the performance of duties (such as vacation, holidays, sickness,

entitlement to benefits under workers' compensation or similar laws);

- C. Any period during which an employee is entitled to disability benefits under this Plan, provided that the employee returns to employment within three months of the date on which it is determined that the employee is no longer totally and permanently disabled if such determination occurs prior to the date a participant attains normal retirement age; and
- D. Any period of voluntary or involuntary military service with the armed forces of the United States of America, provided that the participant has been employed as a regular, full-time member of the employer's police force for a period of at least six months immediately prior to the period of military service; and the participant returns to employment within six months following discharge from military service or within such longer period during which employment rights are guaranteed by applicable law or under the terms of a collective bargaining agreement with the employer; and
- E. Any period of qualified military service as determined under the requirements of Chapter 43 of Title 38, United States Code, provided that the participant returns to employment following such period of qualified military service, and the participant makes payment to the Plan in an amount equal to the participant contributions that would otherwise have been paid to the Plan during such period of qualified military service. The amount of participant contributions shall be based upon an estimate of the compensation that would have been paid to the participant during such period of qualified military service as determined by the average compensation paid to the participant during the 12 months immediately preceding the period of qualified military service. The amount of participant contributions so calculated must be paid into the Plan before the end of the period that begins on the date of re-employment and ends on the earlier of the date that ends the period that has a duration of three times the period of qualified military service, or the date that is five years after the date of re-employment.

2. Shall not mean, for the purpose of determining aggregate service:

- A. Any period of disability for a participant who was disabled as a result of a non-service-related disability.

**FINAL MONTHLY AVERAGE SALARY** — The average monthly salary earned by the participant and paid by the employer during the final 36 months immediately preceding termination of active employment. Salary shall include the employee's compensation to which the employee is entitled for the rendering of services in employment but shall exclude for this purpose any single sum or extraordinary payments made which are not directly attributable to active employment during the averaging period, including but not limited to payment for accumulated sick leave, payment of a longevity bonus, or payment of a back pay damage award.

- 1. Final monthly average salary shall be calculated by taking into account only those periods during which an employee receives salary, as that term is defined in this section. Therefore, for example, the final monthly average salary for a participant who receives disability benefits from this Plan or who is voluntarily or involuntarily serving in the United States armed forces during the final 36 months of aggregate service shall be based on the period

during which the employee last received salary (as defined in the preceding paragraph) from the employer.

2. Salary used to determine final monthly average salary shall be limited on an annual basis to the amount specified for government plans in accordance with Code Section 401(a)(17), as adjusted under Code Section 415(d).

**INSURER or INSURANCE COMPANY** — A legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.

**MEMBER'S SALARY AT THE TIME THE DISABILITY WAS INCURRED** — The last month of basic salary or basic rate of pay as applicable under any then current collective bargaining agreement before the disability date.

**MINIMUM MUNICIPAL OBLIGATION** — The minimum obligation of the municipality as determined by the actuary pursuant to the provisions of the Act.

**NORMAL RETIREMENT AGE** — The date on which the participant has completed 25 years of aggregate service with the employer and has attained age 52.

**NOTICE or ELECTION** — A written document prepared in the form specified by the Plan Administrator. If such notice or election is to be provided by the employer or the Plan Administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified notice or election period. If such notice or election is to be provided to the employer or the Plan Administrator, it must be received by the recipient on or before the last day of the specified notice or election period.

**PARTICIPANT** — An employee who has met the eligibility requirements to participate in the Plan as provided in § 1-502.1 and who has not for any reason ceased to be a participant hereunder.

**PENSION FUND or FUND** — The Police Pension Fund administered under the terms of this Plan and which shall include all money, property, investments, policies and contracts standing in the name of the Plan.

**PLAN** — The Plan set forth herein, as amended from time to time and designated as the Sandy Township Police Pension Plan.

**PLAN ADMINISTRATOR** — The committee or the individual appointed for the purpose of supervising and administering the provisions of the Plan. In the event that no such appointment is made, the Plan Administrator shall be the Board.

**PLAN YEAR** — The twelve-month period beginning on January 1 and ending on December 31 of each year.

**POLICY or CONTRACT** — A retirement annuity or retirement income endowment policy (or a combination of both) or any other form of insurance contract or policy which shall be deemed appropriate in accordance with the provisions of applicable law.

**RESTATEMENT DATE** — January 1, 2014, the date upon which this amendment and restatement of the Plan becomes effective.

**RETIREMENT DATE** — The first day of the month coincident with or next following the date on which the participant retires from employment or the first day of any month thereafter on which the payment of retirement benefits pursuant to this Plan shall commence.

**SERVICE INCREMENT** — The amount calculated pursuant to § 1-504.4 on behalf of a participant for each completed year of aggregate service in excess of 25 years.

**TOTAL AND PERMANENT DISABILITY** — A condition of physical or mental impairment due to which a participant is unable to perform the usual and customary duties of employment, which condition continues for at least six months, which is reasonably expected to continue to be permanent for the remainder of the participant's lifetime and which qualifies the participant to be eligible to receive federal social security disability benefits. For purposes of this definition and § 1-505, a condition shall not be treated as a total and permanent disability unless such condition is a direct result of and occurs in the line of duty of employment. Therefore, an employee whose physical or mental impairment does not occur in the line of duty or which is the result of alcoholism, addiction to narcotics, perpetration of a felonious criminal activity or is willfully self-inflicted is not entitled to receive disability benefits under the Plan.

**§ 1-502. Participation in the Plan.** [Ord. 2000-6, 12/27/2000, Art. II]; as amended by Ord. No. 2014-2, 10/6/2014]

1. **Eligibility Requirements.** Each employee who is employed as a regular, full-time permanent member of the police department of the employer shall participate herein as of the date on which such employee's employment first commences or recommences provided all prerequisites to participation under this Plan shall have been fulfilled, including, but not limited to, completion of all forms required by the Plan Administrator.
2. **Notification of Plan Administrator.** The Board shall furnish the Plan Administrator with written notification of the appointment of any new full-time permanent employee who is eligible for participation hereunder.
3. **Designation of Beneficiary.** Any new, full-time employee who becomes a participant hereunder shall provide a written notice in the manner prescribed by the Plan Administrator which designates a beneficiary at the time participation commences. The participant's election of any such beneficiary may be rescinded or changed, without the consent of the beneficiary, at any time provided the participant provides the written notice of the changed designation to the Plan Administrator in the manner prescribed by the Plan Administrator. Any designation of a beneficiary made in any manner other than one acceptable to the Plan Administrator shall be null and void and have no effect under the terms of this Plan.
4. **Change in Status.** A participant who remains in the service of the employer but ceases to be an employee eligible for participation hereunder, or ceases or fails to make any contributions which are required as a condition of participation hereunder, shall have no further benefit accruals occur until the individual again qualifies as a participant hereunder eligible to resume such accrual of benefits.
5. **Recordkeeping.** The employer shall furnish the Plan Administrator with such information as will aid the Plan Administrator in the administration of the Plan. Such information shall include all pertinent data on employees for purposes of determining their eligibility to

participate in this Plan.

**§ 1-503. Contributions.** [Ord. 2000-6, 12/27/2000, Art. III; as amended by Ord. No. 2014-2, 10/6/2014]

1. Participant Contributions. Each participant shall as a requirement of participation pay regular contributions to the Pension Fund in an amount equal to 5% of the participant's annual compensation. Each participant shall complete the necessary forms to authorize the payment of participant contributions by way of payroll deduction.
2. Reduction of Participant Contributions. Notwithstanding the preceding payments into the Pension Fund by participants may be reduced below the minimum percentages prescribed in Subsection 1, or may be eliminated, provided: i) the current actuarial study indicates that the condition of the Plan is such that contributions may be reduced or eliminated; ii) contributions by the employer will not be required to keep the Pension Fund actuarially sound; and iii) any reduction or elimination of contributions is authorized on an annual basis by an ordinance or resolution of the employer.
3. Employer Contributions. The actuary, in accordance with the Act, shall determine the minimum municipal obligation of the employer. The employer shall pay into the Pension Fund, by annual appropriations or otherwise, the contributions necessary to satisfy the minimum municipal obligation. Notwithstanding the foregoing, nothing contained herein shall preclude the employer from contributing an amount in excess of the minimum municipal obligation.
4. State Aid. General municipal pension system state aid, or any other amount of state aid received by the employer in accordance with the Act from the commonwealth may be deposited into the Pension Fund governed by this Plan in amounts determined by the Board, and shall be used to reduce the amount of the minimum municipal obligation of the employer.
5. Gifts. The Board is authorized to take by gift, grant, devise or otherwise any money or property, real or personal, for the benefit of the Plan and cause the same to be held as a part of the Pension Fund. The care, management, investment and disposal of such amounts shall be vested in the Board or its delegate, the Plan Administrator, subject to the direction of the donor and not inconsistent with applicable laws and the terms of the Plan.
6. Employer Reversion. At no time shall it be possible for the Plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the participants and their Beneficiaries, including payment of any reasonable Plan expenses. Notwithstanding the foregoing, any contributions made by the employer may be returned to the employer if the contribution was made due to a mistake and the contribution is returned within one year of the date on which the discovery of the mistaken payment of the contribution was made or reasonably should have been made or the Plan is terminated, as provided in § 1-510.

**§ 1-504. Retirement Benefits.** [Ord. 2000-6, 12/27/2000, Art IV; as amended by Ord. 2005-3, 5/16/2005; and by Ord. No. 2014-2, 10/6/2014]

1. Normal Retirement. Each participant shall be entitled to normal retirement benefits after retirement on or after the participant has attained normal retirement age.

2. Normal Retirement Benefit. Each participant who shall become entitled to a benefit pursuant to Subsection 1 shall receive a benefit paid monthly in an amount equal to 50% of the participant's final monthly average salary as determined herein.
3. Late Retirement. A participant may continue to work beyond the attainment of normal retirement age subject to the employer's rules and regulations regarding retirement age. If a participant who has met the requirements of Subsection 1 continues to work beyond normal retirement age, there shall be no retirement benefits paid until employment ceases and retirement begins. The retirement benefit of a participant who retires after attainment of normal retirement age shall be calculated in accordance with Subsection 2 on the basis of the final monthly average salary as of such participant's actual retirement date.
4. Service Increment. A participant who shall retire after completion of at least 26 years of aggregate service may be entitled to receive a monthly service increment benefit; provided, however, that the participant shall have accrued sufficient service credit pursuant to this Subsection 4. Such service increment shall only be available to a participant who shall retire on a retirement date after attainment of normal retirement age and whose aggregate service for purposes of this Subsection 4 shall only include periods of time when the participant actively renders service in employment and shall not include any period of time during which the participant received a disability benefit under the terms of this Plan or was not otherwise in active employment. Such service increment shall be an amount equal to \$100 but shall not exceed \$100, and shall be paid monthly in addition to the amount of normal retirement benefit calculated pursuant to Subsection 2 hereof.
5. Cost of Living Adjustment. Each participant who shall retire and receive a retirement benefit determined pursuant to Subsection 2 hereunder shall be entitled to receive a cost of living adjustment to the amount of benefit payable to the participant and exclusive of any service increment determined pursuant to Subsection 4 hereunder. Such cost of living adjustment shall be effective as of each annual anniversary of the participant's date for commencement of benefit payments, and shall be in an amount equal to the percentage increase in the Consumer Price Index (CPI). Notwithstanding the foregoing, no cost of living adjustment can exceed any of the following limits: 1) the percentage increase in the CPI for the year in which the participant was last employed as an employee of the employer; 2) the total retirement benefits payable under the Plan shall not exceed 75% of the participant's final monthly average salary; 3) the total cost of living increase shall not exceed 30% of the participant's retirement benefit under the Plan; and 4) the cost of living adjustment shall not impair the actuarial soundness of the Pension Fund.
6. Payment of Benefits. Retirement benefit payments shall be payable as of the first day of the month coincident with or next following the participant's retirement date and the first day of each month thereafter during the participant's lifetime. A participant must complete an application for benefit in the manner prescribed by the Plan Administrator and deliver such application to the Plan Administrator at least 30 days prior to the date on which benefit payments shall commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments nor any other payments shall be due or payable on or before the first day of the month coincident with or next following the date that is 30 days after the date the Plan Administrator receives the application for benefits. Payment of benefits hereunder shall cease as of the date of death of the participant.

7. **Defined Benefit Dollar Limitation - Incorporation of Code Section 415 by Reference.** Notwithstanding anything contained in this Subsection 7 to the contrary, the limitations, adjustments, and other requirements prescribed in this Subsection 7 shall at all times comply with the provisions of Code Section 415 and the regulations thereunder (as such apply to governmental plans), the terms of which are specifically incorporated herein by reference. Effective for limitation years beginning on and after July 1, 2007, the Plan shall comply with the final regulations issued under Code Section 415.
8. **Maximum Benefit Limitations.** Notwithstanding any provision of this Plan to the contrary, no benefit provided under this Plan attributable to contributions of the employer shall exceed, as an annual amount, the amount specified in Code Section 415(b)(1)(A) as adjusted pursuant to Code Section 415(d), assuming the form of benefit shall be a straight life annuity (with no ancillary benefits). The limitations described in this Subsection 7 shall be governed by the following conditions and definitions:
  - A. Benefits paid or payable in a form other than a straight life annuity (with no ancillary benefits) or where the employee contributes to the Plan or makes rollover contributions shall be adjusted on an actuarially equivalent basis in accordance with applicable regulations to determine the limitation contained herein;
  - B. In the case of a benefit which commences prior to the attainment of age 62 by the participant, the limitation herein shall be adjusted on an actuarially equivalent basis in accordance with applicable regulations to the amount determined pursuant to this section commencing at age 62; however, in the case of a qualified participant (a participant with respect to whom a period of at least 15 years of service, as a full-time employee of a police or fire department or as a member of the Armed Forces of the United States is taken into account in determining the amount of benefit), the limitation contained herein shall not apply;
  - C. In the case of a benefit which commences after attainment of age 65 by the participant, the limitation herein shall be adjusted on an actuarially equivalent basis in accordance with applicable regulations to the amount determined commencing at age 65;
  - D. Benefits paid to a participant which total less than \$10,000 from all defined benefit plans maintained by the employer expressed as an annual benefit shall be deemed not to exceed the limitation of this section provided that the employer has not at any time maintained a defined contribution plan in which the participant has participated; however, in the case of a participant who is not receiving a disability retirement benefit pursuant to § 1-505.2 or a survivor benefit pursuant to § 1-506.2, with fewer than 10 years of participation the limitation expressed in this Subsection 7D shall be reduced by 1/10 for each year of participation less than 10 but in no event shall this limitation be less than \$1,000;
  - E. The limitations expressed herein shall be based upon Plan years for calculation purposes, shall be applied to all defined benefit plans maintained by the employer as one defined benefit plan and to all defined contribution plans maintained by the employer as one defined contribution plan, and shall be applied and interpreted consistent with Code Section 415 and regulations thereunder as applicable to

government plans in general and this Plan in particular;

- F. In the case of a survivor benefit under § 1-506.2 or a disability retirement benefit under § 1-505.2, the adjustment under Subsection 7B hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age of the benefit recipient;
- G. For mandatory employee contributions, the rules set forth in Treasury Regulation 1.415(b)-1(b)(2)(iii) shall apply; and
- H. Effective for distributions with annuity starting dates beginning on or after December 31, 2008, notwithstanding any other Plan provisions to the contrary, the applicable mortality table used solely for purposes of adjusting any benefit or limitation under Section 415(b)(2)(B), (C), or (D) of the Internal Revenue Code as set forth in the applicable Maximum Benefit Limitations section of the Plan is the applicable mortality table under Code Section 417(e)(3)(B).

9. Required Distributions.

- A. Notwithstanding any other provision of this Plan, the entire benefit of any participant who becomes entitled to benefits prior to his death shall be distributed either:
  - (1) Not later than the required beginning date; or
  - (2) Over a period beginning not later than the required beginning date and extending over the life of such participant or over the lives of such participant and a designated beneficiary (or over a period not extending beyond the life expectancy of such participant, or the joint life expectancies of such participant and a designated beneficiary).
- B. If a participant who is entitled to benefits under this Plan dies prior to the date when his entire interest has been distributed to him after distribution of his benefits has begun in accordance with Subsection 9A(2) above, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under Subsection 9A(2) as of the date of his death.
- C. If a participant who is entitled to benefits under this Plan dies before distribution of his benefit has begun, the entire interest of such employee shall be distributed within five years of the death of such employee, unless the following sentence is applicable. If any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary, such portion shall be distributed over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and such distributions begin not later than one year after the date of the employee's death or such later date as provided by regulations issued by the Secretary of the Treasury, then for purposes of the five-year rule set forth in the preceding sentence, the benefit payable to the beneficiary shall be treated as distributed on the date on which such distributions begin; provided, however, that notwithstanding the preceding sentence, if the designated beneficiary is the surviving spouse of the participant, then the date on which distributions are required to begin shall not be earlier than the date upon which the employee would have attained age



70 1/2; and, further provided, if the surviving spouse dies before the distributions to such spouse begin, this subsection shall be applied as if the surviving spouse were the employee.

- D. For purposes of this section, the following definitions and procedures shall apply:
- (1) "Required Beginning Date" shall mean April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 1/2, or the calendar year in which the employee retires.
  - (2) The phrase "designated beneficiary" shall mean any individual designated by the employee under this Plan according to its rules.
  - (3) Any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child's reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
  - (4) For purposes of this section, the life expectancy of an employee and/or the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.
- E. General Rules. The requirements of this Subsection 1-504.8 will take precedence over any inconsistent provisions of the Plan. All distributions required under this Subsection 1-504.8 will be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code and the Treasury regulations thereunder, and the employer's good faith interpretation of such Code and regulations.

10. Direct Rollovers.

- A. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- B. This Subsection 10B shall apply to distributions made on or after January 1, 2006. Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a distributee's election under this section, if a distribution in excess of \$1,000 is made and the distributee does not make an election under Subsection A and does not elect to receive the distribution directly, the Plan Administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer pursuant to § 1-508.3I. The Plan Administrator shall notify the distributee in writing, within a reasonable period of time and as otherwise prescribed by law, that the distribution may be transferred to another individual retirement plan.
- C. For purposes of this section, the following definitions shall apply:
- (1) "Eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of

substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). For purposes of the direct rollover provisions in this section of the Plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code [effective for distributions on or after January 1, 2007, any qualified trust or Code Section 403(b) plan] that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (2) "Eligible retirement plan" is a qualified trust described in Code Section 401(a), an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan.
  - (3) "Distributee" includes a participant or former participant. In addition, the participant's or former participant's surviving spouse and the participant's or former participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.
  - (4) "Direct Rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee or the Plan Administrator, if the distributee does not make an election.
  - (5) Effective January 1, 2008, direct rollovers may be made to a Roth IRA described in Section 408 A of the Internal Revenue Code to the extent that the applicable requirements of Code Section 408A are satisfied with respect to any direct rollover to such Roth IRA.
- D. This section applies to distributions made on or after January 1, 2010. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a nonspouse beneficiary's election under this section, a nonspouse beneficiary may elect to have any portion of a Plan distribution (that is payable to such nonspouse beneficiary due to a participant's death) paid in a direct trustee-to-trustee transfer to an individual retirement account described in Code Section 408(a) or to an individual

retirement annuity described in Section 408(b) (other than an endowment contract) that has been established for the purposes of receiving the distribution on behalf of such nonspouse beneficiary. For these purposes, a "nonspouse beneficiary" is an individual who is a designated beneficiary [as defined by Section 401(a)(9)(E) of the Internal Revenue Code] of a participant and who is not the surviving spouse of such participant.

11. **Assignment.** The pension benefit payments prescribed herein shall not be subject to attachment, execution, levy, garnishment or other legal process and shall be payable only to the participant or designated beneficiary and shall not be subject to assignment or transfer unless the subject of a domestic relations order, mandated by a court of competent jurisdiction, that clearly provides for proper distribution of a portion of the pension benefit payments to an alternate payee (former spouse of the participant) and does not require any benefit to be paid in excess of the available earned and accrued under the Plan.
12. **Retired Participants.** Any participant who shall have retired prior to the restatement date shall not have the benefit altered in any way by the provisions of this amended and restated Plan, except where otherwise expressly provided herein. Such retired participants shall continue to have their benefits governed by the terms of the Plan in effect on the day preceding the restatement date.
13. **Limitation of Liability.** Nothing contained herein shall obligate the employer, the Plan Administrator, any fiduciary or any agent or representative of any of the foregoing, to provide any retirement or other benefit to any participant or beneficiary which cannot be provided from the assets available in the Pension Fund, whether such benefits are in pay status or otherwise payable under the terms of the Plan. The employer retains the right to amend or terminate this Plan consistent with applicable law at any time, with or without cause and whether or not such action directly or indirectly results in the suspension, reduction or termination of any benefit payable under the Plan or in pay status, and without liability to any person for any such action.
14. **Personal Right of Participant.** The right to receive any benefits under this Plan is a personal right of the participant and shall expire upon the death of the participant. No heir, legatee, devisee, beneficiary, assignee or other person claiming by or through a participant shall have any interest in any benefits hereunder unless clearly and expressly so provided by the terms of this Plan or the provisions of applicable law. A participant's election, failure to make an election or revocation of an election hereunder shall be final and binding on all persons.
15. **Nonduplication of Benefit.** To avoid any duplication of benefits, a participant who is receiving a retirement benefit under the Plan and who shall resume employment shall have benefit payments suspended until the first day of the month coincident with or next following the date such employment shall cease. Upon resumption of benefit payments, such participant shall receive the greater of the amount of the suspended benefit or the amount of benefit based upon final monthly average salary and aggregate service as of the date that such period of resumed employment shall cease.

**§ 1-505. Disability Retirement.** [Ord. 2000-6, 12/27/2000, Art. V; as amended by Ord. 2005-3, 5/16/2005; nd by Ord. No. 2014-2, 10/6/2014]

1. Disability Retirement. A participant who shall incur a total and permanent disability shall be entitled to a disability retirement benefit as of the disability date.
2. Disability Retirement Benefit. A participant who shall be entitled to a disability retirement benefit under Subsection 1 shall receive a benefit in an amount equal to 50% of the participant's final monthly average salary determined as of the disability date; however, the disability benefit shall be no less than 50% of the member's salary at the time the disability was incurred as defined pursuant to § 1-501 determined as of the disability date. Any member who receives benefits for the same injuries under social security disability shall have the participant's disability benefits offset or reduced by the amount of such benefits.
3. Payment of Disability Benefits. Disability payments shall be made monthly as of the first day of each month, commencing as of the first day of the month coincident with or immediately following the participant's disability date and continuing until the earliest of the death of the participant, cessation of total and permanent disability, or attainment of normal retirement age (such a participant who attains normal retirement age shall thereafter receive a normal retirement benefit pursuant to § 1-504.2). A participant who shall fail to return within three months to employment as an employee of the employer upon cessation of total and permanent disability prior to attainment of normal retirement age shall be deemed to have terminated employment as of the disability date, shall not be entitled to any distribution of accumulated contributions pursuant to § 1-507.2 to the extent that the total amount of disability payments exceeds the value of the participant's accumulated contributions as of the disability date, and shall not be entitled to any other benefits under the Plan on account of any aggregate service as of the disability date.
4. Verification of Disability. The Plan Administrator shall in its sole discretion determine whether a participant shall have incurred a total and permanent disability. The Plan Administrator shall rely on the report of a physician acceptable to the Plan Administrator. If the Plan Administrator shall determine that a participant who is totally and permanently disabled has recovered sufficiently to resume active employment as a police officer or if a participant refuses to undergo a medical examination as directed by the Plan Administrator (such a medical examination may not be required more frequently than once in any given twelve-month period), the payment of disability retirement benefits shall cease.
5. Cessation of Disability. A participant who is receiving payment of disability retirement benefits under this Plan must notify the Plan Administrator of any change which may cause a cessation of entitlement to receipt of such benefits hereunder. If a participant fails to provide immediate notice to the Plan Administrator of any such change in status and continues to receive payment of benefits hereunder to which the participant is not entitled, then the Plan may take whatever action is necessary to recover any amount of improperly paid amounts, including legal action or offsetting such amounts against any future payments of retirement or other benefits under the Plan, including the costs of such actions.

**§ 1-506. Death Benefits.** [Ord. 2000-6, 12/27/2000, Art. VI; as amended by Ord. 2005-3, 5/16/2005; and by Ord. No. 2014-2, 10/6/2014]

1. Death of Participant. Upon the occurrence of the death of a participant, there shall be benefits payable in accord with the following subsections of this § 1-506.

2. **Survivor Benefit.** If a participant shall die after commencement of retirement or disability benefit payments or after becoming eligible to receive retirement benefit payments under § 1-504.1 and before retirement benefit payments commence, a survivor benefit shall be paid to the surviving spouse or dependent child(ren), if any, of the participant pursuant to § 1-506.6 in an amount equal to 50% of the benefit the participant was receiving or was eligible to receive as of the date of death.
3. **Death of Participant after Retirement.** If a participant shall die after payment of a benefit has commenced and without eligibility for payment of a survivor benefit under § 1-506.2 or § 1-506.6 the beneficiary shall be eligible to receive a distribution only if the total amount of benefit received by the participant is less than the accumulated contributions of the participant as of the date that the payment of a benefit commenced. The amount of such a distribution shall be equal to the difference between the total amount of benefit received by the participant and the amount of accumulated contributions described herein.
4. **Death of Participant Prior to Retirement.** If a participant shall die before payment of a benefit has commenced and without eligibility for payment of a survivor benefit under § 1-506.2 or § 1-506.6, the beneficiary shall be eligible to receive a distribution in an amount equal to the accumulated contributions of the participant as of the date of death of the participant. If the participant has received disability retirement benefits hereunder, the amount of distribution of accumulated contributions shall be reduced by the amount of disability retirement benefits which have been paid hereunder.
5. **Veterans' Survivor Benefits.** Notwithstanding any other provision of the Plan to the contrary, in the case of the death of a participant who dies on or after January 1, 2007, while performing qualified military service [as defined in Code Section 414(u)], the survivors of the participant are entitled to any additional benefits under the Plan (if any) had the participant resumed and then terminated employment on account of death.
6. **Payment of Survivor Benefits.** The survivor benefit commences as of the first day of the month immediately following the date of death of the participant. The survivor benefit shall be paid monthly to the surviving spouse of the participant, if any, until the death of the surviving spouse. Upon the death of the surviving spouse or if there is no surviving spouse, the survivor benefit shall be paid monthly in equal shares to the surviving dependent child(ren) of the deceased participant until attainment of age 18 or, if attending college, under or attaining the age of 23. The shares payable to the surviving dependent child(ren) shall be adjusted as each child ceases to be eligible to receive a share of the benefit hereunder.

**§ 1-507. Termination of Employment.** [Ord. 2000-6, 12/27/2000, Art. VII; as amended by Ord. No. 2014-2, 10/6/2014]

1. **Rights of Terminated Employees.** A participant who shall cease to be an employee except as otherwise hereinbefore provided shall have all interest and rights under this Plan limited to those contained in the following subsections of this section.
2. **Distribution of Accumulated Contributions.** A participant whose employment with the employer shall terminate for any reason other than death or total and permanent disability prior to attainment of normal retirement age shall be entitled to receive a distribution of

accumulated contributions. Upon receipt of such accumulated contributions, said participant and beneficiary shall not be entitled to any further payments from the Plan.

3. **Deferred Vested Benefit.** A participant who has completed at least 12 years of aggregate service and whose employment with the employer shall terminate for any reason other than death or total and permanent disability prior to attainment of normal retirement age shall be entitled to elect, by giving written notice of such election to the Plan Administrator within 90 days following the date that the participant's employment terminated, to receive a deferred vested benefit in lieu of a distribution of accumulated contributions under Subsection 2. Such a deferred vested benefit shall be in an amount equal to the participant's accrued benefit as of the date employment terminates and shall commence after application pursuant to § 1-504.6 as of the first day of the month coincident with or next following the date on which the participant's normal retirement age would be attained if the participant continued in employment until such date.
4. **Forfeiture.** To the extent permissible under the Code, rights under this Plan shall be subject to forfeiture pursuant to the act of July 8, 1978 (P.L. 752, No. 140), known as the Public employee Pension Forfeiture Act.<sup>1</sup>

**§ 1-508. Administration.** [Ord. 2000-6, 12/27/2000, Art. VIII; as amended by Ord. 2005-3, 5/15/2005; and by Ord. No. 2014-2, 10/6/2014]

1. **Plan Administrator.** The Plan Administrator shall be the Committee or the individual appointed by the Board who shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this Plan. The Plan Administrator may delegate authority to act on its behalf to any persons it deems appropriate. If a Plan Administrator is not appointed, the Board shall be the Plan Administrator.
2. **Police Pension Committee.** The Board shall appoint a Police Pension Committee to administer the affairs of the Plan. The Board shall delegate such authority as it shall deem appropriate to the Committee. The Committee shall consist of five members who shall be appointed by the Board. The members of the Committee shall be the Chairman of the Board, the Secretary/Treasurer of the employer, an active police officer of the employer, the Solicitor of the employer and one citizen of the employer who shall be appointed annually at the January reorganization meeting. Each member of the Committee shall serve in that capacity until death, resignation, removal or otherwise. Vacancies on the Committee shall be filled in the same manner as the position was originally filled.
3. **Authority and Duties of the Plan Administrator.**
  - A. The Plan Administrator shall have full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the Plan. The interpretation or construction placed upon any term or provision of the Plan by the Plan Administrator or any action of the Plan Administrator taken in good faith shall, upon the Board's review and approval thereof, be final and conclusive upon all parties hereto, whether employees, participants or other persons concerned. By way

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1. **Editor's Note:** See 43 P.S. § 1311 et seq.

of specification and not limitation and except as specifically limited hereafter, the Plan Administrator is authorized:

- (1) To construe this Plan;
  - (2) To determine all questions affecting the eligibility of any employee to participate herein;
  - (3) To compute the amount and source of any benefit payable hereunder to any participant or beneficiary;
  - (4) To authorize any and all disbursements;
  - (5) To prescribe any procedure to be followed by any participant and/or other person in filing any application or election;
  - (6) To prepare and distribute, in such manner as may be required by law or as the Plan Administrator deems appropriate, information explaining the Plan;
  - (7) To require from the employer or any participant such information as shall be necessary for the proper administration of the Plan; and
  - (8) To appoint and retain any individual to assist in the administration of the Plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws.
  - (9) To select an individual retirement plan provider (either the state or a federally regulated financial institution) and invest funds in connection with the rollover of mandatory distributions as described in Section 4.09(b).
- B. The Plan Administrator shall have no power to add to, subtract from or modify the terms of the Plan or change or add to any benefits provided by the Plan, or to waive or fail to apply any requirements of eligibility for benefits under the Plan. Further, the Plan Administrator shall have no power to adopt, amend, or terminate the Plan, to select or appoint any Trustee or to determine or require any contributions to the Plan, said powers being exclusively reserved to the Board.
4. Police Pension Committee Organization. The Committee may organize itself in any manner deemed appropriate to effectuate its purposes hereunder, subject to the following:
- A. The Committee shall act by a majority of its members at the time in office and such action may be taken either by vote at a meeting or in writing without a meeting.
  - B. The Committee shall, from time to time, appoint a Chairman, a Secretary who may, but need not, be a Committee member and such other agents as it may deem advisable.
  - C. The Committee may, from time to time, authorize any one or more of its members to execute any document or documents including any application, request, certificate, notice, consent, waiver or direction and shall notify the Board, in writing, of the name or names of the member or members so authorized. In the absence of a designation, the Chairman shall be deemed to be so authorized. Any Trustee or other fiduciary

appointed hereunder shall accept and be fully protected in relying upon any document executed by the designated member or members (or the Chairman in the absence of a designation) as representing a valid action by the Committee until the Committee shall file with such fiduciary a written revocation of such designation.

- D. The Committee or its delegate shall maintain and keep such records as are necessary for the efficient operation of the Plan or as may be required by any applicable law, regulation or ruling and shall provide for the preparation and filing of such forms or reports as may be required to be filed with any governmental agency or department and with the participants and/or other persons entitled to benefits under the Plan.
5. **Plan Administrator Costs.** The Plan Administrator shall serve without compensation for services unless otherwise agreed by the Board in writing. All reasonable expenses incident to the functioning of the Plan Administrator, including, but not limited to, fees of accountants, counsel, actuaries and other specialists and other costs of administering the Plan, may be paid from the Pension Fund upon approval by the Board to the extent permitted under applicable law and not otherwise paid by the employer.
  6. **Hold Harmless.** No member of the Council, the Plan Administrator, the Committee, nor any other person involved in the administration of the Plan shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this Plan. To the extent permitted by law, the employer shall, and hereby does agree to, indemnify and hold harmless the Plan Administrator and each successor and each of any such individual's heirs, executors and administrators, and the delegates and appointees (other than any person, bank, firm or corporation which is independent of the employer and which renders services to the Plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit or proceeding to which they may be made a party by reason of being or having been a member, delegate or appointee of the Plan Administrator, except in matters involving criminal liability, intentional or willful misconduct. If the employer purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.
  7. **Approval of Benefits.** The Plan Administrator shall review and approve or deny any application for retirement benefits within 30 days following receipt thereof or within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.
  8. **Appeal Procedure.** Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the Plan ("claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth.
    - A. Any claimant shall file a notice of the claim with the Plan Administrator which shall fully describe the nature of the claim. The Plan Administrator shall review the claim and make an initial determination approving or denying the claim.



- B. If the claim is denied in whole or in part, the Plan Administrator shall, within 90 days (or such other period as may be established by applicable law) from the time the application is received, mail notice of such denial to the claimant. Such ninety-day period may be extended by the Plan Administrator if special circumstances so require for up to 90 additional days by the Plan Administrator's delivering notice of such extension to the claimant within the first ninety-day period. Any notice hereunder shall be written in a manner calculated to be understood by the claimant and, if a notice of denial, shall set forth i) the specific Plan provisions on which the denial is based, ii) an explanation of additional material or information, if any necessary to perfect such claim and a statement of why such material or information is necessary, and iii) an explanation of the review procedure.
- C. Upon receipt of notice denying the claim, the claimant shall have the right to request a full and fair review by the Board of the initial determination. Such request for review must be made by notice to the Board within 60 days of receipt of such notice of denial. During such review, the claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. The Board shall, within 60 days after receipt of the notice requesting such review, (or in special circumstances, such as where the Board in its sole discretion holds a hearing, within 120 days of receipt of such notice), submit its decision in writing to the person or persons whose claim has been denied. The decision shall be final, conclusive and binding on all parties, shall be written in a manner calculated to be understood by the claimant and shall contain specific references to the pertinent Plan provisions on which the decision is based.
- D. Any notice of a claim questioning the amount of a benefit in pay status shall be filed within 90 days following the date of the first payment which would be adjusted if the claim is granted unless the Plan Administrator allows a later filing for good cause shown.
- E. A claimant who does not submit a notice of a claim or a notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.
- F. Nothing contained herein is intended to abridge any right of a claimant to appeal any final decision hereunder to a court of competent jurisdiction under 2 Pa. C.S.A. § 752. No decision hereunder is a final decision from which such an appeal may be taken until the entire appeal procedure of this § 1-508.8 of the Plan has been exhausted.

**§ 1-509. The Pension Fund.** [Ord. 2000-6, 12/27/2000, Art. IX; as amended by Ord. No. 2014-2, 10/6/2014]

1. Operation of the Pension Fund.

- A. The Board is hereby authorized to hold and supervise the investment of the assets of the Pension Fund, subject to the provisions of the laws of the Commonwealth and of this Plan and any amendment thereto.
- B. The Pension Fund shall be used to pay benefits as provided in the Plan and, to the

extent not paid directly by the employer, to pay the expenses of administering the Plan pursuant to authorization by the employer.

- C. The employer intends the Plan to be permanent and for the exclusive benefit of its employees. It expects to make the contributions to the Pension Fund required under the Plan. The employer shall not be liable in any manner for any insufficiency in the Pension Fund; benefits are payable only from the Pension Fund, and only to the extent that there are monies available therein. The Pension Fund will consist of all funds held by the employer under the Plan, including contributions made pursuant to the provisions hereof and the investments, reinvestments and proceeds thereof. The Pension Fund shall be held, managed, and administered pursuant to the terms of the Plan. Except as otherwise expressly provided in the Plan, the employer has exclusive authority and discretion to manage and control the Pension Fund assets. The employer may, however, appoint a trustee, custodian and/or investment manager, at its sole discretion.
2. Powers and Duties of Employer. With respect to the Pension Fund, the employer shall have the following powers, rights and duties, in addition to those vested in it elsewhere in the Plan or by law, unless such duties are delegated.
    - A. To retain in cash so much of the Pension Fund as it deems advisable and to deposit any cash so retained in any bank or similar financial institution (including any such institution which may be appointed to serve as trustee hereunder), without liability for interest thereon.
    - B. To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which are at the time legal investments for fiduciaries under the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended.
    - C. To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate; to exchange such property; to grant options for the purchase or exchange thereof.
    - D. To consent to and participate in any plan of reorganization, consolidation, merger, extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
    - E. To exercise all conversion and subscription rights pertaining to property held in the fund.
    - F. To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
    - G. To place money at any time in a deposit bank deemed to be appropriate for the purposes of this Plan no matter where situated, including in those cases where a bank has been appointed to serve as trustee hereunder, the savings department of its own commercial bank.
    - H. In addition to the foregoing powers, the employer shall also have all of the powers,

rights, and privileges conferred upon trustees by the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the employer may deem necessary to administer the Pension Fund.

- I. To maintain and invest the assets of this Plan on a collective and commingled basis with the assets of other pension plans maintained by the employer, provided that the assets of each respective plan shall be accounted for and administered separately.
- J. To invest the assets of the Pension Fund in any collective commingled trust fund maintained by a bank or trust company, including any bank or trust company which may act as a trustee hereunder. In this connection, the commingling of the assets of this Plan with assets of other eligible, participating plans through such a medium is hereby specifically authorized. Any assets of the Plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the Plan, to the extent of the participation in such collective or commingled trust fund by the Plan.
- K. To make any payment or distribution required or advisable to carry out the provisions of the Plan, provided that if a trustee is appointed by the employer, such trustee shall make such distribution only at the direction of the employer.
- L. To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the Plan.
- M. To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
- N. To pay, and to deduct from and charge against the Pension Fund, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the Fund is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the Pension Fund, the income, property or transfer thereof, or in any matter or thing connected therewith.
- O. To appoint any persons or firms (including but not limited to, accountants, investment advisors, counsel, actuaries, physicians, appraisers, consultants, professional plan administrators and other specialists), or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the management of the Fund; to the extent not prohibited by applicable law, the employer shall be entitled to rely conclusively upon and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such persons or firms, provided such persons or firms were prudently chosen by the employer, taking into account the interests of the participants and beneficiaries and with due regard to the ability of the persons or firms to perform their assigned

functions.

- P. To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the Fund assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the laws of more than one state; in such event, the employer shall follow the directions of such Investment Manager or Managers with respect to the acquisition and disposition of fund assets, but shall not be liable for the acts or omissions of such Investment Manager or Managers, nor shall it be under any obligation to review or otherwise manage any Fund assets which are subject to the management of such Investment Manager or Managers. If the employer appoints a trustee, the trustee shall not be permitted to retain such an Investment Manager except with the express written consent of the employer.
3. Common Investments. The employer shall not be required to make separate investments for individual participants or to maintain separate investments for each participant's account, but may invest contributions and any profits or gains therefrom in common investments.
  4. Compensation and Expenses of Appointed Trustee. If a trustee is appointed, the trustee shall be entitled to such reasonable compensation as shall from time to time be agreed upon by the employer and the trustee, unless such compensation is prohibited by law. Such compensation, and all expenses reasonably incurred by the trustee in carrying out its functions, shall constitute a charge upon the employer or the Pension Fund, which may be executed at any time after 30 days' written notice to the employer. The employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to be reimbursed for the payment thereof, from the Pension Fund.
  5. Periodic Accounting. If a trustee is appointed, the Pension Fund shall be evaluated annually, or at more frequent intervals, by the trustee and a written accounting rendered as of each fiscal year end of the Fund, and as of the effective date of any removal or resignation of the trustee, and such additional dates as requested by the employer, showing the condition of the Fund and all receipts, disbursements and other transactions effected by the trustee during the period covered by the accounting, based on fair market values prevailing as of such date.
  6. Value of the Pension Fund. All determinations as to the value of the assets of the Pension Fund, and as to the amount of the liabilities thereof, shall be made by the employer or its appointed trustee, whose decisions shall be final and conclusive and binding on all parties hereto, the participants and Beneficiaries and their estates. In making any such determination, the employer or trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts, and shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

**§ 1-510. Amendment and Termination.** [Ord. 2000-6, 12/27/2000, Art. X; as amended by Ord. No. 2014-2, 10/6/2014]

1. Amendment of the Plan. The employer may amend this Plan at any time or from time to time by an instrument in writing executed in the name of the employer under its municipal seal by officers duly authorized to execute such instrument and delivered to the Board; provided, however:
  - A. That no amendment shall deprive any participant or any beneficiary of a deceased participant of any of the benefits to which he is entitled under this Plan with respect to contributions previously made;
  - B. That no amendment shall provide for the use of funds or assets held under this Plan other than for the benefit of employees and no funds contributed to this Plan or assets of this Plan shall, except as provided in Subsection 5, ever revert to or be used or enjoyed by the employer; and
  - C. That no amendment to the Plan which provides for a benefit modification shall be made unless the cost estimate described in § 1-511.3 has been prepared and presented to the Board in accordance with the Act.
2. Termination of the Plan. The employer shall have the power to terminate this Plan in its entirety at any time by an instrument in writing executed in the name of the employer.
3. Automatic Termination of Contributions. Subject to the provisions of the Act governing financially distressed municipalities, the liability of the employer to make contributions to the Pension Fund shall automatically terminate upon liquidation or dissolution of the employer, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of its creditors.
4. Distribution Upon Termination.
  - A. In the event of the termination of the Plan, all amounts of vested benefits accrued by the affected participants as of the date of such termination, to the extent funded on such date, shall be nonforfeitable hereunder. In the event of termination of the Plan, the employer shall direct either a) that the Plan Administrator continue to hold the vested accrued benefits of participants in the Pension Fund in accordance with the provisions of the Plan (other than those provisions related to forfeitures) without regard to such termination until all funds have been distributed in accordance with the provisions; or b) that the Plan Administrator immediately distribute to each participant an amount equal to the vested accrued benefit to the date.
  - B. If there are insufficient assets in the Pension Fund to provide for all vested accrued benefits as of the date of Plan termination, priority shall first be given to the distribution of any amounts attributable to mandatory or voluntary employee contributions before assets are applied to the distribution of any vested benefits attributable to other sources hereunder.
  - C. All other assets attributable to the terminated Plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the employer which effects such termination.

5. Residual Assets. If all liabilities to vested participants and any others entitled to receive a benefit under the terms of the Plan have been satisfied and there remain any residual assets in the Pension Fund, such residual assets remaining shall be returned to the employer insofar as such return does not contravene any provision of law, and any remaining balance, in excess of employer contributions, shall be returned to the Commonwealth.
6. Exclusive Benefit Rule. In the event of the discontinuance and termination of the Plan as provided herein, the employer shall dispose of the Pension Fund in accordance with the terms of the Plan and applicable law; at no time prior to the satisfaction of all liabilities under the Plan shall any part of the corpus or income of the Pension Fund, after deducting any administrative or other expenses properly chargeable to the Pension Fund, be used for or diverted to purposes other than for the exclusive benefit of the participants in the Plan, their beneficiaries or their estates.

**§ 1-511. Minimum Funding Requirements.** [Ord. 2000-6, 12/27/2000, Art. XI; as amended by Ord. No. 2014-2, 10/6/2014]

1. Actuarial Valuations. The Plan's actuary shall perform an actuarial valuation at least biennially unless the employer is applying or has applied for supplemental state assistance pursuant to Section 603 of the Act, whereupon actuarial valuation reports shall be made annually.
  - A. Such biennial actuarial valuation report shall be made as of the beginning of each Plan Year occurring in an odd-numbered calendar year, beginning with the year 1985.
  - B. Such actuarial valuation shall be prepared and certified by an approved actuary, as such term is defined in the Act.
  - C. The expenses attributable to the preparation of any actuarial valuation report or investigation required by the Act or any other expense which is permissible under the terms of the Act and which are directly associated with administering the Plan shall be an allowable administrative expense payable from the assets of the Pension Fund. Such allowable expenses shall include but not be limited to the following:
    - (1) Investment costs associated with obtaining authorized investments and investment management fees;
    - (2) Accounting expenses;
    - (3) Premiums for insurance coverage on Fund assets;
    - (4) Reasonable and necessary counsel fees incurred for advice or to defend the Fund; and
    - (5) Legitimate travel and education expenses for Plan officials; provided, however, that the municipal officials of the employer, in their fiduciary role, shall monitor the services provided to the Plan to ensure that the expenses are necessary, reasonable and benefit the Plan; and further provided, that the Plan Administrator shall document all such expenses item by item, and where necessary, hour by hour.

2. Duties of Chief Administrative Officer. Such actuarial reports shall be prepared and filed under the supervision of the Chief Administrative Officer. The Chief Administrative Officer of the Plan shall determine the financial requirements of the Plan on the basis of the most recent actuarial report and shall determine the minimum municipal obligation of the employer with respect to funding the Plan for any given Plan Year. The Chief Administrative Officer shall submit the financial requirements of the Plan and the minimum municipal obligation of the employer to the Board annually and shall certify the accuracy of such calculations and their conformance with the Act.
3. Benefit Plan Modifications. Prior to the adoption of any benefit plan modification by the employer, the Chief Administrative Officer of the Plan shall provide to the Board a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an approved actuary, which estimate shall disclose to the Board the impact of the proposed benefit plan modification on the future financial requirements of the Plan and the future minimum municipal obligation of the employer with respect to the Plan.

**§ 1-512. Miscellaneous Provisions.** [Ord. 2000-6, 12/27/2000, Art. XII; as amended by Ord. No. 2014-2, 10/6/2014]

1. Plan Not a Contract of Employment. No police officer of the employer nor anyone else shall have any rights whatsoever against the employer or the Plan Administrator as a result of this Plan except those expressly granted to them hereunder. Nothing herein shall be construed to give any police officer the right to remain on the police force of the employer.
2. Masculine/Feminine; Singular/Plural. For purposes of this Plan, the masculine shall be read for the feminine and the singular shall be read for the plural, wherever the person or context shall plainly so require.
3. Construction of Document. This Plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be construed and enforced according to the laws of the Commonwealth, excepting such Commonwealth's choice of law rules.
4. Headings. The headings of articles are included solely for convenience of reference, and if there be any conflict between such headings and the text of the Plan, the text shall control.
5. Severability of Provisions. In case any provisions of this Plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this Plan, and the Plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted therein.
6. Incapacity of Participant. If any participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder, the Plan Administrator, upon the receipt of satisfactory evidence that such participant is so incapacitated and that another person or institution is maintaining him, may provide for such payment of pension benefits hereunder to such person or institution so maintaining him, and any such payments so made shall be deemed for every purpose to have been made to such participant.
7. Liability of Officers of the Plan Administrator and/or Employer. Subject to the provisions

of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer of the employer shall be personally liable to any participant, beneficiary or other person under any provision of the Plan.

8. Assets of the Fund. Nothing contained herein shall be deemed to give any participant or beneficiary any interest in any specific property of the Pension Fund or any right except to receive such distributions as are expressly provided for under the Plan.
9. Pension Fund for Sole Benefit of Participants. The income and principal of the Pension Fund are for the sole use and benefit of the participants covered hereunder, and to the extent permitted by law, shall be free, clear and discharged from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any participant or beneficiary.

## **Part 6 HIRING OF IMMEDIATE FAMILY**

### **§ 1-601. Hiring of Immediate Family Prohibited.** [Ord. 1991-3, 4/3/1991, § 1]

It is hereby declared and ordained to be the policy of Sandy Township, in the exercise of its powers in hiring individuals as employees, workmen, independent contractors or consultants, that it shall be, and it is hereby, prohibited to hire any members of the immediate family of Supervisors by the said Township.

### **§ 1-602. Immediate Family Defined.** [Ord. 1991-3, 4/3/1991, § 2]

The term "immediate family" as defined in this Part shall include any mother, mother-in-law, father, father-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, husband and wife.

### **§ 1-603. Effectiveness of This Part.** [Ord. 1991-3, 4/3/1991, § 3]

This Part shall apply to any future employees hired, and in the event that any individuals should become elected to the office of Supervisors hereafter, and any such "immediate family" already employed by the said Township shall be exempt and not be subject to the terms and provisions of this Part.

### **§ 1-604. Objection of Hiring Family Member.** [Ord. 1991-3, 4/3/1991, § 4]

Should any such member of the immediate family of any Supervisors be hired hereafter, any resident or property owner within Sandy Township shall have standing to object to the same, and should the Supervisors fail to immediately terminate the employment of any such individual, the Supervisors shall then be personally liable for any and all costs involved in any court proceedings which may be brought to enforce the terms hereof. The term "costs" shall include the legal fees, court costs, any loss of earning or wages by persons required to testify, as well as reimbursement to the Township for any Township personnel required to appear at any such hearing.



**§ 1-605. Enforcement and Remedies.** [Ord. 1991-3, 4/3/1991, § 5; as amended by Ord. No. 2005-7, 12/19/2005]

1. Enforcement Notice.

- A. If it appears to the Township that a violation of this Part has occurred, the Township shall initiate enforcement proceedings by sending an enforcement notice as provided in this Section.
- B. The enforcement notice shall be sent to the violator and, if applicable, the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel and to any other person requested in writing by the owner of record.
- C. An enforcement notice shall state at least the following:
  - (1) The name of the violator and, if applicable, the owner of record and any other person against whom the Township intends to take action.
  - (2) The location of the violation and, if applicable, the property in violation.
  - (3) The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of this Part.
  - (4) The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
  - (5) That the recipient of the notice has the right to appeal to the Board of Supervisors within a period of 10 days.
  - (6) That failure to comply with the notice within the time specified, unless extended by appeal to the Board of Supervisors, constitutes a violation, with possible sanctions clearly described.

2. Enforcement Remedies.

- A. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Part shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than \$600 plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues or each Section of this Part which shall be found to have been violated shall constitute a separate violation.
- B. Nothing contained in this Section shall be construed or interpreted to grant to any person or entity other than the Township the right to commence any action for enforcement pursuant to this Section.
- C. District justices shall have initial jurisdiction over proceedings brought under this Section.

**Part 7**  
**FIRE INSURANCE PROCEEDS**

**§ 1-701. Use of Fire Insurance Proceeds.** [Ord. 1993-17, 7/21/1993; as revised by Ord. No. 2005-7, 12/19/2005]

1. No insurance company, association or exchange (hereinafter "insurer") doing business in the Commonwealth of Pennsylvania shall pay a claim of a named insured for fire damage to a structure located within the Township of Sandy where the amount recoverable for the fire loss to the structure under all policies exceeds \$7,500, unless the insurer is furnished by the Township Treasurer with a certificate pursuant to 508(b) of the Insurance Company Law of 1921, as amended by Act 98 of 1992 and Act 93 of 1994 (collectively, the "Act") and unless there is compliance with the procedures set forth in 508(c) and (d) of the Act.
2. Where there are delinquent taxes, assessments, penalties or user charges against the property ("municipal claims"), or there are expenses which the Township has incurred as a cost for the removal, repair or securing of a building or other structure on the property (collectively "municipal expenses"), the Treasurer or Zoning Officer of the Township shall immediately render a bill for such work, if he has not already done so. Upon written request of the named insured specifying the tax description of the property, the name and address of the insurer and the date of receipt by the insurer of a loss report of the claim, the Treasurer shall furnish a certificate within 14 working days after the request, to the insurer, a certificate (or at his discretion an oral notice confirmed in writing) either:
  - A. Stating that there are no unpaid municipal claims or municipal expenses against the property; or,
  - B. Specifying the nature and amount of such claims or expenses, accompanied by a bill for such amounts.
  - C. Taxes, assessments, penalties and user charges shall be deemed delinquent for this purpose if a lien could have been filed for such claims under applicable law. Upon receipt of a certificate and bill pursuant to subsection (A) of this Section, the insurer shall transfer to the Treasurer an amount from the insurance proceeds sufficient to pay such sums prior to making payment to the named insured, subject to the provisions of subsection (3) hereof.
3. When all municipal claims and municipal expenses have been paid pursuant to subsection (2) of this Section, or where the Treasurer has issued a certificate described in subsection (2)(A) indicating that there are no municipal claims or municipal expenses against the property, the insurer shall pay the claim of the named insured; provided, however, that if the loss agreed upon by the named insured and the insurer equals or exceeds 60% of the aggregate limits of liability on all fire policies covering the building or structure, the following procedures must be followed:
  - A. The insurer shall transfer from the insurance proceeds to the Treasurer, in the aggregate, \$2,000 for each \$15,000 of such claim or fraction thereof.
  - B. If at the time a loss report is submitted by the insured, such insured has submitted to the insurer, with a copy to the Township, a contractor's signed estimate of the cost of

removing, repairing or securing the building or other structure in an amount less than the amount calculated under the foregoing transfer formula, the insurer shall transfer to the Treasurer from the insurance proceeds the amount specified in the estimate. If there is more than one insurer, the transfer of proceeds shall be on a pro rata basis by all insurers insuring the building or other structure.

- C. Upon receipt of the above described portion of the insurance proceeds, the Treasurer shall do the following:
- (1) Place the proceeds in a separate fund to be used solely as security against the total municipal expenses anticipated by the Township to be required in removing, repairing or securing the building or structure as required by this ordinance. Such costs shall include, without limitation, any engineering, legal or administrative costs incurred by the Township in connection with such removal, repair or securing or any proceedings related thereto; and,
  - (2) Mail to the named insured, at the address received from the insurer, a notice the proceeds have been received by the Township and that the procedures under this subsection shall be followed.
  - (3) After the transfer, the named insured may submit to the Township a contractor's signed estimate of the cost of removing, repairing or securing the building or other structure, in which event the Treasurer shall, if such estimate is deemed by the Treasurer to be reasonable, return to the insured the amount of the funds transferred to the Township in excess of that required to pay the municipal expenses; provided, the Township has not commenced to remove, repair or secure the building or other structure, in which case the Township will complete the work.
  - (4) Pay to the Treasurer, for reimbursement to the Township general fund, the amount of the municipal expenses paid by the Township.
  - (5) Pay the remaining balance in the fund (without interest) to the named insured upon receipt of a certificate issued by the Chief of Police and/or Fire Chief that the repair, removal or securing of the building or other structure has been completed in accordance with all applicable codes and regulations of the Township.
  - (6) Nothing in this Section shall be construed to limit the ability of the Township to recover any deficiency in the amount of municipal claims or municipal expenses recovered pursuant to this ordinance, or to insurance proceeds, by an action at law or in equity to enforce the codes of the Township or to enter into an agreement with the named insured with regard to such other disposition of the proceeds as the Township may deem responsible.

**§ 1-702. Limits of Liability.** [Ord. 1993-17, 7/21/1993; as revised by Ord. No. 2005-7, 12/19/2005]

Nothing in this Part shall be construed to make an insurance company, association or exchange liable for any amount in excess of proceeds payable under its insurance policy or for any other act performed pursuant to this Part or to make this Township, any Township official, a

municipality or public official an insured under a policy of insurance or to create an obligation to pay delinquent property taxes or unpaid removal liens or expenses other than as provided in this Part.

**§ 1-703. Insurance Company Rights Reserved.** [Ord. 1993-17, 7/21/1993; as revised by Ord. No. 2005-7, 12/19/2005]

An insurance company, association or exchange making payment of policy proceeds under this Part for delinquent taxes or structure removal liens or removal expenses incurred by the Township shall have a full benefit of such payment including all rights of subrogation and of assignment.

**§ 1-704. Construction.** [Ord. 1993-17, 7/21/1993; as revised by Ord. No. 2005-7, 12/19/2005]

This Part shall be liberally construed to accomplish its purpose to deter the commission of arson and related crimes, to discourage the abandonment of property and to prevent urban blight and deterioration.

**§ 1-705. Notification of Pennsylvania Department of Community and Economic Development.** [Ord. 1993-17, 7/21/1993; as revised by Ord. No. 2005-7, 12/19/2005]

The Secretary of the Township shall transmit a certified copy of this Part promptly to the Pennsylvania Department of Community and Economic Development.

**§ 1-706. Penalty.** [Ord. 1993-17, 7/21/1993; as amended by Ord. No. 2005-7, 12/19/2005]

Any owner of property, any named insured or insurer or any person, firm or corporation who shall violate any provision of this Part or who shall fail to comply with any of the requirements hereof, upon conviction thereof in an action brought before a district justice in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedures, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

**§ 1-707. Saving Clause.** [Ord. 1993-17, 7/21/1993; as revised by Ord. No. 2005-7, 12/19/2005]

The provisions of this Part, so far as they are the same as those of ordinances enforced immediately prior to the enactment of this Part are intended as a continuation of such ordinances and not as new enactments. The provisions of this Part shall not affect any act done or liability incurred, nor shall it affect any suit or prosecution pending or to be instituted to enforce any right or penalty or to punish any offense under the authority of any ordinance repealed by this Part.

## **Part 8 PLANNING COMMISSION**

**§ 1-801. Creation of Commission.** [Ord. No. 2005-7, 12/19/2005]

A Township Planning Commission to be composed of five members, appointed as provided by

law (53 P.S. § 10202), is hereby created in and for the Township of Sandy. The Planning Commission shall perform all duties and may exercise all powers conferred by law upon Township planning agencies; provided, the Planning Commission previously created in and for the said Township shall constitute the tenure of any of the members thereof, but any and all vacancies in the said Commission, hereafter occurring, shall be filled in the manner and for the term provided in the law governing Township planning commissions in effect at the time of the happening of the said vacancy.

**Part 9**  
**(RESERVED)** <sup>2</sup>

**§ 1-901. (Reserved)**

**Part 10**  
**EMERGENCY SERVICE COSTS**

**§ 1-1001. Responsible Person.** [Ord. 2000-3, 5/17/2000, § 1]

Any person who intentionally, negligently, accidentally or otherwise causes a motor vehicle accident, hazardous material or substance spill or any other act or omission necessitating the providing of emergency services by the Township of Sandy or any of the fire companies ("Fire Departments") in the Sandy Township Fire Department within the boundaries of the Township or the service are of the Fire Departments shall be liable for all costs incurred by the Township and/or the fire departments as a result of such accident, spill or other act or omission. The remedy provided by this Part shall be in addition to any other remedies provided by law.

**§ 1-1002. Definition.** [Ord. 2000-3, 5/17/2000, § 2]

For the purpose of this Part, "hazardous materials" shall be defined as any substance or materials in a quantity or form which, in the determination of the Emergency Management Coordinator, or other authorized representative of the Township, poses an unreasonable and imminent risk to the life, health or safety of persons or property or to the ecological balance of the environment and shall include, but not be limited to, such substances as explosives, radioactive materials, petroleum products or gasses, poisons, etiologic (biologic) agents, flammable, corrosives or materials listed in the hazardous substances list of the Pennsylvania Department of Labor and Industry.

**§ 1-1003. Authority to Recover Costs.** [Ord. 2000-3, 5/17/2000, § 3]

The authority to recover costs under this Part shall not include actual fire suppression services which are normally or usually provided by the fire departments.

**§ 1-1004. Charges.** [Ord. 2000-3, 5/17/2000, § 4]

For purposes of this Part, the charges for use of the Township and Fire Departments emergency service equipment, materials and personnel shall be established by resolution of the Township

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2. Editor's Note: Former Part 9, Employee Residency Requirement, adopted by Ord. 1999-7, 6/2/1999, as amended, was repealed by Ord. 2-2007, 4/2/2007.

Board of Supervisors.

**§ 1-1005. Severability.** [Ord. 2000-3, 5/17/2000, § 5]

In the event that any provision, Section, sentence, clause or part of this part shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, Section, sentence, clause or part of this Part, it being the intent of the Township that such remainder shall be and remain in full force and effect.

**Part 11  
RIGHT-TO-KNOW POLICY**

**§ 1-1101. Open Records Officer.** [Res. 2008-21, 12/15/2008]

1. The Township hereby designates the Sandy Township Secretary, currently Barbara Miller, as the Township Open Records Officer.
2. The Open Records Officer may be reach at 1094 Chestnut Avenue, P.O. Box 267, DuBois, PA 15801. Phone 814-371-4220, Fax 814-375-7837. E-mail sandytwp@comcast.net

**§ 1-1102. Days and Hours.** [Res. 2008-21, 12/15/2008]

All documents deemed public records shall be available for inspection, retrieval, and duplication at the Municipal Building during established business hours (8:00 a.m. to 4:00 p.m.) with the exception of weekends and holidays.

**§ 1-1103. Requests.** [Res. 2008-21, 12/15/2008]

Requests shall be made in writing to the Township Open Records Officer on a form provided by the Township. (See attached form<sup>3</sup>)

**§ 1-1104. Fees.** [Res. 2008-21, 12/15/2008]

Paper copies shall be \$0.25 per page per side. The certification of a record is \$1 per record. Specialized documents, including but not limited to blueprints, color copies, and nonstandard-sized documents shall be charged the actual cost of production. If mailing is requested, the cost of postage will be charged. The Township shall require prepayment if the total fees are estimated to exceed \$100.

**§ 1-1105. Response.** [Res. 2008-21, 12/15/2008]

1. The Township shall make a good-faith effort to provide the requested public record(s) as promptly as possible. The Open Records Officer shall cooperate with those requesting records to review and/or duplicate original Township documents while taking reasonable measure to protect Township documents from the possibility of theft, damage, and/or modification.
2. The Open Records Officer shall review all written requests for access to public records. As

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3. Editor's Note: The Right-to-Know Request Form is included at the end of this Chapter.

soon as possible, but no later than five business days after receiving a written request to access public records, the Open Records Officer shall respond to such requests in writing consistent with Act 3 of 2008, the Right-to-Know Law.

**§ 1-1106. Contact Information for Appeals.** [Res. 2008-21, 12/15/2008]

1. If a written request is denied or deemed denied, the requester may file an appeal in writing to Terry Mutchler, Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, Plaza Level, Harrisburg, PA 17120-0225.
2. Appeals of criminal records shall be made to the District Attorney of Clearfield County, currently William Shaw, Jr., 230 East Market Street, Suite 210, Clearfield, PA 16830, Phone 814-765-2641, Ext. 5990.

**§ 1-1107. Appeals Process.** [Res. 2008-21, 12/15/2008]

The appeal shall be filed within 15 business days of the mailing date of the Township's response or within 15 business days of a deemed denial. The appeal shall state the grounds upon which the requester asserts the records is a public record and shall address any grounds stated by the Applying to the County for the request.