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Part 1

Elected Officers

A. Office of Mayor

§1-101. Compensation of Mayor.

The salary of the Mayor shall be as fixed from time to time by Borough Council. It shall be payable in monthly installments and he shall also be paid by the Borough an automobile allowance of such sum as may be fixed by Council, payable monthly.

(Ord. 621, 12/14/1983)

§1-102. Emergency Powers of Mayor.

The Mayor is authorized, if he finds that the Borough or any part of it is suffering or is in imminent danger of suffering a riot, disturbance or disorderly assembly or other occurrence which will seriously and substantially endanger the peace, safety and welfare of the Borough or its inhabitants, to declare by proclamation of state of emergency and take the following specified measures throughout the Borough or any part of it:

- A. Prohibit or limit the number of persons who may gather or congregate upon the public highways or public sidewalks, or in any outdoor place.
- B. Halt access or egress upon public highways to or from the Borough or any part of it.
- C. Establish a curfew limiting the hours when persons may go upon or travel the public streets and sidewalks. During that curfew, it shall be unlawful for any person, except Borough officials, police, firemen, or their duly authorized agents or persons to whom a permit has been issued by police authorities, to be on any street, sidewalk or outdoor place within the Borough.
- D. Require the closing of places dispensing alcoholic beverages and prohibit the dispensing of alcoholic beverages.
- E. Prohibit or restrict the sale of gasoline or other nonflammable liquids.
- F. Prohibit the sale, carrying or possession on the public streets or sidewalks or any public place by anyone except police, of weapons including, but not limited to, firearms, air rifles, slingshots, knives, razors, fire bombs, Molotov cocktails, or other inflammable items or devices or missiles of any kind.
- G. Prohibit any interference in any way with the functions of firemen or the operations of any fire equipment.

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(Ord. 527, 7/8/1969, §1)

§1-103. Duration of State of Emergency.

The state of emergency declared by the Mayor shall exist for the period set forth in the proclamation but not in excess of two weeks. However, the state of emergency may be extended for additional periods of two weeks.

(Ord. 527, 7/8/1969, §2)

§1-104. Penalties.

Any person, firm or corporation who shall violate any provision of this Part 1 shall, upon conviction thereof, be sentenced to pay a fine of not more than \$300; and/or to imprisonment for a term not to exceed 90 days.

(Ord. 527, 7/8/1969, §3; as amended by Ord. 591, 8/8/1978, §1; and by Ord. 621, 12/14/1983)

B. Council

§1-111. Time, Day and Place of Regular Meetings.

The regular meetings of the Council of the Borough of Beaver shall convene on the second Tuesday of each month at 7:30 p.m. (prevailing time) in Council Room, Borough Municipal Building, 469 Third Street, Beaver, Pennsylvania.

(Ord. 621, 12/14/1983)

Part 2

Appointed Officers

A. Manager.

§1-201. Office of Manager Created.

An office to be called the office of Borough Manager is established and created for the Borough.

(Ord. 409, 1/9/1951, §1)

§1-202. Appointment of Manager.

While the office of a Manager exists, Council shall, from time to time whenever there is a vacancy, elect by a vote of a majority of all its members one person to fill the office of Manager, for an indefinite term, and subject to removal by Council at any time by a vote of a majority of its members.

(Ord. 409, 1/9/1951, §2)

§1-203. General Authority of Manager.

The Manager shall carry on the business of the Borough under the direction of Council, and his duties shall consist of those prescribed by §§1-205 and 1-206, as well as the general management of all Borough business not specifically given by statute or other ordinances or other officials of the Borough.

(Ord. 409, 1/9/1951, §3)

§1-204. Compensation and Bond of Manager.

The compensation of the Manager shall be fixed by Council from time to time, and the Manager shall give bond in a sum to be fixed by Council with surety approved by Council, conditioned for the faithful performance of his duties.

(Ord. 409, 1/9/1951, §4)

§1-205. Specific Duties of Manager.

The duties of the Manager shall consist of the following:

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- A. The Manager shall be the chief administrative officer of the Borough responsible to Council as a whole for the proper and efficient administration of the affairs of the Borough, including all Borough business not specifically vested in some other officer or person by statute, ordinance or resolution.
- B. The Manager shall supervise and be responsible for the activities of all municipal departments, except that he shall not exercise any supervision or authority over the Police Department other than such duties as may be delegated to him from time to time by the Mayor.
- C. He shall hire, appoint, suspend or remove all municipal employees in accordance with §1-206, except as otherwise provided by law or ordinance, and excepting that all employees covered by the civil service provisions of the Borough Code shall be hired, suspended, or discharged in accordance with those provisions. The Manager shall at the next succeeding meeting of Council report any action taken under authority of this subsection.
- D. He shall prepare and submit the annual operating budget for the succeeding year to Council in sufficient time prior to the close of the preceding fiscal year to allow for its adoption as required by law. He shall submit such explanatory budget message as may be required and obtain from all employees and other persons estimates of revenues and expenditures and other supporting data as may be required to fully explain his proposed budget.
- E. He shall submit to Council with his proposed budget, a complete written report on the finances and administrative activity of the municipality for the current year.
- F. He shall, subject to other requirements by law, ordinance or resolution, generally superintend and manage all of the day-to-day fiscal affairs of the municipality. He shall continually examine and review all accounts in which the municipality is concerned, either as debtor or creditor, and prepare and present to Council such written reports and financial statements as may be required.
- G. He shall keep Council fully informed and advised as to the financial condition and the conduct of business affairs of the Borough and its future needs, submitting such periodic reports and making such recommendations for action concerning the fiscal and other business affairs of the municipality as he deems necessary.
- H. He shall attend all Council meetings and all committee meetings, at which his presence is requested, and shall have the right to take part in discussion in those meetings of Council or its committee but shall have no vote in those meetings. He shall prepare an agenda for each meeting of Council for the conduct of the business of Council, subject, however, to the right of the Council President to authorize deviation from the order of business listed in

the agenda. Each councilman shall be supplied with a copy of the agenda no later than the Friday preceding the regular monthly meeting.

- I. He may employ experts or consultants to perform work or advise or assist in the business of the Borough. However, the approval of Council shall be necessary if the cost of any such expert or consultant exceeds a sum set by Council from time to time by resolution.
- J. He shall be responsible for the letting of contracts and shall supervise the performance and execution of contracts unless those duties are imposed by law, ordinance or resolution upon some other officer or person.
- K. He shall act as purchasing officer of the Borough and shall purchase, subject to the requirements of the Borough Code, all supplies and equipment required by any agency, board, department or officer of the Borough. He shall keep an account of those purchases and from time to time make full written report of them to Council.
- L. He shall be responsible for investigating all complaints regarding Borough affairs, problems, personnel and actions, and shall, when appropriate, take appropriate action, keeping a record of those complaints investigated or reported to him and the action, if any, taken on them.
- M. He shall keep appropriate records as required by law, and he shall be authorized to certify and attest to the execution of all ordinances, contracts or other instruments. He shall have custody of the municipal corporate seal.
- N. He shall, where authorized by law, ordinance or resolution, acknowledge and execute documents, contracts, obligations or other papers, on behalf of the municipality.
- O. He shall have the duty to enforce ordinances and regulations of the municipality.
- P. He shall have the authority to represent the Borough in deliberation with other governmental bodies.
- Q. He may hold such other municipal offices or departments or boards of the municipality as Council may from time to time direct.
- R. The above list shall be construed as a general guideline of the extent of the Manager's powers and duties. The listing of a power and duty in the above list shall not be construed to deny Council the right to remove that power or duty from the list or to add any power or duty by ordinance or resolution.

(Ord. 577, 4/13/1976, §1)

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§1-206. Manager's Authority Over Employees.

Except as required by civil service provisions of the Borough Code, the Manager and pertinent committee of Council involved, with the approval of Council, shall have the right to hire, discharge or suspend Borough employees, and he shall have the right solely to direct the Borough employees. All actions of Council relating to the Borough employees shall be conducted through the Manager.

(Ord. 577, 4/13/1976, §2)

§1-207. Substitute Appointed in Case of Absence or Disability of Manager.

In the absence of, or upon the disability of the Manager, he shall nominate and appoint an employee of the Borough who shall perform his duties during such absence or disability. In the event such a substitute is required for longer than two weeks, his continued appointment shall require the approval of Council.

(Ord. 577, 4/13/1976, §3)

§1-208. Residence of Manager.

The Manager shall, within two years after his appointment, fix his residence within the Borough.

(Ord. 577, 4/13/1976, §4)

B. Independent Auditor.

§1-209. Office of Independent Auditor.

The office of Independent Auditor is hereby created for this Borough. The office of Elected Auditor is hereby abolished.

(Added by Ord. 743, 10/12/2004)

§1-210. Appointment of Independent Auditor.

While the office of an Independent Auditor exists, the Council shall annually, by resolution, appoint a competent public accountant, or certified public accountant, or firm of public accountants, or firm of certified public accountants to perform the duties of such office. The appointed Independent Auditor shall hold office at the pleasure of the Council and shall be subject to removal at any time.

(Added by Ord. 743, 10/12/2004)

§1-211. Duties of Independent Auditor.

The duties of the Independent Auditor shall be:

A. To make an independent examination of the accounting records of the Borough for each fiscal year.

B. To perform the other duties and exercise the powers conferred by the Borough Code.

(Added by Ord. 743, 10/12/2004)

§1-212. Compensation of Independent Auditor.

The compensation of the Independent Auditor shall be as fixed by the Council from time to time.

(Added by Ord. 743, 10/12/2004)

C. Director of Operations.

§1-221. Office Created.

The office of Director of Operations is established and created for the Borough. This Part is intended to create a management level position, and shall be so construed for all purposes relating to the Public Employee Relations Act (Act No. 195 of 1970, as amended).

(Ord. 795, 6/10/2014, §1)

§1-222. Appointment.

While the office of a Director of Operations exists, and whenever the Council deems it to be in the best interests of the Borough to have such position filled, the Council by a vote of the majority of all its members shall appoint a person to serve in such for an indefinite term and subject to removal at any time and for any reason by majority vote of the Council.

(Ord. 795, 6/10/2014, §1)

§1-223. Compensation and Bond.

The compensation of the Director of Operations shall be fixed by Council from time to time, and the Director of Operations shall give bond in a sum to be fixed by Council with surety approved by Council, conditioned for the faithful performance of his duties.

(Ord. 795, 6/10/2014, §1)

§1-224. Specific Duties.

The duties of the Director of Operations shall consist of the following:

- A. He/she shall oversee the operation of the Borough's public water treatment plant and sewage treatment plant.
- B. He/she shall supervise the day-to-day work activities of the employees assigned to the Borough's water treatment and sewage treatment plants.
- C. He/she shall, in conjunction with the Borough's Water and Sewer Engineer, oversee projects for the improvement, replacement, repair and maintenance of the Borough's water treatment and sewage treatment plants.
- D. He/she shall, in conjunction with the Borough Engineer and Water and Sewer Engineer, oversee projects for the improvement, replacement, repair

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or maintenance of the Borough's underground water and/or sewer service lines.

- E. He/she shall, in conjunction with the Borough Engineer, oversee projects for the improvement, replacement, repair or maintenance of the public streets of the Borough.
- F. He/she shall supervise the day-to-day work activities of the employees assigned to public street projects of the Borough.
- G. He/she shall oversee the operation of the Borough swimming pool and shall supervise the improvement, replacement, repair and maintenance of the related grounds, buildings and equipment and the day-to-day work activities of the seasonal employees assigned there.
- H. He/she shall oversee projects for the improvement or maintenance of the public parks, grounds and buildings of the Borough.
- I. He/she shall oversee the repair or maintenance of vehicles and movable equipment owned or leased by the Borough.
- J. He/she shall coordinate the interests of the Borough with the activities of public utility companies and contractors performing work in the Borough.
- K. He/she shall coordinate the interests of the Borough with the activities of the Beaver Business District Authority, the Beaver Area Heritage Foundation and other local organizations.
- L. He/she shall perform the duties of the Borough's Code Enforcement Officer, as specified in Chapter 5 of the Code of Ordinances.
- M. He/she shall perform the duties of the Property Maintenance Code Enforcement Officer.
- N. He/she shall perform the duties of the Historic Preservation Officer as specified in Chapter 11 of the Code of Ordinances.
- O. He/she shall attend all Council meetings and all committee meetings at which his/her presence is requested.
- P. He/she shall perform any of those duties of the Borough Manager, set forth in §1-205 of this Part, as may be specifically delegated to him/her by the Council.
- Q. He/she shall perform any of those duties of the Borough Manager, set forth in §1-205 of this Part, as may be specifically delegated to him/her by the Borough Manager with the approval of the Council.

- R. He/she shall work cooperatively with the Borough Manager and make regular reports on his/her activities.
- S. He/she shall promptly respond to any requests for information or recommendation regarding Borough affairs submitted by any member of the Council or the Borough Manager.

(Ord. 795, 6/10/2014, §1)

§1-225. Vacancy, Disability or Absence.

In the event of vacancy in the office of Director of Operations, or the disability or absence of the Director of Operations, the specific duties of such officer shall be performed by the Borough Manager for so long as may be necessary or proper.

(Ord. 795, 6/10/2014, §1)

Part 3

Authorities, Commissions and Agencies

A. Municipal Authority.

§1-301. Desire and Intention to Organize Authority.

Council signifies and expresses its desire and intention to organize an authority under an Act known as “Municipal Authorities Act of 1945,” approved May 2, 1945, P.L. 382, its amendments and supplements.

(Res. 12/11/1956, §1)

§1-302. Purpose of Organization of Authority.

The said authority shall be organized for the purpose of acquiring, holding, constructing, improving, maintaining and operating, owning, leasing, either in the capacity of lessor or lessee, sewers, sewer systems or parts thereof, and sewage treatment works. [See also §1-304B]

(Res. 12/11/1956, §2)

§1-303. Beaver Borough Municipal Authority Named.

The name of the proposed authority is to be the Beaver Borough Municipal Authority.

(Res. 12/11/1956, §3)

§1-304. Articles of Incorporation of Beaver Borough Municipal Authority.

The proposed articles of incorporation of the said authority are as follows:

- A. The name of the authority shall be Beaver Borough Municipal Authority.
- B. The Authority is formed for the purpose of acquiring, holding, constructing, improving, maintaining and operating, owning, leasing, either in the capacity of lessor or lessee, sewers, sewer systems or parts thereof, and sewage treatment works, reservoir or reservoirs, tank or tanks for water storage, water works, water supply works and water distribution systems, and land facilities for parking spaces for the parking of vehicles of any kind.¹

¹ Amending Ordinances 478 and 508, added to the authorized purposes of the Authority.

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- C. No other authority organized under the “Municipal Authorities Act of 1945,” approved May 2, 1945, P.L. 382, its amendments and supplements, or under the act approved the 28th day of June, 1935, P.L. 463, is in existence in or for the incorporating municipality.
- D. The name of the incorporating municipality, together with the names and addresses of the Municipal Authorities is as follows: . . .²
- E. The names and addresses and terms of office of the first members of the Board of Beaver Borough Municipal Authority, all of whom live in the Borough of Beaver and none of whom are members of the Borough of Beaver Municipal Authorities, are: . . .²

(Res. 12/11/1956, §4; as amended by Ord. 478, 4/14/1964, §1; and by Ord. 508, 2/14/1967, §1)

§1-305. Acquisition of Projects.

- 1. The Borough expresses its intention to acquire now all of the projects previously undertaken by the Beaver Borough Municipal Authority, and requests the immediate conveyance to the Borough by said Authority of all of its property.
- 2. As used herein, the term “property” is comprehensive and includes: real property and any legal or equitable interest therein; tangible personal property; bank accounts and funds on deposit; cash on hand; government or corporate securities; books of account and other financial records; documents such as contracts, certificates, permits, licenses, plans, drawings, charts, photographs, logs, studies and correspondence; and tapes or computer disks containing electronically created or stored data.
- 3. The conveyance by said Authority of its property shall be made by the physical delivery of tangible objects, and by the execution of such instruments of transfer as the Borough Solicitor may deem necessary or proper.
- 4. Upon such conveyance, the Borough shall assume all of the obligations incurred by said Authority with respect to each project.

(Res. 12/11/1956; as added by Ord. 728, 2/11/2003, §1)

B. Planning Commission.

² Here followed a listing of the then current members of Council, and the first persons appointed to the Board of the Authority.

§1-311. Planning Commission.

1. Creation. A Planning Commission is hereby established.
2. Membership. The Commission shall have seven members.
3. Functions. The powers, duties and operations of the Commission shall be as set forth in the Pennsylvania Municipalities Planning Code or other applicable State law.

(Ord. 687, 9/9/1997, §1)

C. Educational Service Agency.

§1-321. Educational Service Agency Established.

By authority vested in the boroughs of the Commonwealth of Pennsylvania by the Act of 1979 P.L. 503 No. 108, the Borough of Beaver establishes an Educational Service Agency.

(Ord. 610, 5/30/1980, §1)

§1-322. Membership, Appointment and Tenure.

The Educational Service Agency shall be composed of three individuals; each of whom shall be a resident of the Borough at least 18 years of age, who shall be appointed by Council for three-year overlapping terms, coinciding with the calendar year; provided, in the case of the three individuals appointed at the time of establishment of the Educational Service Agency, the term of one shall expire on the first day of January 1981, the term of one shall expire on the first day of January 1982, and the term of the third member shall expire on the first day of January 1983.

(Ord. 610, 5/30/1980, §2)

§1-323. Certain Officials Disqualified for Membership; Vacancies.

No elected Borough or school district official shall be eligible to appoint to or membership on the Educational Service Agency. A vacancy shall occur in the Educational Service Agency in the case of any member who ceases to be a resident of the Borough or who is otherwise disqualified for appointment or membership.

(Ord. 610, 5/30/1980, §3)

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§1-324. Filling of Vacancies.

Vacancies in the Educational Service Agency occurring for any reason shall be filled by appointment by Council of a successor to serve for the remainder of the term of the individual being replaced.

(Ord. 610, 5/30/1980, §4)

§1-325. Compensation.

Members of the Educational Service Agency shall receive such compensation as shall be fixed from time to time by Council.

(Ord. 610, 5/30/1980, §5)

§1-326. Bond.

Each member of the Educational Service Agency may, at the discretion of Council, be required to furnish a bond, in the amount and with a surety specified by the Borough for the faithful performance of his duties as a member of the Educational Service Agency.

(Ord. 610, 5/30/1980, §6)

§1-327. Employment and Supervision of School Crossing Guards.

The function of the Educational Service Agency shall be to employ and supervise school crossing guards, also referred to as special school police, to direct traffic at or near schools. In order to enable the Educational Service Agency to perform that function, the Borough delegates to that agency the authority to appoint and supervise crossing guards or special school police as set out in the Borough Code.

(Ord. 610, 5/30/1980, §7)

§1-328. Authority and Duties.

The Educational Service Agency shall have the following authority, and it shall be its duty to:

- A. Prepare annually on or before the first day of November of each year and submit to Council for approval a budget showing its contemplated income and its proposed expenditures for the succeeding year.
- B. Annually adopt the budget as submitted under Subsection A of this section, as modified by the Borough.

- C. From time to time employ, and/or discharge, and fix the compensation of crossing guards or special school police to serve in the Borough.
- D. Exercise supervision and control over the crossing guards or special school police by:
 - (1) Establishing, administering and enforcing rules and regulations for the work and conduct of the crossing guards or special school police.
 - (2) Establishing work schedules and designating the locations where and the time when the various individuals are to be on duty.
 - (3) Establishing position classification, if deemed necessary, and designating the individuals to serve in each classification.
 - (4) Providing for supervision as necessary.
 - (5) Exercising any and all other prerogatives normally associated with personnel management.
- E. From monies budgeted and available, make all payments for the services of crossing guards or special school police and make all other expenditures as prescribed by law or superior body or agency, or as otherwise deemed necessary or appropriate.
- F. Receive, in addition to payments by the Borough, any payments by the school district or any other gift, grant, devise or bequest.
- G. Establish a system of accounts for all monies under its control, and establish one or more separate bank accounts into which all income shall be deposited and from which all expenditures shall be made.

(Ord. 610, 5/30/1980, §8)

§1-329. Certain Monies Transferred to Educational Service Agency.

The Borough shall transfer and pay over to the Educational Service Agency the monies that the Borough is required to pay as compensation to special school police under the Borough Code, or other agreement executed with the school district, as provided in the Borough Code, as well as other monies as necessary to cover expenditures budgeted, for the Educational Service Agency as provided in §1-328.

(Ord. 610, 5/30/1980, §9)

§1-330. Term of Existence.

The Educational Service Agency recognized and formally established by this Part 3 shall continue until changed or abolished by action of the Borough or until the suspension of the Act of 1979, P.L. No. 503, as adopted by the Legislature of the Commonwealth, in accord with the terms of that act.

(Ord. 610, 5/30/1980, §10)

D. Beaver Business District Authority.

§1-341. Creation of Authority.

1. Beaver Borough Council declares that it is desirable for the entire Borough of Beaver to improve the business or commercial district thereof and areas contiguous thereto and intends to organize a Municipal Authority for that purpose under the Municipal Authority Act 1945, as amended.
2. Said Authority shall be organized for the purpose of making "business improvements (as defined in §2(1) of the Municipal Authority Act of 1945, as amended) in, and/or administrative services related thereto, to any district of the Borough which is used for or zoned as a Business or Commercial District under the Zoning Ordinance of the Borough of Beaver), said districts being those located upon the official Zoning Map of the Borough of Beaver and identified or classified thereon as District C-1, C-2 or C-3.
3. Borough Council of said Borough certifies that notice, by publication, in Beaver County Legal Journal and Beaver County Times, of a public meeting as a hearing on the proposed Authority was given on April 2 and 4, 1987, and in pursuance thereof a public meeting was held in Council Chambers of the Borough of Beaver on Tuesday, April 14, 1987, at 7:00 p.m. prior to consideration of and adoption of this Part.
4. The name of the Authority shall be "Beaver Business District Authority."
5. Pursuant to said desire and intention of the Borough of Beaver and in conformance with said Municipal Authority Act of 1945, as amended, Articles of Incorporation are hereby set forth as follows in §1-342.
6. The Borough of Beaver retains the right, given by said Municipal Authority Act of 1945, as amended, to approve any plan or action of this Authority formed to make business improvements or provide administrative services if appropriate.
7. The proper officer of the Borough shall sign the ordinance and Articles of Incorporation, advertise both as required by law and file said Articles of Incorporation with the Secretary of the Commonwealth.

(Ord. 638, 6/9/1987)

§1-342. Articles of Incorporation.

In compliance with the Municipal Authority Act of 1945, as amended, the Borough of Beaver, situate in the County of Beaver and Commonwealth of Pennsylvania hereby adopts and certifies the following Articles of Incorporation of a Municipal Authority:

A. The Authority is formed under the Municipal Authority Act of 1945, as amended (1945, P.L. 382, 53 P.S. §301 et seq.).

B. The name of the Authority shall be:

BEAVER BUSINESS DISTRICT AUTHORITY

C. The location of the initial registered office of the Authority in this Commonwealth is 469 Third Street, Beaver, PA 15009.

D. A Municipal Authority was organized by the Borough of Beaver for the purpose of furnishing water and sewage service to said Borough, which said Authority was incorporated by the Commonwealth January 18, 1957 (3/1/1956, 03-638), under the name of "Beaver Borough Municipal Authority," which said Authority continues in existence.

E. No Authority has been organized under this or any Act of Assembly by this Municipality for a purpose similar to the proposed Authority.

F. The name of the incorporating Municipality is the Borough of Beaver and its present Council (being its "municipal authorities," as defined in said Act) is constituted as follows:

[Hereby followed names and addresses of original Council members.]

G. The names, addresses and terms of office of the first members of the Board of Beaver Business District Authority are:

[Hereby followed names, addresses and terms of original Board members.]

H. The Borough of Beaver, the incorporating Municipality, retains the right, given by the Municipal Authority Act of 1945, as amended, to approve any plan or action of the Authority which Authority is created for the purpose of making business improvements or providing administrative services, if appropriate.

(Exhibit A of Ord. 638, 6/9/1987)

Part 4

Police Protection

§1-401. Police Department Established; Classifications; Number of Members.

A Police Department is established in and for the Borough. The Police Department shall be composed of a Chief of Police and other officers of such ranks and as many patrolmen as Council shall from time to time determine.

(Ord. 621, 12/14/1983)

§1-402. Chief of Police.

The Chief of Police, under the direction of the Mayor, shall be in charge of the Police Department and shall have supervision over the members of the Police Department, in the exercise of their powers, duties and authority.

(Ord. 621, 12/14/1983)

§1-403. Status of Existing Police Force.

The existing police force of the Borough is established and recognized as the Police Department established by §1-401.

(Ord. 621, 12/14/1983)

§1-404. Appointment of Special Policemen by Mayor.

Nothing in this Part shall affect the authority of the Mayor to appoint special policemen during emergencies.

(Ord. 621, 12/14/1983)

§1-405. Prohibited Types of Outside Employment of Policemen.

Police officers of the Borough of Beaver shall not enter into any contract with any other municipality, or municipal corporation, for any casual or regularly scheduled employment as a policeman at any time during his/her term of employment with the Borough. The above restriction shall not apply to employment of Beaver police officers by Beaver Area School District within the Borough.

(Ord. 614, 1/13/1981, §1)

§1-406. Restrictions Applicable to Permitted Types of Outside Employment of Policemen.

In any other outside employment other than that allowed above, Beaver police officers shall not wear or use any police uniform intended for use by an officer of the Borough of Beaver or marked for such use, nor shall he/she, in such outside employment, use any firearm, or other equipment supplied to, or used by, him/her as an employee of the Borough of Beaver, except that in their employment by the Beaver Area School District within the Borough of Beaver, police officers may use Beaver uniforms and equipment.

(Ord. 614, 1/13/1981, §2)

§1-407. Time and Hours of Permitted Outside Employment of Policemen.

In any such permitted outside employment, police officers of the Borough of Beaver shall be under duty of ordering the time and hours of employment so as to be free to answer all calls by the Borough for emergency service or required overtime work.

(Ord. 614, 1/13/1981, §3)

Part 5

Pensions/Retirement Systems

A. Firemen's Relief.

§1-501. Firemen's Relief Association Recognized.

The Firemen's Relief Association of the Borough of Beaver, pursuant to the authority contained in the Act of Assembly of the Commonwealth of Pennsylvania, approved the 25th day of April, 1929, P.L. 700, is hereby recognized, accepted and approved as the duly incorporated existing and only Firemen's Relief Association of the Borough of Beaver.¹

(Ord. 321, 12/9/1930, §1)

§1-502. Foreign Fire Insurance Tax Moneys Payable to Firemen's Relief Association.

The proper officers of the Borough are authorized and directed pursuant to the Acts of Assembly in such case made and provided, to pay, to the proper officers of the Beaver Firemen's Relief Association of Beaver, Pennsylvania, all monies payable to Beaver from the Commonwealth of Pennsylvania from taxes on premiums on foreign fire insurance companies based upon premiums of fire insurance written on property in the Borough.

(Ord. 321, 12/9/1930, §2; as amended by Ord. 621, 12/14/1983)

§1-503. When Foreign Fire Insurance Tax Moneys Payable to Firemen's Relief Association.

The tax on premiums from foreign fire insurance companies paid to the Commonwealth of Pennsylvania, and paid by the Commonwealth of Pennsylvania to the Borough of Beaver as the Borough's legally apportioned share of that tax, shall be paid to the proper officers of the Firemen's Relief Association promptly, upon receipt of the money by the Borough.

(Ord. 321, 12/9/1930, §3)

¹ Editor's Note: The Beaver Firemen's Relief Association was duly incorporated by letters patent issued out of the Court of Common Pleas of July, 1929, which proceedings of incorporation were had at No. 150, September Term, 1929, and after decree of incorporation duly the chapter was duly recorded in the Recorder's Office of Beaver County in Chapter Book No. 13, page 120.

B. Borough of Beaver Municipal Employees' Pension Plan.

§1-511. Definitions.

The following words and phrases as used herein shall have the meanings set forth in this Section, unless a different meaning is plainly required by the context:

ACCRUED BENEFIT—as of any given computation date, a participant's projected monthly normal retirement benefit determined in accordance with §1-514.2, multiplied by a fraction, the numerator of which shall be an amount equal to the participant's years of service as of the computation date and the denominator of which shall be an amount equal to the total possible number of the participant's years of service beginning on the first date of employment and ending on the normal retirement date (including periods of time when no employee contributions are paid); however, in no event shall the fraction exceed one.

In no event, however, shall the accrued benefit exceed the maximum limitation, determined as of the date of computation, provided under §1-514.10. All accrued benefits are subject to all applicable limitations, reductions, offsets and actuarial adjustments provided by the plan prior to the actual payment thereof.

ACCUMULATED CONTRIBUTIONS—the total amount of employee contributions contributed by a participant to this plan or its predecessor by way of payroll deduction or otherwise, plus interest credited at the rate of 5% per annum. Interest shall be credited annually in the form of a compound interest rate from the first day of the plan year coincident with or next following the date of deposit into the pension fund until the first day of the month in which a distribution of accumulated contributions under §1-517.2 or 1-518.2 shall be paid, or the payment of benefits shall commence. Notwithstanding anything contained herein to the contrary, no interest shall be credited for any period of time prior to February 1, 1976.

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 expressly 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.

ALTERNATE ACCRUED BENEFIT—as of any given computation date, a participant's monthly benefit determined in accordance with §1-514.3. which amount shall be based upon the participant's credited service determined as of such computation date and which shall represent the monthly benefit which would be payable in the normal form as of the participant's attainment of

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alternate retirement age, provided that the participant shall satisfy all requirements pursuant to the terms of the plan for entitlement to receive such benefit.

In no event, however, shall the alternate accrued benefit exceed the maximum limitation, determined as of the date of computation, provided under §1-514.10. All accrued benefits are subject to all applicable limitations, reductions, offsets and actuarial adjustments provided by the plan prior to the actual payment thereof.

ALTERNATE RETIREMENT AGE—the date a participant who first became a participant on or after January 1, 1995, attains 62 years of age and completes at least 10 years of credited service.

ANNIVERSARY DATE—January 1 of a given plan year.

AUTHORIZED LEAVE OF ABSENCE—any leave of absence not to exceed 2 years granted in writing by the employer for reasons including, but not limited to, accident, sickness, pregnancy or temporary disability, education, training, jury duty or such other reasons as may necessitate authorized leave from active employment. Authorized leave of absence shall also include a period of time for active service with the armed forces of the United States of America provided that such service shall commence after the participant has completed at least 6 months of credited service and the participant shall return to employment within the applicable time prescribed by law following separation from such military service.

AVERAGE MONTHLY COMPENSATION—the compensation earned by a participant for services rendered as an employee in employment during the 36 consecutive months immediately preceding retirement or other termination of employment, divided by 36; provided, however, that any month during which a participant has been on an authorized leave of absence shall be excluded from such 36 consecutive months and another month shall be substituted, therefore, such that the averaging period shall include the last 36 months of active rendering of services.

BENEFICIARY—the person or persons validly designated in writing by a participant to receive such benefits as may be due hereunder upon the death of the participant. A designation shall become effective only upon the participant's death and shall be valid only if delivered prior to such participant's death to the plan administrator in such form as the plan administrator shall specify. In the event that there is no validly designated beneficiary that survives the participant or that is legally able to take the benefits provided as beneficiary then 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 of the participant; 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.

CHIEF ADMINISTRATIVE OFFICER—the person designated by the Council, who has the primary responsibility for the execution of the administrative affairs for the plan.

CODE—the Internal Revenue Code of 1986, as amended.

COMMONWEALTH—the Commonwealth of Pennsylvania.

COMPENSATION—the total remuneration paid to an employee by the employer, whether salary or hourly wages, paid by the employer for services rendered in employment and reported on the employee's Form W-2, wage and tax statement. Compensation shall be limited on an annual basis for the purposes of this plan to the amount specified for government plans in accordance with Code §401(a)(17), as adjusted under Code §415(d).

COUNCIL—the Borough Council of the Borough of Beaver, Beaver County, Pennsylvania.

CREDITED SERVICE—a participant's total years and fractions thereof, calculated to the nearest completed month of service accumulated as an employee in employment. Credited service shall include each period of active employment and each period of time during which an employee is on an authorized leave of absence. Credited service shall not include any period of time during which an employee failed or refused to make required contributions pursuant to §1-513.1.

Notwithstanding the foregoing, in the case of service prior to February 1, 1976, the participant shall be granted credited service pursuant to the terms of the plan in existence prior to such date and excluding any service in excess of 15 years prior to April 1, 1971.

DEFERRED VESTED PARTICIPANT—any participant who has completed at least 10 years of service, who has separated from employment prior to attainment of alternate. Early or normal retirement age for reasons other than death or total and permanent disability and who is eligible to receive a vested retirement benefit pursuant to §1-517.3 to commence at a later date.

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.

EARLY RETIREMENT AGE—the date a participant attains 50 years of age and completes at least 10 years of credited service.

EMPLOYEE—any individual employed by the employer as a regular full-time employee who is entitled to receive a regular stated salary or wage, excluding any pension, retainer or fee under contract. Any police officer, fireman, or individual covered under another retirement plan or program sponsored by the employer shall be excluded as an employee under this plan.

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Employees, hired on or after January 1, 2011, shall have an account under the money purchase plan as specified under Appendix 1-5B-A. Except as provided in Appendix 1-5B-A, participants hired on or after January 1, 2011, are subject to the same plan terms as other participants.

EMPLOYER—the Borough of Beaver, Beaver County, Pennsylvania.

EMPLOYMENT—any period of time during which an employee renders services for the employer for which the employee is directly or indirectly compensated or entitled to receive compensation for the performance of duties as an employee. Employment shall exclude any period of time during which services are performed as an independent contractor paid on a contractual or fee basis. Employment shall also include 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 5 years after the date of reemployment.

INCENTIVE RETIREMENT AGE—the date on which a participant attains 60 years of age.

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

NORMAL FORM—the usual and customary form of payment of a normal retirement benefit as further described in §1-515.1 hereof.

NORMAL RETIREMENT AGE—the date a participant, who first became a participant herein prior to January 1, 1995, attains 60 years of age or the date a participant, who first becomes a participant herein on or after January 1, 1995, attains 60 years of age and completes at least 20 years of credited service.

NORMAL RETIREMENT DATE—the first day of the month coincident with or next following the attainment of normal retirement age.

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—any employee who has commenced participation in this plan in accordance with §1-512, and has not for any reason ceased to participate hereunder.

PENSION FUND—the assets of the plan, which shall be accounted for separately from the assets of any other plans maintained by the employer, whether actually held separately or commingled with the assets of another plan, and which shall be administered under the supervision of the employer in accordance with the terms of the plan and applicable law.

PENSION PLAN COMMITTEE or COMMITTEE—the committee appointed by the Council pursuant to the provisions of §1-519.2 who shall be responsible for the administration of the plan.

PLAN—the Borough of Beaver Municipal Employees' Pension Plan as herein set forth and as it may be amended from time to time hereafter.

PLAN ADMINISTRATOR—the person or persons appointed by the Council for the purpose of supervising and administering the plan. In the event no person is so appointed, the plan administrator shall be the Council.

PLAN YEAR—the consecutive 12-month period beginning on January 1 and ending on December 31 of each year.

RESTATEMENT DATE—January 1, 2011, the effective date of this plan as hereby amended and restated.

TOTAL AND PERMANENT DISABILITY—a condition of physical or mental impairment which renders a participant unable to perform a duty of gainful employment for which the participant is suited by training, education or experience, which continues for at least 6 months and which is expected to last until the death of the participant, and as a result of which qualifies the participant for receipt of Federal Social Security disability benefits. Total and permanent disability shall be determined by the plan administrator based upon such evidence as the plan administrator shall deem appropriate in its sole discretion.

YEAR OF SERVICE—for determining the amount of benefits, each completed 12-month period of credited service. Years of service shall mean for determining vesting percentage and eligibility to receive a benefit hereunder, the total period of employment including any period of time during employment that is not included in the determination of credited service.

(Ord. 774, 12/13/2011, Art. I)

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§1-512. Eligibility.

1. Eligibility for participation. Each employee who was a participant in the plan on the day prior to the restatement date shall continue to be a participant, on and after the restatement date, subject to the terms and conditions of the plan as set forth herein. On or after the restatement date, each other person shall become a participant in the Money Purchase Pension Plan described in Appendix 1-5B-A, as of the date on which such employee's employment commences or recommences provided all prerequisites to participation in this plan have been fulfilled, including but not limited to, completion of all necessary forms authorizing payroll deduction of employee contributions and any other forms required by the plan administrator.
2. Participation requirements. Each participant hereunder shall be required to make contributions to the plan, as provided in §1-513.1 hereof, and shall execute and complete any enrollment or application forms as required by the plan administrator authorizing payroll deduction of such contributions. No employee shall be eligible to participate hereunder until any and all such forms are completed and delivered to the plan administrator.
3. Designation of beneficiary. Each employee who becomes a participant hereunder shall provide a written notice which designates the beneficiary or beneficiaries to the plan administrator at the time participation commences. The participant's election of any such beneficiary or beneficiaries may be rescinded or changed, without the consent of the beneficiary or beneficiaries, at any time provided the participant provides the plan administrator with written notice of the changed designation and such election is not contrary to applicable law.
4. Reemployment. Each person who shall have previously been an active participant in the plan and who shall have ceased being an active participant for any reason shall be eligible to participate pursuant to subsection .1 hereof as of the date such eligibility requirements are met.
5. Change in status. In the event a participant who remains in the service of the employer ceases to be an employee eligible for participation hereunder, or who ceases or fails to make any contributions which are required as a condition of participation hereunder, no further benefit accruals shall occur until the participant again qualifies under such participation requirements. Such a requalified participant shall immediately commence the accrual of additional benefits hereunder upon becoming eligible to participate unless such person received a distribution of accumulated contributions, in which case the person shall be treated as a new employee in accord with subsection .1 hereof and shall not receive any credit for prior credited service unless such person shall repay to the fund the amount of such distribution with interest credited at the same rate and in the same manner as described in §1-511 from the date of distribution to the date of repayment.

6. Leave of absence. During any leave of absence that is not an authorized leave of absence, a participant shall be deemed an inactive participant and shall not be given credit for years of credited service, nor shall any benefits accrue hereunder. If the employee is not re-employed by the expiration of the leave of absence, participation in the plan shall cease on the date on which the leave of absence commenced.
7. 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 initially and subsequently.

(Ord. 774, 12/13/2011, Art. II)

§1-513. Contributions.

1. Employee contributions. As a condition of participation in the plan, each participant shall contribute to the plan by payroll deduction an amount equal to 3% of such participant's compensation. Each employee must have executed the appropriate documents authorizing the employer to deduct the contributions from the pay of the employee. Such contributions shall be required until such time as the employer, consistent with any provisions of applicable law, shall increase, reduce or eliminate the requirement. A participant who is on an authorized leave of absence shall have the obligation to contribute hereunder waived during the period of such authorized leave of absence and a participant who shall continue in employment after attainment of normal retirement age shall no longer be required to contribute hereunder as of the date the participant attains such normal retirement age.
2. 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 appropriation or otherwise, the contributions necessary to satisfy the minimum municipal obligation.
3. State aid. General municipal pension system State aid, or any other amount of State aid received by the employer from the Commonwealth in accordance with the Act, may be deposited into the pension fund governed by this plan and shall be used to reduce the amount of the minimum municipal obligation of the employer.
4. Gifts. To the extent permitted by law, the plan administrator may accept gifts, outright or in trust, for deposit into the pension fund. The application of such gifts shall be governed by the rules of the plan and such directions prescribed by the donor as are not inconsistent with the rules of the plan and applicable law.
5. No reversion to the employer. 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, except that contributions made by the

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employer may be returned to the employer if the contribution was made due to a mistake of fact and the contribution is returned within 1 year of the mistaken payment of the contribution, or the plan is terminated, as provided in §1-521.

(Ord. 774, 12/13/2011, Art. III)

§1-514. Retirement Benefits.

1. Normal retirement. Each participant shall be entitled to a normal retirement benefit after retirement on or after attainment of normal retirement age.
2. Normal retirement benefit. A participant who retires upon attainment of normal retirement age shall be entitled to receive a monthly retirement benefit in an amount equal to 50% of the participant's average monthly compensation paid in the normal form commencing on the first day of the month coincident with or next following the date of retirement.
3. Alternate retirement benefit. A participant who first became a participant on or after January 1, 1995, who retires upon attainment of alternate retirement age shall be entitled to receive a monthly retirement benefit in an amount equal to 2.5% of the participant's average monthly compensation multiplied by the participant's years of service not to exceed 20 years, paid in the normal form commencing on the first day of the month coincident with or next following the date of retirement.
4. Early retirement. Each participant shall be entitled to an early retirement benefit after retirement on or after attainment of early retirement age.
5. Early retirement benefit. Each participant who shall become entitled to a benefit pursuant to subsection .4 but prior to attainment of alternate or normal retirement age, may retire from employment and receive either a benefit in an amount equal to the amount determined under subsection .2 based upon final monthly average compensation and years of service as of the date of retirement to commence as of the participant's normal retirement date, or a benefit in an amount equal to the amount determined under subsection .2 based upon final monthly average compensation and years of service as of the date of retirement and actuarially reduced for early commencement to commence as of the participant's early retirement date or any payment commencement date after retirement and prior to the participant's normal retirement date. Such reduction for early commencement shall be in an amount equal to a factor calculated herein for each month that the payment commencement date precedes the date the participant would attain normal retirement age. The applicable factors are as follows and will be prorated to the nearest month for a partial year (a partial month shall be treated as a completed month):

Number of Years Early Retirement Benefits Commence Prior to Normal Retirement Age	
Years	Factor
1	.9333
2	.8667
3	.8000
4	.7333
5	.6667
6	.6333
7	.6000
8	.5667
9	.5333
10	.5000

6. Incentive retirement. A participant who retires upon attainment of incentive retirement age shall be entitled to receive a monthly benefit in an amount equal to 2.5% of the participant's average monthly compensation multiplied by the participant's years of service, not to exceed 25 years, paid in the normal form commencing on the first day of the month coincident with or next following the date of retirement. Such benefit shall be paid until such time as the participant become eligible for a Social Security early retirement benefit equal to 80% of a Social Security full age retirement benefit. (Such eligibility usually occurs 36 months before full retirement age). At that time the participant's monthly benefit will automatically reduce to a normal retirement benefit as prescribed in subsection .2. In order to elect this incentive retirement benefit, a participant must apply therefor within 30 days of attaining incentive retirement age.
7. Application for benefit. A participant must complete and execute an application for benefit on a form and in the manner prescribed by the plan administrator and deliver the said application to the plan administrator at least 30 days prior to the date on which benefit payments are to commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments or any other benefit 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 benefit.
8. Nonduplication of benefit. A participant who shall receive a monthly retirement benefit under this plan and who shall resume employment as an employee, shall have benefit payments suspended until the first day of the month coincident with or next following the date such employment shall cease. Such benefit payments shall not, upon resumption, be adjusted to reflect any change in average monthly compensation caused by such additional period of employment, even if rendered as an employee, unless taking into account such additional period of employment will not result in a decrease in such participant's average monthly compensation,

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when determined as of such subsequent retirement, to an amount which is less than the amount determined as of the previous severance from service date, but shall be adjusted to reflect any additional years of credited service which may have accrued. Such future benefits shall be actuarially adjusted upon resumption of the pension payments.

9. Small amounts. If the plan administrator determines that the value of a participant's accrued benefit is so small as to make monthly pension payments administratively impractical, the plan administrator may cause such payments to be made at such other periodic intervals as are administratively practical, but no less frequently than annually, or may make a single lump sum payment equal to the commuted value of such accrued benefit to the extent permitted under applicable law.
10. Cessation of benefit payments. Any pension benefit payable hereunder shall be payable through and including the later of the month in which such participant's death occurs or the month in which any period certain payments due on or after the participant's death have been paid. Any survivor annuity payable on or after the participant's death in accordance with the form of pension benefit elected shall be paid through the month in which such surviving annuitant's death occurs.
11. Retired participants. The benefit amount of any participant who may have retired prior to the restatement date shall not be in any way altered by the provisions of this plan, except where otherwise expressly indicated herein, and shall continue to be determined on the basis of the terms of the plan in effect on the day preceding the restatement date.

For ease of administration, the following are restated herein and specifically incorporated into this plan.

- A. On January 1, 1984, an additional amount of monthly retirement benefit became payable to each participant who retired prior to January 1, 1984, in an amount equal to 60% of the monthly retirement benefit.
 - B. On January 1, 1987, an additional amount of monthly retirement benefit became payable to each participant who retired prior to January 1, 1987. For participants who retired prior to January 1, 1984, the additional amount is equal to 50% of the monthly retirement benefit. For participants who retired after December 31, 1983, and prior to January 1, 1987, the additional amount is equal to 35% of the participant's monthly compensation as of the date of retirement.
 - C. On January 1, 2003, an additional amount of monthly retirement benefit became payable to each participant who retired prior to January 1, 1993, in an amount equal to \$10 for each year of retirement.
12. 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 §415(b)(1)(A) as adjusted pursuant to Code §415(d), assuming the form of benefit shall be a straight life annuity (with no ancillary benefits). The limitations described in this subsection .12 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 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 subsection 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 herein 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 subsection 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 §1-516.2, with fewer than 10 years of participation the limitation expressed in this subsection .12.D shall be reduced by one-tenth 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 §415 and regulations thereunder as applicable to government plans in general and this plan in particular.
- F. In the case of any survivor benefit or any disability retirement benefit under §1-516.2, the adjustment under subsection .12.B hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age of the benefit recipient.

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- G. For mandatory employee contributions, the rules set forth in Treasury Regulation 1.415(b)-1(b)(2)(iii) shall apply.
 - 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 §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 §417(e)(3)(B).
13. Incorporation of Code §415 by reference. Notwithstanding anything contained in subsection .12 to the contrary, the limitations, adjustments, and other requirements prescribed in subsection .12 shall at all times comply with the provisions of Code §415 and the regulations thereunder (as such apply to governmental plans), the terms of which are specifically incorporated by reference. Effective for limitation years beginning on and after July 1, 2007, the plan shall comply with the final regulations issued under Code §415.

(Ord. 774, 12/13/2011, Art. IV)

§1-515. Payment of Benefits.

- 1. Normal form of benefit payment. The normal form for payment of retirement benefits shall be a monthly annuity for the life of the participant; provided, however, that if the death of the retired participant occurs after the payments commence but before the total amount of monthly retirement benefit payments and any single sum or other prior distributions, if applicable, exceed the accumulated contributions as of the date of employment termination, the remainder of such amount shall be paid in a single sum to the beneficiary designated by the participant.
- 2. Optional form of benefit payment. The automatic form of payment of retirement benefits shall be the normal form specified in subsection .1 unless a participant elects to receive benefits in some other form as provided herein. A participant who retires under §§1-514.1, 1-514.3, 1-514.4 or 1-514.6 may elect, by giving written notice to the employer at least 30 days prior to the date retirement benefit payments shall commence, to receive payment in one of the optional forms of payment, which shall be the actuarial equivalent of the normal form, set forth hereafter:
 - A. Contingent annuitant option. In lieu of receiving a retirement benefit under the normal form, a participant may elect the contingent annuitant option which provides for payment of the monthly retirement benefit to the participant until death and thereafter the continuation of monthly benefit payments in an amount equal to 50%, 66 ²/₃%, or 100% of the participants reduced benefit, whichever the participant shall have chosen, to the

previously designated contingent annuitant, if living, until the death of the contingent annuitant.

If the contingent annuitant is the spouse of the retired participant, the benefit payable under this option is payable without restriction, otherwise the benefit payable hereunder shall be limited to the extent that the present value of payments to be made to the participant until death shall be more than 50% of the present value of the total payments to be made to the participant and the contingent annuitant.

If the death of the contingent annuitant occurs before the participant's actual retirement date, any election of this option shall be deemed null and void and the retirement benefit shall be payable in the normal form, the same as if this option had not been elected. If the contingent annuitant predeceases the retired participant after actual retirement, retirement benefit payments shall terminate after the monthly payment due immediately preceding the retired participant's death.

- B. Life annuity with payments guaranteed option. In lieu of receiving a retirement benefit under the normal form, a participant may elect the life annuity with payments guaranteed option which provides for payment of a monthly retirement benefit to the participant until death with a guarantee that at least 60, 120 or 180 monthly retirement benefit payments shall be paid, whichever the participant shall have chosen. If the death of the participant occurs after the date that retirement benefits payments shall commence but before the guaranteed number of monthly payments have been made, the remainder of such guaranteed monthly payments shall be paid as they become due to the beneficiary. If the death of the participant occurs after the participant has received at least the guaranteed number of payments there shall be no additional payments due or payable hereunder.
 - C. Life annuity option. In lieu of receiving a retirement benefit under the normal form, a participant may elect the life annuity option which provides for payment of a monthly retirement benefit to the participant until death only, and upon the death of the participant there shall be no additional payments due or payable hereunder.
3. Employer provided retirement benefit. Notwithstanding anything contained herein to the contrary, a participant, in lieu of receiving a retirement benefit pursuant to subsections .1 and .2 hereof based upon the total value of employee and employer contributions to the plan, may choose to receive a single sum payment in an amount equal to the participant's accumulated contributions as of the date of termination of employment and a reduced retirement benefit pursuant to subsections .1 and .2. The value of the retirement benefit shall be reduced by the portion of the value attributable to that which could have been provided by the value of the participant's accumulated contributions as of the date of termination of employment.

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4. Commencement of benefits. A participant may elect to commence receiving distribution of retirement benefits as of the first day of the month coincident with or next following the date on which retirement occurs with an eligibility to receive benefits, or may defer such payments to a date not later than the required date for commencement of benefits determined under this subsection. Unless the participant otherwise elects, payment of benefits under the plan shall commence not later than 60 days following the close of the plan year in which occurs the latest of the following dates:
 - A. The date when the participant attains normal retirement age.
 - B. The 10th anniversary of the year in which the participant commenced participation in the plan.
 - C. The date when the participant terminates service with the employer.
5. Required distributions.
 - A. Notwithstanding any other provision of this plan, the entire benefit of any participant who becomes entitled to benefits prior to death shall be distributed either:
 - (1) Not later than the required beginning date.
 - (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).

If a participant who is entitled to benefits under this plan dies prior to the date when the entire interest has been distributed after distribution of benefits has begun in accordance with subsection .5.B(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 .5.B(2) as of the date of death.

- B. If a participant who is entitled to benefits under this plan dies before distribution of the benefit has begun, the entire interest of such employee shall be distributed within 5 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 1 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 5-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 70½ and, further provided, if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

C. For purposes of this subsection, 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 70½, 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 subsection, 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.

D. General rules. The requirements of this subsection .5 will take precedence over any inconsistent provisions of the plan. All distributions required under this subsection .5 will be determined and made in accordance with §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.

6. Change of benefit election. Any election permitted hereunder may be revoked or a new election may be made within the applicable election period on a form and in a manner prescribed by the plan administrator and without the knowledge or consent of any applicable beneficiary.
7. Personal right of participant. Each participant’s right to receive any benefits hereunder is personal and expires on such participant’s death. 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. A participant’s election, failure to file an election hereunder or revocation of an election shall be final and binding on all persons.

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8. Direct rollovers. This subsection applies to distributions made on or after December 31, 2001. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this subsection, 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 that is equal to at least \$500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

A. For purposes of this subsection, 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 §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 subsection of the plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consist 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 §408(a) or (b) of the Code, or to a qualified defined contribution plan described in §401(a) or 403(a) of the Code (effective for distributions on or after January 1, 2007, any qualified trust or Code §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 §401(a), an individual retirement account described in Code §408(a), and individual retirement annuity described in Code §408(b), an annuity plan described in Code §403(a), an annuity contract described in Code §403(b), an eligible plan under §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 an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the

alternate payee under a qualified domestic relations order, as defined in Code §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.
- (5) Effective January 1, 2008, direct rollovers may be made to a Roth IRA described in §408A of the Internal Revenue Code to the extent that the applicable requirements of Code §408A are satisfied with respect to any direct rollover to such Roth IRA.

This subsection 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 subsection, a nonspouse beneficiary may elect to have a 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 §408(a) or to an individual retirement annuity described in §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 §401(a)(9)(E) of the Internal Revenue Code) of a participant and who is not surviving spouse of such participant.

(Ord. 774, 12/13/2011, Art. V)

§1-516. Disability Retirement.

1. Disability retirement. A participant who has completed at least 10 years of credited service and who shall incur a total and permanent disability prior to attainment of alternate, early or normal retirement age shall be entitled to a disability retirement benefit.
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 the participant’s accrued benefit determined as of the disability date.
3. Payment of disability benefit. Disability payments shall be made monthly, 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 have the benefit considered a normal retirement benefit thereafter paid in the same amount and for the life of the participant only.

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A participant who shall fail to return within 3 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 §1-517.2 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 credited 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 and such other evidence as the plan administrator shall deem appropriate. If the plan administrator shall determine that a participant who is totally and permanently disabled and who has not attained normal retirement age has recovered sufficiently to resume active employment 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 12-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.

(Ord. 774, 12/13/2011, Art. VI)

§1-517. Termination of Employment.

1. Rights of terminated employees. A participant who shall cease to be an employee except as otherwise hereinbefore provided, shall be limited to those rights under the plan contained in the following subsections of this Section.
2. Distribution of accumulated contributions. A participant whose employment with the employer ceased for any reason other than death or total and permanent disability prior to completion of at least 10 years of service shall only 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. Vested benefits. A participant who ceases to be an employee in employment for any reason other than death, disability or retirement, and who has completed at least 10 years of service shall be entitled to a 100% vested retirement benefit based upon the accrued benefit at the date employment ceases. Such a participant may choose to receive the benefit earned pursuant to the provisions of §1-515.3 and elect to receive the single sum payment of the participant's accumulated contributions determined as of the date of employment termination and paid at any time after such termination and prior to the commencement of any other payment option. The remaining benefit attributable to employer contributions or the full value of accrued benefit if no distribution of accumulated contributions occurs may commence as of the date of eligibility for a benefit under §1-514.5 including applicable reductions for early commencement, or under §1-514.2 or 1-514.3.
4. Forfeiture. A participant who terminates employment with the employer at a time when not vested in any portion of the accrued benefit derived from employer contributions shall cease to be a participant hereunder and shall not be entitled to any benefits under the plan derived from employer contributions.

A terminated participant who shall have made employee contributions to the plan shall have the current value of such contributions refunded to the beneficiary of the participant, if the participant dies prior to receipt of the accumulated contributions.

(Ord. 774, 12/13/2011, Art. VII)

§1-518. Death Benefits.

1. Death benefit. Except as hereinafter set forth, no benefit shall be payable hereunder upon or by reason of the death of any participant.
2. Death prior to eligibility for retirement. A benefit shall be payable to the beneficiary of a participant who shall die prior to becoming eligible to commence a retirement benefit in a single payment in an amount equal to the accumulated contributions as of the date of death of the participant. The beneficiary, with the approval of the plan administrator, may choose to convert the value of the single sum payment into an available monthly annuity consistent with the annuity options under the plan.

Notwithstanding the foregoing, a surviving spouse annuity will be paid to the spouse of a participant who shall die while an active employee in employment after attainment of early retirement age and prior to attainment of normal retirement age. The surviving spouse annuity shall be an amount equal to the value payable to the survivor for a joint and 50% survivor annuity pursuant to §1-515.2.A hereof as if the participant retired on the date of death and elected immediate commencement of the early retirement benefit as of such date, reduced by the value of the benefit which would have been payable under the

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preceding paragraph as a monthly annuity to the spouse as if the spouse were the unmarried beneficiary as of the date of death of the participant.

3. Death after retirement. A benefit shall be payable to the beneficiary of a participant who shall die after the payment of monthly retirement benefits has commenced or in the case of a participant who shall die after attainment of normal retirement age but prior to the commencement of benefits only to the extent and in the manner consistent with the provisions of the form of payment of benefits selected by the participant pursuant to the provisions of §1-515.
4. 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 §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.

(Ord. 774, 12/13/2011, Art. VIII)

§1-519. Administration.

1. Plan administrator. The Council of the employer may appoint a plan administrator who shall be either an individual or a committee. The plan administrator 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 the Council does not appoint a plan administrator, the employer shall be the plan administrator.
2. Pension Plan Committee. If the Council shall appoint a Pension Plan Committee, it shall consist of from one to five members who shall serve in that capacity until the earliest of resignation, death, removal or otherwise. Each member may be removed at any time, with or without cause, by the Council. Each member may resign by delivering written notice to the Council and other members of the Pension Plan Committee. Vacancies on the Pension Plan Committee shall be filled by the Council; provided, however, that the remaining members of the Pension Plan Committee shall have full power to act pending the filling of such vacancies.
3. Authority and duties of the plan administrator. 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 Council's review and approval thereof, be final and conclusive upon all parties hereto, whether employees, participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the plan administrator is authorized:

- A. To construe this plan.
- B. To determine all questions affecting the eligibility of any employee to participate herein.
- C. To compute the amount and source of any benefit payable hereunder to any participant or beneficiary.
- D. To authorize any and all disbursements.
- E. To prescribe any procedure to be followed by any participant and/or other person in filing any application or election.
- F. To prepare and distribute, in such manner as may be required by law or as the administrator deems appropriate, information explaining the plan.
- G. To require from the employer or any participant such information as shall be necessary for the proper administration of the plan.
- H. 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.

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 Council.

- 4. Pension Plan Committee organization. The Committee, if one is appointed, 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 anyone 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 Council, 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

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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. Pension Plan Committee costs. The Committee members shall each serve without compensation for services unless otherwise agreed by the Council in writing. All reasonable expenses incident to the functioning of the Committee, 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 Council 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 enrolled actuary 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 each present member of the Committee and each successor and each of any such member's heirs, executors and administrators, and the Committee's 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 he is or may be made a party by reason of being or having been a member, delegate or appointee of the Committee, 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 90-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 90-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 (1) the specific plan provisions on which the denial is based, (2) 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 (3) 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 Council of the initial determination. Such request for review must be made by notice to the Council 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 Council shall, within 60 days after receipt of the notice requesting such review, (or in special circumstances, such as where the Council 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

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which such an appeal may be taken until the entire appeal procedure of this subsection .8 of the plan has been exhausted.

(Ord. 774, 12/13/2011, Art. IX)

§1-520. The Pension Fund.

1. Operation of the pension fund. The Council 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 of Pennsylvania and of this plan and any amendment thereto.

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.

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.

To the extent, the pension fund includes assets of the Money Purchase Pension Plan as described in Appendix 1-5B-A, the assets of the Money Purchase Pension Plan will be held and invested separately from the assets of the Borough of Beaver Municipal Employees' Pension Plan within the pension fund. Assets in the Municipal Employees' Pension Plan and the Money Purchase Pension Plan are for the exclusive benefits of each individual plan and assets from one plan may not be used for the benefit of other plan. In addition, the assets of each individual plan may be used to pay benefits as provided in that plan and, to the extent not paid directly by the employer, to pay the expenses of administering that individual plan pursuant to authorization by the employer.

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

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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 his 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 reimburse themselves 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.

(Ord. 774, 12/13/2011, Art. X)

§1-521. Amendment.

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 Council, provided however:

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- A. That no amendment shall deprive any participant or any beneficiary of a deceased participant of any of the benefits to which such person 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 §1-513.5 and subsection .5, ever revert to or be used or enjoyed by the employer.
 - C. That no amendment to the plan which provides for a benefit modification shall be made unless the cost estimate described in §1-522.3 has been prepared and presented to the Council 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 consistent with the provisions of applicable law.
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. In the event of the termination or partial termination of the plan, all amounts of vested benefits accrued by the affected participants to the date of such termination, to the extent funded on such date, shall be non-forfeitable 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.

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 participant contributions before assets are applied to the distribution of vested benefits attributable to other sources hereunder.

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, the residual assets 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.

(Ord. 774, 12/13/2011, Art. XI)

§1-522. Provisions to Comply with the Municipal Pension Plan Funding Standard and Recovery Act of 1984.

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 §603 of the Act, whereupon actuarial valuation reports shall be made annually.

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.

Such actuarial valuation shall be prepared and certified by an approved actuary, as such term is defined in the Act.

The expenses attributable to the preparation of any actuarial valuation report or experience-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:

- A. Investment costs associated with obtaining authorized investments and investment management fees.
- B. Accounting expenses.
- C. Premiums for insurance coverage on fund assets.
- D. Reasonable and necessary counsel fees incurred for advice or to defend the fund.
- E. Legitimate travel and education expense for pension plan officials; provided, however, that the municipal officials of the employer, in their

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fiduciary role, shall monitor the services provided to the plan to ensure that the expenses are necessary, reasonable and benefit the pension plan and, further provided, that the plan administrator shall document all such expenses item by item, and where necessary, hour by hour.

2. Reporting requirements. Such actuarial reports shall be prepared and filed under the supervision of the Chief Administrative Officer of the municipality. The Chief Administrative Officer of the pension plan shall determine the financial requirements of the pension 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 Council annually and shall certify the accuracy of such calculations and their conformance with the Act.
3. Benefit modifications. Prior to the adoption of any benefit plan modification by the employer, the Chief Administrative Officer of the plan shall provide to the Council a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an approved actuary, which estimate shall disclose to the Council 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.

(Ord. 774, 12/13/2011, Art. XII)

§1-523. Miscellaneous Provisions.

1. Plan not a contract of employment. No employee 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 employee the right to remain in the employ 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.

(Ord. 774, 12/13/2011, Art. XIII)

Appendix 1-5B-A

Applicability: This Appendix 1-5B-A shall apply only to participants who were hired on or after January 1, 2011.

Borough of Beaver Money Purchase Pension Plan (Effective January 1, 2011)

Article A-I Definitions

Sec. A-1.01 “**Account**” shall mean the entire interest of a participant in the plan. Unless otherwise specified, the value of a participant’s account shall be determined as of the valuation date coincident with or next following the occurrence of the event to which reference is made. A participant’s account shall consist of such of the following as the participant has under the plan: (a) employer contribution account; and (b) employee contribution account.

Sec. A-1.02 “**Anniversary date**” shall mean the last day of the plan year.

Sec. A-1.03 “**Beneficiary**” shall mean:

- (a) As to any participant who is married at the time of his/her death, the participant’s spouse, except as provided in paragraph (c) of this section;
- (b) As to any participant who: (1) is not married at the time of his/her death, or (2) is married, but whose spouse has consented to the designation of a beneficiary other than himself/herself (to the extent of such consent), the persons or entities designated by the participant in writing to be his/her beneficiaries hereunder; and
- (c) As to any participant who dies not survived by a spouse, and who has not designated a beneficiary (or who is not survived by any such designated beneficiary), the participant’s estate.

Sec. A-1.04 “**Benefit commencement date**” shall mean the first day of the first period for which an amount is paid in any form.

Sec. A-1.05 “**Compensation**” shall mean:

- (a) In general. “Compensation” shall mean the participant’s gross pay before any payroll deductions. Compensation shall exclude any amounts paid after termination of employment.
- (b) Limitation on applicable compensation. In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, the compensation of each participant taken into account under the plan shall not exceed \$200,000, as adjusted by the

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Commissioner of Internal Revenue for increases in the cost of living in accordance with Code §401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning with or within such calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. Notwithstanding the foregoing, compensation may not include amounts that are not included in compensation for purposes of the limit imposed under §A-4.01.

Sec. A-1.06 **“Computation period”** shall mean the period of 12 consecutive months designated as the vesting computation period, as indicated by the context of usage.

Sec. A-1.07 **“Effective date”** shall mean January 1, 2011.

Sec. A-1.08 **“Eligible class employee”** shall mean (i) any person who is hired by the employer on or after January 1, 2014, in a job classification that is a member of the Clerical Workers Union or a job classification that is not represented by a Union for the purpose of collective bargaining with the employer; (ii) who is employed on a full-time basis (at least 35 hours per week); and (iii) is not a uniformed employee. [Ord. 792]

Sec. A-1.09 **“Employee”** shall mean each person in the employ of the employer.

Sec. A-1.10 **“Employer”** shall mean Borough of Beaver, Beaver County, Pennsylvania, its successors and assigns.

Sec. A-1.11 **“Employer contribution account”** shall mean that portion of a participant’s Account consisting of employer contributions pursuant to §A-3.01(b) of the plan, and the earnings and accretions attributable thereto.

Sec. A-1.12 **“Internal Revenue Code” or “Code”** shall mean the Internal Revenue Code of 1986 as the same may be amended from time to time.

Sec. A-1.13 **“Normal retirement age”** shall mean the date on which the participant attains age 60 and has completed 10 years of service.

Sec. A-1.14 **“Participant”** shall mean any person who has been or who is an eligible class employee of the employer and who has been admitted to participation in this plan pursuant to the provisions of §1-512. The term “participant” shall include active participants (those who are currently eligible to share in employer contributions to the plan), retired participants (those former employees presently receiving benefits under the plan or immediately entitled to receive such benefits), and vested participants (employees and former employees who are no longer active participants, any of whom are or may become entitled at some future date to the distribution of benefits from this plan by reason of their having been active participants herein).

Sec. A-1.15 “**Participant Contribution account**” shall mean that portion of a participant’s Account consisting of employee contributions pursuant to §A-3.01(a) of the plan, and the earnings and accretions attributable thereto.

Sec. A-1.16 “**Plan**” shall mean the Borough of Beaver Money Purchase Pension Plan as set forth in this Appendix 1-5B-A and as the same may from time to time hereafter be amended. This plan is intended to satisfy the requirements of §401(a) of the Code as a governmental money purchase pension plan. For purposes of the Code, the plan is a separate plan from the Borough of Beaver Municipal Employees’ Pension Plan (“Pension Plan”) and assets held in trust under this plan may not be commingled with or otherwise used to pay benefits under the Pension Plan.

Sec. A-1.17 “**Plan administrator**” shall mean the person or committee named as such pursuant to the provisions hereof, or, in the absence of any such appointment, the employer.

Sec. A-1.18 “**Plan year**” shall mean the 12-month period commencing each January 1 and ending on the subsequent December 31.

Sec. A-1.19 “**Required beginning date**” shall mean the April 1 of the calendar year next following the calendar year in which the participant attains age 70½, or if later, the April 1 of the calendar year next following the calendar year in which he/she retires.

Sec. A-1.20 “**Spouse**” shall mean (a) the person to whom the participant was married on his/her benefit commencement date, or (b) if the participant’s benefit commencement date had not occurred at the time of his/her death, the person to whom the participant was married at the time of his/her death.

Sec. A-1.21 “**Valuation date**” shall mean the last day of the plan year (the “annual valuation date”) and each other interim date during the plan year on which a valuation of the fund is made.

Sec. A-1.22 “**Vesting computation period**” shall mean each 12-month period of employment with the employer beginning on the employee’s date of hire and ending on the employee’s date of termination of employment.

Sec. A-1.23 “**Year of service**” shall have the following meanings when used in this plan:

- (a) When applied to vesting provisions, a “year of service” shall mean each vesting computation period.
- (b) For a participant who terminates employment prior to completing 10 years of service, any previous years of service shall be disregarded upon rehire. For a participant who has completed 10 consecutive years of service, all prior years of service shall be reinstated upon rehire.

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- (c) All years of service which are disregarded under (b) shall cease to be years of service for all purposes under the plan.

Article A-II Participation Eligibility

Sec. A-2.01 Initial Eligibility. Every eligible class employee shall become eligible for plan participation on his/her date of hire.

Sec. A-2.02 Procedure for and Effect of Admission. Each eligible class employee who becomes eligible for admission to participation in this plan shall complete such forms and provide such data as are reasonably required by the plan administrator in order to become a participant. By becoming a participant, each employee shall for all purposes be deemed conclusively to have assented to the terms and provisions of this plan and to all plan amendments.

Sec. A-2.03 Changes in Status. In the event that a person who has been in the employ of the employer in a category of employment not eligible for participation in this plan subsequently becomes an eligible class employee of the employer by reason of a change in status to a category of employment eligible for participation, he/she shall, subject to §A-2.02, become a participant as of the date on which occurs such change to eligible class employee status.

Article A-III Contributions

Sec. A-3.01 Determination of Amount.

- (a) Participant contributions. Participants are required to contribute an amount equal to 3.5% of participant's compensation on the last day of each payroll period into their account on a pre-tax basis under Code §414(h)(2).
- (b) Employer contributions. As of the last day of each month, the employer shall contribute an amount equal to 7.5% of each participant's compensation.
- (c) Rollover contributions. Participants shall be entitled to contribute rollover amounts to the plan in accordance with procedures established by the plan administrator.

Sec. A-3.02 Timing of Contributions. Employer shall pay its contribution made with respect to any payroll period on or before the last day of the sixth complete month following the last day of the payroll period.

Sec. A-3.03 Contingent Nature of Contributions. Each contribution made by the employer pursuant to the provisions of Section A-3.01 hereof is hereby made

expressly contingent on the exclusion thereof for Federal income tax purposes with respect to the participants for whom contribution is made.

Sec. A-3.04 Exclusive Benefit; Refund of Contributions. All contributions made by the employer are made for the exclusive benefit of the participants and their beneficiaries, and such contributions shall not be used for nor diverted to purposes other than for the exclusive benefit of the participants and their beneficiaries (including the costs of maintaining and administering the plan). Notwithstanding the foregoing, to the extent that such refunds do not, in themselves, deprive the plan of its qualified status, refunds of contributions shall be made to the employer under the following circumstances and subject to the foregoing limitations:

- (a) Mistake of fact. In the case of a contribution which is made in whole or in part by reason of a mistake of fact (for example, incorrect information as to the eligibility or compensation of an participant, or a mathematical error), so much of the employer contribution as is attributable to the mistake of fact shall be returnable to the employer upon demand. Repayment must be effectuated within 1 year after the payment of the contribution to which the mistake applies.
- (b) Exclusive benefit; refund of contributions. In the event that any refund of amounts contributed pursuant to §A-3.01(a) or §A-3.01(b) is paid to the employer hereunder, such refund shall be made without interest and shall be deducted from among the employer contribution accounts or participant contribution accounts of the participants, as the case may be, except to the extent that the amount of the refund can be identified to one or more specific participants (as in the case of certain mistakes of fact) in which case the amount of the refund identifiable to each such participant's account shall be deducted directly from such account.

Article A-IV Limitations on Contributions

Sec. A-4.01 Annual Additions Limitations.

- (a) Incorporation of Code §415 by reference. Notwithstanding anything contained in this §A-4.01 to the contrary, the limitations, adjustments, and other requirements prescribed in §A-4.01 shall at all times comply with the provisions of Code §415 and the regulations thereunder (as such apply to governmental plans), the terms of which are specifically incorporated herein by reference.
- (b) Compliance with Treasury regulations. The plan will comply with the final Treasury regulations under Code §415, which are incorporated into the plan by reference. Consistent with those regulations, a participant's compensation for purposes of the limit imposed under this §A-4.01 includes regular compensation for services during an employee's regular working hours, or compensation for services outside of regular working hours (such

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as overtime and shift differential), commissions, bonuses or other similar payments if (i) such amounts would have been paid to the employee prior to severance of employment if employment had continued and (ii) such amounts are actually paid by the later of 2½ months after severance of employment or the end of the limitation year in which severance of employment occurs (the “latest permissible date”). Compensation for purposes of the limit imposed under this §A-4.01 includes:

- (1) Any payments for unused accrued bona fide sick, vacation or other leave if (i) the employee would have been able to use the leave if employment had continued and (ii) such payments were actually paid by the latest permissible date.
 - (2) Any amounts received by an employee pursuant to a nonqualified deferred compensation plan if (i) the amount would have been paid to the employee if the employee had continued employment, (ii) only to the extent the amounts are includible in the employee’s gross income and (iii) such payments were actually paid by the latest permissible date.
 - (3) Any amounts of salary continuation payments made to an individual during periods in which the individual does not perform services due to qualified military service (as defined in §414(u)(1) of the Code) to the extent the payments do not exceed the amounts the individual would have received if the individual would have continued performing services.
 - (4) Any amounts of salary continuation payments made to an individual who is permanently and totally disabled (as defined in §22(e)(3) of the Code).
- (c) Compensation includes differential pay. Notwithstanding anything contained in this §A-4.01 to the contrary, a participant’s Compensation, for purposes of the limit imposed under this §A-4.01, includes military wage differential payments (as such term is used in IRS Notice 2010-15).

Sec. A-4.02 Elimination of Excess Amount. In the event that the limit imposed under §A-4.01 is exceeded with respect to any participant for a limitation year, the plan shall eliminate such excess amount in accordance with the Internal Revenue Service’s Employee Plans Compliance Resolution System or pursuant to any other correction method permitted by law.

Article A-V Administrative Provisions

Sec. A-5.01 Investment of Assets. All contributions shall be invested in accordance with the plan.

Sec. A-5.02 Investment Direction by Participants.

- (a) Rights of participants. To the extent that the plan administrator has established investment categories for participant investment direction, each participant shall have the right to designate the investment category or categories in which the plan is to invest amounts allocated to such participant's account from contributions made by the employer.
- (b) Changes in investment directions. Any designation of investment categories by a participant shall be made in the manner prescribed by the plan administrator and shall be made at such reasonable times as shall be determined by the plan administrator.
- (c) Available investment categories. There shall be offered such investment categories as shall be determined in accordance with uniform nondiscriminatory rules prescribed by the plan administrator from time to time.
- (d) Limitations on division of investments. Any participant may elect as to the allocation among investment categories for the investment of future contributions in such percentages and at such time as shall be determined in accordance with uniform nondiscriminatory rules prescribed by the plan administrator.
- (e) Failure to elect investment categories. In the absence of any written designation of investment category preference, the plan administrator shall invest all funds received on account of any participant in the investment category selected by the plan administrator. Any designation of investment category by any participant shall, on its effective date, cancel any prior designation by that participant with respect to investment of future contributions.
- (f) Annuity contract or trust. Notwithstanding any instruction from any participant, the terms of any applicable annuity or trust agreement shall control investment of plan assets.

**Article A-VI
Retirement Benefits**

Sec. A-6.01 Normal Retirement Benefit. The normal retirement benefit payable with respect to any participant retiring at his/her normal retirement age shall be equal to 100% of his/her account as of the appropriate valuation date coincident with or following the participant's normal retirement age.

Sec. A-6.02 Deferred Vested Benefits. A participant shall be entitled to receive deferred vested benefits in accordance with §A-9.02(c).

Article A-VII
Death Benefits

Sec. A-7.01 Payment of Death Benefits. Except as provided below, upon the death of a participant, a death benefit equal to the balance of the participant's vested interest in his/her account shall be paid to the participant's spouse.

Sec. A-7.02 Unmarried Participants; Electing Married Participants.

- (a) If the participant (i) is not survived by a spouse, or (ii) is survived by a spouse who has consented, in accordance with procedures established by the plan administrator, to the designation of a beneficiary or beneficiaries other than such spouse (but only to the extent of the portion of the participant's account subject to such consent) the benefit hereunder shall be paid to the participant's beneficiary.
- (b) If the spouse of a participant dies subsequent to the death of the participant but prior to the benefit commencement date, there shall be paid to the estate of such deceased spouse only the amount, if any, that such spouse would have received under the plan.

Sec. A-7.03 Beneficiary Designation.

- (a) Spouse as beneficiary. The primary beneficiary of each married participant shall be his/her spouse except to the extent that there is in force a consent, executed by such spouse to the designation of one or more beneficiaries other than or in addition to such spouse.
- (b) Beneficiary designation right. Each unmarried participant and each married participant whose spouse has consented to designation of persons or entities other than or in addition to such spouse as beneficiaries shall have the right to designate one or more primary and one or more contingent beneficiaries to receive any benefit becoming payable pursuant to this Section. All beneficiary designations shall be in writing in a form satisfactory to the plan administrator. Each participant shall be entitled to change his/her beneficiaries at any time and from time to time with the consent of his/her spouse as provided in this §A-7.03.
- (c) Termination of beneficiary designation. Any designation of beneficiary by a participant pursuant to paragraph (b) of this Section shall become null and void upon the marriage of the participant subsequent to the date on which such designation was made.
- (d) Miscellaneous. Changes in beneficiary designations shall become effective only upon receipt of the form by the plan administrator, but upon such receipt the change shall relate back to and take effect as of the date the participant signed the request (which shall be presumed to be the date appearing on such form, or, if there be none, then the date of the participant's death) whether or not the participant is living at the time of

such receipt. The plan administrator shall not be liable by reason of any payment of the participant's death benefit made before the receipt of any acceptable form designating or changing the designation of the beneficiary.

Any change of beneficiary designation filed in proper form with the plan administrator shall revoke all prior beneficiary designations. The plan administrator shall be the sole determinant of the acceptability of a beneficiary designation or change of beneficiary designation.

Article A-VIII Vesting Provisions

Sec. A-8.01 Full and Immediate Vested Interests. All participants shall at all times be fully vested in their respective employees contributions and rollover amounts.

Sec. A-8.02 Deferred Vested Interests. The participant's vested interest in his/her employer contribution account shall be determined from the following table as of any date of reference:

Completed Years of Service	Participant's Vested Percentage
1	20%
2	40%
3	60%
4	80%
5	100%

[Ord. 792]

Sec. A-8.03 Forfeiture of Non-Vested Accounts. Accounts of non-vested participants shall be forfeited upon termination of employment and shall not be subject to reinstatement.

Sec. A-8.04 Allocation of Forfeitures. Forfeitures arising under the plan shall be reallocated to other plan participants using the following ratio: the individual's account balance to the total of individual account balances (excluding balances distributed during the year) as of the prior allocation date.

Article A-IX Methods and Timing of Benefit Distributions

Sec. A-9.01 Forms of Benefit Payments.

- (a) Normal form of benefits. Benefits shall normally be paid as a single-sum distribution.

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Sec. A-9.02 Benefit Commencement Dates.

- (a) Retirement benefits. Benefits payable by reason of a participant's retirement are payable as soon as administratively practicable following the valuation date of the plan coincident with or next following the event entitling the participant to such distribution. However, if a participant does not submit a request describing the date that his benefit is to commence, the participant will be deemed to have elected to postpone benefit commencement until the time such participant elects (in the form and manner prescribed by the plan administrator) to commence benefit payments. Notwithstanding the foregoing, the participant's benefit commencement date shall in no event be later than his/her required beginning date.
- (b) Death benefits. Upon the beneficiary's election, benefits payable by reason of the death of the participant shall commence and be paid within 1 year of the date of the participant's death in a single sum.
- (c) Deferred vested benefits. Benefits payable to a participant by reason of a separation from service (other than due to retirement or death) prior to his/her retirement shall be payable, as of the date that would have been the participant's normal retirement age, and shall not, in any event, be deferred beyond the participant's required beginning date. Notwithstanding the foregoing, a terminated vested participant shall have the right to request a distribution of any benefit to which he/she is entitled pursuant to Article A-VIII as of any earlier valuation date coincident with or next following the date of such request, and the plan administrator shall have the right to pay any such benefit, if the participant consents to such benefit distribution in writing. No distribution of such benefit shall occur prior to a termination of employment.

Sec. A-9.03 Direct Rollover.

- (a) In General. 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) 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 §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 §408(a) or (b) of the Code, or to a qualified defined contribution plan described in §401(a) or 403(a) of the Code or any qualified trust or Code §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 §401(a), an individual retirement account described in Code §408(a), an individual retirement annuity described in Code §408(b), an annuity plan described in Code §403(a), an annuity contract described in Code §403(b), an eligible plan under §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 §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) Direct rollovers may be made to a Roth IRA described in §408A of the Internal Revenue Code to the extent that the applicable requirements of Code §408A are satisfied with respect to any direct rollover to such Roth IRA.
- (c) 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

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account described in Code §408(a) or to an individual retirement annuity described in §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 §401(a)(9)(E) of the Internal Revenue Code) of a participant and who is not the surviving spouse of such participant.

Sec. A-9.04 Required Distributions.

- (a) Notwithstanding any other provision of this plan, the entire benefit of any participant who becomes entitled to benefits prior to death shall be distributed either:
 - (1) Not later than the required beginning date.
 - (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).

If a participant who is entitled to benefits under this plan dies prior to the date when the entire interest has been distributed after distribution of the benefits has begun in accordance with paragraph (2) above, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under paragraph (2) as of the date of the death.

- (b) If a participant who is entitled to benefits under this plan dies before distribution of the benefit has begun, the entire interest of such participant shall be distributed within 5 years of the death of such participant, unless the following sentence is applicable. If any portion of the participant'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 1 year after the date of the participant's death or such later date as provided by regulations issued by the Secretary of the Treasury, then for purposes of the 5-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 participant would have attained age 70½ and, further provided, if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the participant.

- (c) 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 participant attains age 70½, or the calendar year in which the participant retires.
 - (2) The phrase “designated beneficiary” shall mean any individual designated by the participant 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 a participant or the participant’s spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.
- (d) General rules. The requirements of this §A-9.04 will take precedence over any inconsistent provisions of the plan. All distributions required under this §A-9.04 will be determined and made in accordance with §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.

Sec. A-9.05 Veterans’ Survivor Benefits. Notwithstanding any other provision of the plan to the contrary, in the case of the death of a participant while performing qualified military service (as defined in Code §414(u)), the survivors of the participant are entitled to any additional benefits under the plan (if any, other than benefit accruals related to the period of such service which wouldn’t otherwise be credited) had the participant resumed and then terminated employment on account of death.

Article A-X Administration

The plan is administrated in accordance with Article IX, Article X, Article XI and Article XIII of the Municipal Employees’ Pension Plan.

(Ord. 774, 12/13/2011, App. A; as amended by Ord. 792, 5/13/2014, §2)

C. Borough of Beaver Police Pension Plan.

§1-531. Definitions.

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

ACCRUED BENEFIT—as of any given date, the benefit determined under §1-534, Subsection 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 not exceed the maximum limitation, determined as of the date of computation, provided under §1-534, Subsection 5. 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 any interest actually earned thereon and/or any other increases in the value of the participant's investment in the fund.

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.

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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 participant receive a distribution of accumulated contributions with respect to a period of employment for which employee contributions are required, 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 subsection, 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 above. Aggregate service shall be calculated in completed years, and shall not include any period of voluntary leave of absence without pay.

ATTENDING COLLEGE—for purposes of §1-536, Subsection 5, being registered at an accredited institution of higher learning and carrying a minimum course load of 7 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 Council of the Borough of Beaver.

CHIEF ADMINISTRATIVE OFFICER— the person designated by the Borough 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 §1-538, Subsection 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 compensation paid by the employer for police services rendered. Compensation shall also include fixed, periodic amounts paid for periods during which the

participant is not actively employed as a member of the employer's regular full-time police force, which amounts are paid directly by the employer or through a program to which the employer has made contributions on behalf of the employee, other than under this plan (including, without limitation, a workers' compensation program or payments made under the Pennsylvania Heart and Lung Act). Compensation shall be limited on an annual basis to the amount specified for government plans pursuant to Code §401(a)(17), as adjusted under Code §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—Borough of Beaver, Beaver County, Pennsylvania.

EMPLOYMENT—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 3 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.
- 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 6 months immediately prior to the period of military service; and the participant returns to employment within 6 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.
- E. Any period of qualified military service as determined under the requirements of Chapter 43 of Title 38, United States Code, provided that the par-

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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 calculated must be paid into the plan before the end of the period that begins on the date of reemployment 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 5 years after the date of reemployment.

FINAL MONTHLY AVERAGE SALARY—the average monthly salary earned by the participant and paid by the employer during the full 36 months immediately preceding termination of active employment. Salary shall include the employee's regular gross pay, whether salary or hourly wages, including overtime pay, holiday pay, longevity pay and other forms of compensation to which the employee is entitled for police services rendered. However, salary shall exclude any single sum or end-of-career one-time lump-sum payments, 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.

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 §1-531. 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. 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 §401(a)(17), as adjusted under Code §415(d).

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

LATE RETIREMENT DATE—the first day of the month coincident with or next following the date on which a participant shall retire from employment, which occurs after the participant's normal retirement 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 55.

NORMAL RETIREMENT DATE—the first day of the month coincident with or next following the attainment of normal retirement age.

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 plan administrator, it must be received by the intended 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 §1-532, Subsection 1, and who has not for any reason ceased to be a participant hereunder.

PENSION 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 Borough of Beaver 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, 2001, the date upon which this amendment and restatement of the plan becomes effective.

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SALARY—for purposes of §§1-535, Subsection 2, and 1-536, Subsection 3, the average monthly base wages earned by the participant and paid by the employer during the final 12 months preceding the termination of active employment. Base wages shall consist of the regular hourly wage multiplied by the number of hours actually worked, up to a maximum of 2,080, during the aforesaid period.

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 and which is reasonably expected to continue to be permanent for the remainder of the participant's lifetime. For purposes of this subsection and §1-535, 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 is willfully self-inflicted, is not entitled to receive disability benefits under the plan.

(Ord. 712, 11/13/2001, Art. I; as amended by Ord. 726, 12/10/2002, §2; by Ord. 731, 5/13/2003, §1; and by Ord. 769, 7/13/2010, §2)

§1-532. Participation in the plan.

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. Each employee who was a participant in the plan on the day prior to the restatement date shall continue to be a participant on and after the restatement date subject to the terms and conditions of the plan as set forth herein.
2. Participation requirements. 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. Each participant hereunder shall be required to make contributions to the plan, as provided in §1-533, Subsection 1, hereof, and shall execute and complete any enrollment or application forms as required by the plan administrator.
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 designated 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.

(Ord. 712, 11/13/2001, Art. II)

§1-533. Contributions.

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 compensation. Each participant shall complete the necessary forms to authorize the payment of participant contributions by way of payroll deduction. The participant contributions required under this subsection shall be picked up by the employer and shall be treated as employer contributions pursuant to Code §414(h)(2).
2. Reduction of participant contributions. Notwithstanding the preceding Subsection 1, the employer may, in its sole discretion and on an annual basis, by ordinance or resolution, reduce or eliminate payments into the pension fund by participants.
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

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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 §1-540.

(Ord. 712, 11/13/2001, Art. III; as amended by Ord. 726, 12/10/2002, §2)

§1-534. Retirement Benefits.

1. Normal retirement. Each participant shall be entitled to a normal retirement benefit after retirement on or after the participant has attained normal retirement age.
2. Normal retirement, benefits. Each participant who shall become entitled to a benefit pursuant to §1-532, 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. In addition to the monthly retirement benefit described above, each participant who has completed 26 years of service with the employer shall receive an additional pension benefit of \$100 per month. [Ord. 804]
3. Late retirement. A participant may continue in employment 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 §1-534, Subsection 1, continues in employment beyond normal retirement age, there shall be no retirement benefits paid until employment ceases and the participant's retirement actually begins. The retirement benefit of a participant who continues employment after attainment of normal retirement age shall be calculated in accordance with §1-534, Subsection 2, on the basis of the final monthly average salary as of such participant's actual retirement and shall commence on the participant's late retirement date.
4. Payment of benefits. Retirement benefit payments shall be payable as of 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 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.

[Text continued on p. 1-61]

5. 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 §1-534, Subsection 5, 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 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 to the amount determined pursuant to this section commencing at age 62; however, the reduction shall not reduce the limitation below \$75,000 for a benefit commencing at or after age 55, or if the benefit commences prior to attainment of age 55 the amount which is actuarially equivalent to a benefit of \$75,000 commencing at age 55; however, in the case of a qualified participant (a participant with respect to whom a period of at least 15 years of service, including applicable military service, as a full-time employee of a police or fire department is taken into account in determining the amount of benefit), the limitation contained herein shall not reduce the limitation to an amount less than the amount specified pursuant to Code Section 415(b)(2)(G) such amount shall be adjusted pursuant to Code Section 415(d).
 - 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 to the amount determined herein 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 §1-535, Subsection 2, with fewer than 10 years of participation the limitation expressed in this Subsection 5D, shall be reduced by one-tenth 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

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thereunder as applicable to government plans in general and this plan in particular.

- F. In the case of a survivor benefit under §1-536, Subsection 2, or a disability retirement benefit under §1-535, Subsection 2, the adjustment under Subsection 5B hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age of the benefit recipient.
6. Required distributions.
- A. Notwithstanding any other provision of this plan, the entire benefit of any participant who becomes entitled to benefits prior to 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 the entire interest has been distributed after distribution of benefits has begun in accordance with Subsection 6A(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 6A(2) as of the date of death.
 - C. If a participant who is entitled to benefits under this plan dies before distribution of the 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 – 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) Designated Beneficiary – 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) 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.
7. 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.
8. 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 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. Any participant who shall have terminated employment and elected to receive a deferred retirement benefit under §1-537, Subsection 3, shall have such benefit determined based upon the provisions of the plan in effect as of the date of such termination of employment and shall not have the benefit altered by the provisions of this amended and restated plan.
9. 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 Board 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.

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10. **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.
11. **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.
12. **Incorporation of Code Section 415 by reference.** Notwithstanding anything contained in §1-534, Subsection 5, to the contrary, the limitations, adjustments and other requirements prescribed in §1-534, Subsection 5, 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.
13. **Direct rollovers.** This subsection applies to distributions made on or after December 31, 2001. 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 that is equal to at least \$500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this subsection, the following definitions shall apply:

DIRECT ROLLOVER — a payment by the plan to the eligible retirement plan specified by the distributee.

DISTRIBUTE — an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former 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.

ELIGIBLE RETIREMENT PLAN — 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 §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 po-

litical subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan.

ELIGIBLE ROLLOVER DISTRIBUTION—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 subsection 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 §408(a) or (b) of the Code, or to a qualified defined contribution plan described in §401(a) or §403(a) of the Code 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.

(Ord. 712, 11/13/2001, Art. IV; as amended by Ord. 726, 12/10/2002, §2; and by Ord. 804, 3/10/2015, §1)

§1-535. Disability Retirement.

1. Disability retirement. A participant who shall incur a total and permanent disability before attaining normal retirement age 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 §1-535, Subsection 1, shall receive a monthly benefit in an amount equal to 50% of the participant's salary as defined in §1-531 as of the disability date, offset or reduced by the full amount of any benefits received under the Federal Social Security Act (49, Stat. 620, 42 U.S.C. §§301 et seq.) for the same injury or injuries which create the total and permanent disability.
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 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 §1 534, Subsection 2. A participant who shall fail to return within 3 months to employment as an employee of the employer upon cessation of total and permanent disability prior to the attainment of normal retirement age shall

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be deemed to have terminated employment as of the disability date, shall not be entitled to any distribution of accumulated contributions pursuant to §1-537, Subsection 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.

(Ord. 712, 11/13/2001, Art. V; as amended by Ord. 726, 12/10/2002, §2)

§1-536. Death Benefits.

1. Death of participant. Upon the occurrence of the death of the participant, there shall be benefits payable in accord with the following subsections of this Section.
2. Survivor benefit at retirement. If a participant shall die either after the commencement of retirement benefit-payments under §1-534 above, or after the participant becomes eligible to retire under §1-534, Subsection 1, but before retirement benefit payments commence, a survivor benefit shall be paid to the surviving spouse or children, if any, in accordance with §1-536, Subsection 5, in an amount equal to 50% of the accrued benefit which the participant was receiving or was entitled to receive.
3. Death of a 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 subsection 2, 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 his or her death. 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. [Ord. 769]

4. Payment of survivor benefit. 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, if any, until the date of his or her death. Upon the death of the surviving spouse, or if there is none, the survivor benefit shall be paid monthly in equal shares to the surviving children of the deceased participant until the death or attainment of age 18 of each child or attainment of age 23 for a child then attending college. The shares payable to the surviving children shall be adjusted as each child ceases to be eligible to receive a share of the benefit hereunder. [Ord. 769]

(Ord. 712, 11/13/2001, Art. VI; as amended by Ord. 726, 12/10/2002, §2; and by Ord. 769, 7/13/2010, §2)

§1-537. Termination of employment.

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 retirement benefit. A participant who shall have completed at least 12 years of aggregate service and whose employment shall terminate for any reason other than due to death or total and permanent disability prior to attainment of normal retirement age shall be entitled to elect by filing a written notice of the intention to vest with the plan administrator within 90 days of the date employment ceases to receive a deferred retirement benefit in lieu of a distribution of accumulated contributions under §1-537, Subsection 2. Such a deferred retirement benefit shall be equal to 100% of the participant's accrued benefit as of the date employment terminates and shall commence after application pursuant to §1-534, Subsection 4, and not earlier than the date which would be the participant's normal retirement date under the plan if the participant remained in employment until such date.

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(Ord. 712, 11/12/2001, Art. VII)

§1-538. Administration.

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 may 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, if one is appointed, shall consist of not more than five members. Each member of the committee shall serve in that capacity until death, resignation, removal or otherwise. Each member may resign by delivering written notice to the Board and other members of the committee. Vacancies on the committee shall be filled in the same manner as the position was originally filled by the Board; provided, however, that the remaining members of the committee shall have full power to act pending the filling of such vacancies.
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 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 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 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.
 - (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.
 - 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 provided that it shall operate and act by a majority of its members as the time in office either by vote at a meeting or in writing without a meeting. The committee shall appoint a chairman, a secretary who may, but need not be a committee member, and such other agents as it may deem advisable. The committee may 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 each such member so authorized; however, if no such member is so authorized, 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 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. The committee shall meet at least one time in each plan year, and it 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, reports or documents as may be required to be filed with any governmental agency or department and with the participants 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.

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6. Hold harmless. No member of the Board, the plan administrator, the enrolled actuary 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 he is or 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 the specific plan provisions on which the denial is based, 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 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 the 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 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 §1-538, Subsection 8, of this Part has been exhausted.

(Ord. 712, 11/13/2001, Art. VIII)

§1-539. The Pension Fund.

1. Operation of the Pension Fund. 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 of Pennsylvania and of this plan and any amendment thereto. 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. 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

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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 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, the 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.

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- 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 reimburse themselves 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.

(Ord. 712, 11/13/2001, Art. IX)

§1-540. Amendment and Termination.

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 such person 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 §1-540, Subsection 5, ever revert to or be used or enjoyed by the employer.
 - C. That no amendment to the plan which provides for a benefit modification shall be made unless the cost estimate described in §1-541, Subsection 3, has been prepared and presented to the Council 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. In the event of the termination or partial 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 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 that the plan administrator immediately distribute to each participant an amount equal to the vested accrued benefit to the date. 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

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hereunder. 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 the 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.

(Ord. 712, 11/13/2001, Art. X)

§1-541. Funding Standard Requirements.

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 §603 of the Act, whereupon actuarial valuation reports shall be made annually. 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. Such actuarial valuation shall be prepared and certified by an approved actuary, as such term is defined in the Act. 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:
 - A. Investment costs associated with obtaining authorized investments and investment management fees.
 - B. Accounting expenses.
 - C. Premiums for insurance coverage on fund assets.
 - D. Reasonable and necessary counsel fees incurred for advice or to defend the fund.

- E. Legitimate travel and education expense 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 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 Council 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.

(Ord. 712, 11/13/2001, Art. XI)

§1-542. Miscellaneous Provisions.

- 1. Employment rights. No employee 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 hereunder. Participation in this plan shall not give any right to any employee to be retained in the employ of the employer, nor shall interfere with the right of the employer to discharge any employee and to deal with such employee without regard to the effect such treatment might have upon participation in this plan.
- 2. Meaning of certain words. For purposes of this plan, the masculine gender shall include the feminine gender and the singular shall include the plural, and vice versa, in all cases wherever the person or context shall plainly so require. Headings of Parts and Sections are inserted only for convenience of reference and are not to be considered in the construction of the plan.
- 3. Information to be furnished by the employer. The employer shall furnish to the plan administrator (and where applicable, the trustee) information in the em-

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ployer's possession as the plan administrator and the trustee shall require from time to time to perform their duties under the plan.

4. Severability of provisions. Should any provisions of this plan 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 herein.
5. 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 the participant and that no guardian or committee has been appointed for the participant, may provide for such payment of pension benefits hereunder to such person or institution so maintaining the participant, and any such payments so made shall be deemed for every purpose to have been made to such participant.
6. 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.
7. Benefits for a deceased participant. If any benefit shall be payable under the plan to or on behalf of a participant who has died, if the plan provides that the payment of such benefits shall be made to the participant's estate, and if no administration of such participant's estate is pending in the court of proper jurisdiction, then the plan administrator, at its sole option, may pay such benefits to the surviving spouse of such deceased participant, or, if there is no surviving spouse, to such participant's then living issue, per stirpes; provided, however, that nothing contained herein shall prevent the plan administrator from insisting upon the commencement of estate administration proceedings and the delivery of any such benefits to a duly appointed executor or administrator.
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. Personal liability. Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer or agent of the employer or plan administrator shall be personally liable to any participant, beneficiary or other person under any provision of the plan.
10. 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.

(Ord. 712, 11/13/2001, Art. XII)

D. 457 Deferred Compensation Plan.

§1-551. Purpose.

1. The employer hereby establishes and maintains the employer's Deferred Compensation Plan and Trust, hereafter referred to as the "plan." The plan consists of the provisions set forth in this document.
2. The primary purpose of this plan is to provide retirement income and other deferred benefits to the employees of the employer and the employees' beneficiaries in accordance with the provisions of §457 of the Internal Revenue Code of 1986, as amended (the "Code").
3. This plan shall be an agreement solely between the employer and participating employees. The plan and trust forming a part hereof are established and shall be maintained for the exclusive benefit of participants and their beneficiaries. No part of the corpus or income of the trust shall revert to the employer or be used for or diverted to purposes other than the exclusive benefit of participants and their beneficiaries.

(Ord. 785, 3/12/2013, Art. I)

§1-552. Definitions.

ACCOUNT—the bookkeeping account maintained for each participant reflecting the cumulative amount of the participant's deferred compensation, including any income, gains, losses, or increases or decreases in market value attributable to the employer's investment of the participant's deferred compensation, and further reflecting any distributions to the participant or the participant's beneficiary and any fees or expenses charged against such participant's deferred compensation.

ACCOUNTING DATE—each business day that the New York Stock Exchange is open for trading, as provided in §1-556.6 for valuing the trust's assets.

ADMINISTRATOR—the person or persons named in writing to carry out certain nondiscretionary administrative functions under the plan, as hereinafter described. The employer may remove any person as administrator upon 75 days advance notice in writing to such person, in which case the employer shall name another person or persons to act as administrator. The administrator may resign upon 75 days advance notice in writing to the employer, in which case the employer shall name another person or persons to act as administrator.

AUTOMATIC DISTRIBUTION DATE—April 1 of the calendar year after the plan year the participant attains age 70½ or, if later, has a severance event.

BENEFICIARY—the person or persons designated by the participant in his or her joinder agreement who shall receive any benefits payable hereunder in the event of the participant's death. In the event that the participant names two or more beneficiaries,

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each beneficiary shall be entitled to equal shares of the benefits payable at the participant's death, unless otherwise provided in the participant's joinder agreement. If no beneficiary is designated in the joinder agreement, if the designated beneficiary predeceases the participant, or if the designated beneficiary does not survive the participant for a period of 15 days, then the estate of the participant shall be the beneficiary. If a married participant resides in a community or marital property state, the participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the participant designates someone other than his or her spouse as beneficiary. The preceding sentence shall not apply with respect to a deemed IRA under §1-559.

DEEMED IRA—a separate account or annuity established under the plan that complies with the requirements of §408(q) of the Code, the Income Tax Regulations thereunder, and any other IRS guidance.

DEFERRED COMPENSATION—the amount of includable compensation otherwise payable to the participant which the participant and the employer mutually agree to defer hereunder, any amount credited to a participant's account by reason of a transfer under §1-556.9 or 1-556.10, a rollover under §1-556.11, or any other amount which the employer agrees to credit to a participant's account.

DOLLAR LIMITATION—the applicable dollar amount within the meaning of §457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with §457(e)(15) of the Code.

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

EMPLOYER—Borough of Beaver, which is a political subdivision, agency or instrumentality of the Commonwealth of Pennsylvania, described in §457(e)(1)(A) of the Code.

457 CATCH-UP DOLLAR LIMITATION—twice the dollar limitation.

INCLUDABLE COMPENSATION—includable compensation of a participant means "compensation," as defined in §415(c)(3) of the Code, for services performed for the employer. Includable compensation shall be determined without regard to any community property laws. For purposes of a participant's joinder agreement only and not for purposes of the limitations in §1-555, includable compensation shall include pre-tax contributions (excluding direct employer contributions) to an integral part trust of the employer providing retiree health care benefits.

JOINDER AGREEMENT—an agreement entered into between an employee and the employer, including any amendments or modifications thereof. Such agreement shall fix the amount of deferred compensation, specify a preference among the investment alternatives designated by the employer, designate the employee's beneficiary or beneficiaries, and incorporate the terms, conditions, and provisions of the plan by reference.

NORMAL LIMITATION—the maximum amount of deferred compensation for any participant for any taxable year (other than amounts referred to in §§1-556.9, 1-556.10, and 1-556.11).

NORMAL RETIREMENT AGE—age 70½, unless the participant has elected an alternate normal retirement age by written instrument delivered to the administrator prior to a severance event. A participant's normal retirement age determines the period during which a participant may utilize the 457 catch-up dollar limitation of §1-555.2.B hereunder. Once a participant has to any extent utilized the catch-up limitation of §1-555.2.B, his normal retirement age may not be changed.

A participant's alternate normal retirement age may not be earlier than the earliest date that the participant will become eligible to retire and receive immediate, unreduced retirement benefits under the employer's basic defined benefit retirement plan covering the participant (or a money purchase pension plan in which the participant also participates if the participant is not eligible to participate in a defined benefit plan), and may not be later than the date the participant will attain age 70½. If the participant will not become eligible to receive benefits under a basic defined benefit retirement plan (or money purchase pension plan, if applicable) maintained by the employer, the participant's alternate normal retirement age may not be earlier than 65 and may not be later than age 70½. In no event may a participant's normal retirement age be different than the normal retirement age under the employer's other 457(b) plans, if any.

In the event the plan has participants that include qualified police or firefighters (as defined under §415(b)(2)(H)(ii)(I) of the Code), a normal retirement age may be designated for such qualified police or firefighters that is not earlier than age 40 or later than age 70½. Alternatively, qualified police or firefighters may be permitted to designate a normal retirement age that is between age 40 and age 70½ .

PARTICIPANT—any employee who has joined the plan pursuant to the requirements of §1-554. For purposes of §1-556.11 of the plan, the term participant includes an employee or former employee of the employer who has not yet received all of the payments of benefits to which he/she is entitled under the plan.

PERCENTAGE LIMITATION—100 percent of the participant's includable compensation available to be contributed as deferred compensation for the taxable year.

PLAN YEAR—the calendar year.

RETIREMENT—the first date upon which both of the following shall have occurred with respect to a participant: severance event and attainment of age 65.

SEVERANCE EVENT—a severance of the participant's employment with the employer within the meaning of §457(d)(1)(A)(ii) of the Code.

In general, a participant shall be deemed to have experienced a severance event for purposes of this plan when, in accordance with the established practices of the employer, the employment relationship is considered to have actually terminated. In

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the case of a participant who is an independent contractor of the employer, a severance event shall be deemed to have occurred when the participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the employer will renew the contract or enter into a new contract for the participant's services, and it is not anticipated that the participant will become an employee of the employer, or such other events as may be permitted under the Code.

TRUST—the trust created under §1-556 of the plan which shall consist of all compensation deferred under the plan, plus any income and gains thereon, less any losses, expenses and distributions to participants and beneficiaries.

(Ord. 785, 3/12/2013, Art. II)

§1-553. Administration.

1. Duties of the employer. The employer shall have the authority to make all discretionary decisions affecting the rights or benefits of participants which may be required in the administration of this plan. The employer's decisions shall be afforded the maximum deference permitted by applicable law.
2. Duties of administrator. The administrator, as agent for the employer, shall perform nondiscretionary administrative functions in connection with the plan, including the maintenance of participants' accounts, the provision of periodic reports of the status of each account, and the disbursement of benefits on behalf of the employer in accordance with the provisions of this plan.

(Ord. 785, 3/12/2013, Art. III)

§1-554. Participation in the Plan.

1. Initial participation. An employee may become a participant by entering into a joinder agreement prior to the beginning of the calendar month in which the joinder agreement is to become effective to defer compensation not yet earned, or such other date as may be permitted under the Code. A new employee may defer compensation in the calendar month during which he or she first becomes an employee if a joinder agreement is entered into on or before the first day on which the employee performs services for the employer.
2. Amendment of joinder agreement. A participant may amend an executed joinder agreement to change the amount of includable compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A participant may at any time amend his or her joinder agreement to change the designated beneficiary, and such amendment shall become effective immediately.

(Ord. 785, 3/12/2013, Art. IV)

§1-555. Limitations on Deferrals.

1. Normal limitation. Except as provided in subsection .2, the maximum amount of deferred compensation for any participant for any taxable year, shall not exceed the lesser of the dollar limitation or the percentage limitation.

2. Catch-up limitations.

A. Catch-up contributions for participants age 50 and over a participant who has attained the age of 50 before the close of the plan year, and with respect to whom no other elective deferrals may be made to the plan for the plan year by reason of the normal limitation of subsection .1, may enter into a joinder agreement to make elective deferrals in addition to those permitted by the normal limitation in an amount not to exceed the lesser of:

(1) The applicable dollar amount as defined in §414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with §414(v)(2)(C) of the Code.

(2) The excess (if any) of:

(a) The participant's includable compensation for the year.

(b) Any other elective deferrals of the participant for such year which are made without regard to this subsection .2.A.

An additional contribution made pursuant to this subsection .2.A shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in subsection .1 above, or be taken into account in applying such limitation to other contributions or benefits under the plan or any other plan. This subsection .2.A shall not apply in any year to which a higher limit under subsection .2.B applies.

B. Last 3 years catch-up contribution. For each of the last 3 taxable years for a participant ending before his or her attainment of normal retirement age, the maximum amount of deferred compensation shall be the lesser of:

(1) The 457 catch-up dollar limitation.

(2) The sum of:

(a) The normal limitation for the taxable year.

(b) The normal limitation for each prior taxable year of the participant commencing after 1978 less the amount of the

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participant's deferred compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the participant was eligible to participate in the plan for such year, and (y) compensation (if any) deferred under the plan (or such other plan) was subject to the normal limitation.

3. Sick, vacation and back pay. If the employer so elects, a participant may defer all or a portion of the value of the participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the participant to exceed the dollar limitation or percentage limitation (including any catch-up dollar limitation) for the year of deferral. The election to defer such sick, vacation and/or back pay must be made in a manner and at a time permitted under §1.457-4(d) of the Income Tax Regulations.

For plan years beginning before January 1, 2009, pursuant to proposed IRS regulations issued under §415 of the Code, the plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid within 2½ months following severance from employment and the other requirements of §§457(b) and 415 of the Code are met. For plan years beginning on or after January 1, 2009, pursuant to final IRS regulations issued under §415 of the Code, the plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid by the later of: (A) 2½ months following severance from employment, and (B) the end of the calendar year that includes the date of such severance from employment, and the other requirements of §§457(b) and 415 of the Code are met. Additionally, the agreement to defer such amounts must be entered into prior to the first day of the month in which the amounts otherwise would be paid or made available.

4. Other plans. Notwithstanding any provision of the plan to the contrary, the amount excludable from a participant's gross income under this plan or any other eligible deferred compensation plan under §457(b) of the Code shall not exceed the limits set forth in §§457(b) and 414(v) of the Code.
5. Excess deferrals. Any amount that exceeds the maximum dollar limitation or percentage limitation (including any applicable catch-up dollar limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed in accordance with the requirements for excess deferrals under the Code and §1.457-4(e) of the Income Tax Regulations or other applicable Internal Revenue Service guidance.
6. Protection of person who serves in a uniformed service. An employee whose employment is interrupted by qualified military service under §414(u) of the Code or who is on leave of absence for qualified military service under §414(u) of the Code may elect to contribute additional deferred compensation upon resumption of employment with the employer equal to the maximum deferred compensation that the employee could have elected during that period if the employee's employment with the employer had continued (at the same level of includable compensation) without the interruption or leave, reduced by deferred

compensation, if any, actually made for the employee during the period of the interruption or leave. This right applies for 5 years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

(Ord. 785, 3/12/2013, Art. V)

§1-556. Trust and Investment of Accounts.

1. Investment of deferred compensation. A trust is hereby created to hold all the assets of the plan (except deemed IRA contributions and earnings thereon held pursuant to §1-559) for the exclusive benefit of participants and beneficiaries, except that expenses and taxes may be paid from the trust as provided in subsection .3. The trustee shall be the employer or such other person that agrees to act in that capacity hereunder.
2. Investment powers. The trustee or the administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of trust assets, except to the extent that the investment of trust assets is directed by participants, pursuant to subsection .5 or to the extent that such powers are restricted by applicable law.
 - A. To invest and reinvest the trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including, but not limited to, insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including, but not limited to, savings accounts and certificates of deposit. Assets of the trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
 - B. To invest and reinvest all or any part of the assets of the trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to employee plans described under §457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the plans the declaration of trust of such commonly collective, or commingled trust fund shall constitute a part of this plan.
 - C. To invest and reinvest all or any part of the assets of the trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other 457 plan or trust qualified under §401(a) of the Code or any other plan described in §401(a)(24) of the

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Code, and such contract may be held or issued in the name of the administrator, or such custodian as the administrator may appoint, as agent and nominee for the employer. During the period that an investment through any such contract shall exist, to the extent of participation of the plan, the terms and conditions of such contract shall constitute a part of the plan.

- D. To hold cash awaiting investment and to keep such portion of the trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the plan or otherwise to be in the best interests of the plan.
- E. To hold, to authorize the holding of, and to register any investment to the trust in the name of the plan, the employer, or any nominee or agent of any of the foregoing, including the administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the plan shall at all times show that all such investments are part of the trust.
- F. Upon such terms as may be deemed advisable by the employer or the administrator, as the case may be, for the protection of the interests of the plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the plan or any default in any obligation owing to the plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the plan requires it, and to represent the plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- G. To employ suitable consultants, depositories, agents, and legal counsel on behalf of the plan.
- H. To open and maintain any bank account or accounts in the name of the plan, the employer, or any nominee or agent of the foregoing, including the administrator, in any bank or banks.

- I. To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.
3. Taxes and expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the plan, or in respect to the trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the trust, shall be paid from the trust. Such reasonable compensation of the administrator, as may be agreed upon from time to time by the employer and the administrator, and reimbursement for reasonable expenses incurred by the administrator in performance of its duties hereunder (including, but not limited to, fees for legal, accounting, investment and custodial services) shall also be paid from the trust.
4. Payment of benefits. The payment of benefits from the trust in accordance with the terms of the plan may be made by the administrator, or by any custodian or other person so authorized by the employer to make such disbursement. The administrator, custodian or other person shall not be liable with respect to any distribution of trust assets made at the direction of the employer.
5. Investment funds. In accordance with uniform and nondiscriminatory rules established by the employer and the administrator, the participant may direct his or her accounts to be invested in one or more investment funds available under the plan; provided, however, that the participant's investment directions shall not violate any investment restrictions established by the employer. Neither the employer, the administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.
6. Valuation of accounts. As of each accounting date, the plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such account balance as of the immediately preceding accounting date bears to the total of all such account balances as of that accounting date. For purposes of this Section, all account balances include the account balances of all participants and beneficiaries.
7. Participant loan accounts. Participant loan accounts shall be invested in accordance with §1-558.3 of the plan. Such accounts shall not share in any investment income and gains or losses of the investment funds described in subsections .5 and .6.
8. Crediting of accounts. The participant's account shall reflect the amount and value of the investments or other property obtained by the employer through the investment of the participant's deferred compensation pursuant to subsections .5 and .6. It is anticipated that the employer's investments with respect to a participant will conform to the investment preference specified in the participant's joinder agreement, but nothing herein shall be construed to require

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the employer to make any particular investment of a participant's deferred compensation. Each participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her account.

9. Post-severance transfers among eligible deferred compensation plans.

A. Incoming transfers. A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a participant's or beneficiary's account under the plan if:

- (1) In the case of a transfer for a participant, the participant has had a severance event with that employer and become an employee of the employer.
- (2) The other employer's plan provides that such transfer will be made.
- (3) The participant or beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with §457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of §457(b) of the Code, and to assure that transfers are provided for under such plan. The employer may refuse to accept a transfer in the form of assets other than cash, unless the employer and the administrator agree to hold such other assets under the plan.

B. Outgoing transfers. An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a participant's or beneficiary's account under this plan, if:

- (1) In the case of a transfer for a participant, the participant has a severance event with the employer and becomes an employee of the other employer.
- (2) The other employer's plan provides that such transfer will be accepted.
- (3) The participant or beneficiary and the employers have signed such agreements as are necessary to assure that the employer's liability to pay benefits to the participant has been discharged and assumed by the other employer.
- (4) The participant or beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of §457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under §457 of the Code and the regulations thereunder.

10. Transfers among eligible deferred compensation plans of the employer.
 - A. Incoming transfers. A transfer may be accepted from another eligible deferred compensation plan maintained by the employer and credited to a participant's or beneficiary's account under the plan if:
 - (1) The employer's other plan provides that such transfer will be made.
 - (2) The participant or beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.
 - (3) The participant or beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the plan unless the participant or beneficiary is performing services for the employer.
 - b. Outgoing transfers. A transfer may be accepted from another eligible deferred compensation plan maintained by the employer and credited to a participant's or beneficiary's account under the plan if:
 - (1) The employer's other plan provides that such transfer will be accepted.
 - (2) The participant or beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.
 - (3) The participant or beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the employer's other eligible deferred compensation plan unless the participant or beneficiary is performing services for the employer.
11. Eligible rollover distributions.
 - A. Incoming rollovers. An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a participant's account under the plan. The employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with §402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of §402(c)(8)(B) of the Code.

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The plan shall separately account (in one or more separate accounts) for eligible rollover distributions from any eligible retirement plan.

- B. Outgoing rollovers. 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 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.
- C. Definitions.

DIRECT ROLLOVER—a direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

DISTRIBUTEE—a distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in §414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

ELIGIBLE RETIREMENT PLAN—an eligible retirement plan is an individual retirement account described in §408(a) of the Code, an individual retirement annuity described in §408(6) of the Code, an annuity plan described in §403(a) or 403(b) of the Code, a qualified trust described in §401(a) of the Code, or an eligible deferred compensation plan described in §457(b) of the Code which is maintained by an eligible governmental employer described in §457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution.

ELIGIBLE ROLLOVER DISTRIBUTION—an 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 §§401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), such as after-tax contributions.

12. Trustee-to-trustee transfers to purchase permissive service credit. All or a portion of a participant's account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in §414(d) of the Code) if such transfer is (A) for the purchase of permissive service credit (as defined in §415(n)(3)(A) of the Code) under such plan, or (B) a repayment to which §415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of §457(e)(17) of the Code.
13. Treatment of distributions of amounts previously rolled over from §§401(a) and 403(b) plans and IRAs. For purposes of §72(t) of the Code, a distribution from this plan shall be treated as a distribution from a qualified retirement plan described in §4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in §4974(c) of the Code).
14. Employer liability. In no event shall the employer's liability to pay benefits to a participant under this plan exceed the value of the amounts credited to the participant's account; neither the employer nor the administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this plan.

(Ord. 785, 3/12/2013, Art. VI)

§1-557. Benefits.

1. Retirement benefits and election on severance event.
 - A. General rule. Except as otherwise provided in this Section, the distribution of a participant's account shall commence as of a participant's automatic distribution date, and the distribution of such benefits shall be made in accordance with one of the payment options described in subsection .2. Notwithstanding the foregoing, but subject to the following paragraphs of this subsection .1, the participant may elect following a severance event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of the year following the year of the participant's retirement or attainment of age 70½, whichever is later. The participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this subsection .1. Notwithstanding the foregoing, the administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.
 - B. Loans. Notwithstanding the foregoing provisions of this subsection .1, no election to defer the commencement of benefits after a severance event shall operate to defer the distribution of any amount in the participant's loan account in the event of a default of the participant's loan.

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2. Payment options. As provided in subsections .1, .4 and .5, a participant may elect to have value of the participant's account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in subsection .3:
 - A. Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the participant, continuing until his or her account is exhausted.
 - B. One lump-sum payment.
 - C. Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the participant.
 - D. Annual payments equal to the minimum distributions required under §401(a)(9) of the Code, including the incidental death benefit requirements of §401(a)(9)(G), over the life expectancy of the participant or over the life expectancies of the participant and his or her beneficiary.
 - E. Payments equal to payments made by the issuer of a retirement annuity policy acquired by the employer.
 - F. A split distribution under which payments under subsections .A, .B, .C or .E commence or are made at the same time, as elected by the participant under subsection .1, provided that all payments commence (or are made) by the latest benefit commencement date permitted under subsection .1.
 - G. Any other payment option elected by the participant and agreed to by the employer and administrator. A participant's selection of a payment option under subsections .A, .C, or .G above may include the selection of an automatic annual cost-of-living increase. Such increase will be based on the rise in the consumer price index for all urban consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.
3. Limitation on options. No payment option may be selected by a participant under subsections .2.A or .C unless the amount of any installment is not less than \$100. No payment option may be selected by a participant under subsections .2, .4, or .5 unless it satisfies the requirements of §§401(a)(9) and 457(d)(2) of the Code, including that payments commencing before the death of the participant shall satisfy the incidental death benefit requirements under §401(a)(9)(G) of the Code.
4. Minimum required distributions. Notwithstanding any provision of the plan to the contrary, the plan shall comply with the minimum required distribution rules set forth in §§457(d)(2) and 401(a)(9) of the Code, including the incidental death benefit requirements of §401(a)(9)(G) of the Code.
5. Post-retirement death benefits.

- A. Should the participant die after he or she has begun to receive benefits under a payment option, the remaining payments, if any, under the payment option shall continue until the administrator receives notice of the participant's death. Upon notification of the participant's death, benefits shall be payable to the participant's beneficiary commencing not later than December 31 of the year following the year of the participant's death, provided that the beneficiary may elect to begin benefits earlier than that date.
 - B. In the event that the beneficiary dies before the payment of death benefits has commenced or been completed, the remaining benefits payable under the payment option applicable to the beneficiary shall, subject to the requirements set forth in subsection .4, be paid to an additional beneficiary designated by the beneficiary. If no additional beneficiary is named, payment shall be made to the beneficiary's estate in a lump sum.
 - C. In the event that the participant's estate is the beneficiary, payment shall be made to the estate in a lump sum.
6. Pre-retirement death benefits.
- A. Should the participant die before he or she has begun to receive the benefits provided by subsection .1, the value of the participant's account shall be payable to the beneficiary commencing not later than December 31 of the year following the year of the participant's death, provided that the beneficiary may elect to begin benefits earlier than that date.
 - B. In the event that the beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the participant's Account shall be paid to the estate of the beneficiary in a lump sum. In the event that the participant's estate is the beneficiary, payment shall be made to the estate in a lump sum.
7. Unforeseeable emergencies.
- A. In the event an unforeseeable emergency occurs, a participant or beneficiary may apply to the employer to receive that part of the value of his or her account that is reasonably needed to satisfy the emergency need. If such an application is approved by the employer, the participant or beneficiary shall be paid only such amount as the employer deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.
 - B. An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship of a participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or

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beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in §152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to §§152(b)(1), (b)(2), and (d)(1)(B) of the Code); loss of the participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. For example, the imminent foreclosure of or eviction from the participant's or beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in §152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to §§152(b)(1), (b)(2), and (d)(1)(B) of the Code) may also constitute an unforeseeable emergency: Except as otherwise specifically provided in this subsection .7.B, the purchase of a home and the payment of college tuition are not unforeseeable emergencies.

8. In-service distribution of rollover contributions. Effective January 1, 2006, the employer may elect to allow participants to receive an in-service distribution of amounts attributable to rollover contributions to the plan. If the employer has elected to make such distributions available, a participant that has a separate account attributable to rollover contributions to the plan may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.
9. In-service distribution to participants age 70½ or older. A participant who has reached age 70½ and has not yet had a severance event, may, at any time, request a distribution of all or a part of his or her account. A participant may only receive two such distributions pursuant to this subsection .9 in any calendar year.
10. Distribution de minimis accounts. Notwithstanding the foregoing provisions of this Section:
 - A. Mandatory distribution. If the value of a participant's account is less than \$1,000, the participant's account shall be paid to the participant in a single lump sum distribution, provided that:
 - (1) No amount has been deferred under the plan with respect to the participant during the two-year period ending on the date of the distribution.
 - (2) There has been no prior distribution under the plan to the participant pursuant to this subsection .10.
 - B. Voluntary distribution. If the value of the participant's account is at least \$1,000 but not more than the dollar limit under §411(a)(11)(A) of the Code,

the participant may elect to receive his or her entire account in a lump sum payment if:

- (1) No amount has been deferred under the plan with respect to the participant during the two-year period ending on the date of the distribution.
- (2) There has been no prior distribution under the plan to the participant pursuant to this subsection .10.

(Ord. 785, 3/12/2013, Art. VII)

§1-558. Loans to Participants.

1. Availability of loans to participants.
 - A. The employer may elect to make loans available to participants in this plan. If the employer has elected to make loans available to participants, a participant may apply for a loan from the plan subject to the limitations and other provisions of this Section. However, no loans are available from deemed IRAs.
 - B. The employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the administrator and are not inconsistent with the provisions of this Section, and that loans are made available to all participants on a reasonably equivalent basis.
2. Terms and conditions of loans to participants. Any loan by the plan to a participant under subsection .1 of the plan shall satisfy the following requirements:
 - A. Availability. Loans shall be made available to all participants on a reasonably equivalent basis.
 - B. Interest rate. Loans must be adequately secured and bear a reasonable interest rate.
 - C. Loan limit. No participant loan shall exceed the present value of the participant's account.
 - D. Foreclosure. In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the plan.
 - E. Reduction of account. Notwithstanding any other provision of this plan, the portion of the participant's account balance used as a security interest held by the plan by reason of a loan outstanding to the participant shall be

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taken into account for purposes of determining the amount of the account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan.

- F. Amount of loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the participant from the plan and from all other plans of the employer that are either eligible deferred compensation plans described in §457(b) of the Code or qualified employer plans under §72(p)(4) of the Code shall not exceed the lesser of:
- (1) \$50,000, reduced by the excess (if any) of:
 - (a) The highest outstanding balance of loans from the plan during the one-year period ending on the day before the date on which the loan is made.
 - (b) The outstanding balance of loans from the plan on the date on which such loan is made.
 - (2) One-half of the value of the participant's interest in all of his or her accounts under this plan.
- G. Application for loan. The participant must give the employer adequate written notice, as determined by the employer, of the amount and desired time for receiving a loan. No more than one loan may be made by the plan to a participant's in any calendar year. No loan shall be approved if an existing loan from the plan to the participant is in default to any extent.
- H. Length of loan. Any loan issued shall require the participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed 5 years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the participant, the 5-year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the employer. Principal installments and interest payments otherwise due may be suspended for up to 1 year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection .H, with a revised payment schedule (within such term) instituted at the end of such period of suspension.
- I. Prepayment. The participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.

- J. Promissory note. The loan shall be evidenced by a promissory note executed by the participant and delivered to the employer, and shall bear interest at a reasonable rate determined by the employer.
 - K. Security. The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her account.
 - L. Assignment or pledge. For the purposes of subsections .F and .G, assignment or pledge of any portion of the participant's interest in the plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the plan, will be treated as a loan.
 - M. Other terms and conditions. The employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the plan and trust under §457 of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the participant. The employer, in its discretion for any reason, may also fix other terms and conditions of the loan, including, but not limited to, the provision of grace periods following an event of default, not inconsistent with the provisions of this Section and §72(p) of the Code, and any applicable regulations thereunder.
3. Participant loan accounts.
- A. Upon approval of a loan to a participant by the employer, an amount not in excess of the loan shall be transferred from the participant's other investment fund(s), described in §1-556.5 of the plan, to the participant's loan account as of the accounting date immediately preceding the agreed upon date on which the loan is to be made.
 - B. The assets of a participant's loan account may be invested and reinvested only in promissory notes received by the plan from the participant as consideration for a loan permitted by subsection .1 of the plan or in cash. Uninvested cash balances in a participant's loan account shall not bear interest. Neither the employer, the administrator, nor any other person shall be liable for any loss, or by reason of any breach, that results from the participant's exercise of such control.
 - C. Repayment of principal and payment of interest shall be made by payroll deduction or, where repayment cannot be made by payroll deduction, by check, and shall be invested in one or more other investment funds, in accordance with §1-556.5 of the plan, as of the next accounting date after payment thereof to the trust. The amount so invested shall be deducted from the participant's loan account.
 - D. The employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the plan, governing the establishment and maintenance of participant loan accounts.

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(Ord. 785, 3/12/2013, Art. VIII)

§1-559. Deemed IRAs.

1. General. This Section of the plan reflects §602 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”), as amended by the Job Creation and Worker Assistance Act of 2002. This Section is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. This Section shall supersede the provisions of the plan to the extent that those provisions are inconsistent with the provisions of this Section.

Effective for plan years beginning after December 31, 2002, the employer may elect to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan that complies with the requirements of §408(q) of the Code and any regulations promulgated thereunder (a “deemed IRA”). The plan shall establish a separate account for the designated deemed IRA contributions of each employee and any earnings properly allocable to the contributions, and maintain separate record keeping with respect to each such deemed IRA.

2. Voluntary employee contributions. For purposes of this Section, a voluntary employee contribution means any contribution (other than a mandatory contribution within the meaning of §411(c)(2) of the Code) that is made by the employee and which the employee has designated, at or prior to the time of making the contribution, as a contribution to which this Section applies.
3. Deemed IRA trust requirements. This Section shall satisfy the trust requirement under §408(q) of the Code and the regulations thereto. IRAs established pursuant to this Section shall be held in one or more trusts or custodial accounts (the “deemed IRA trusts”), which shall be separate from the trust established under the plan to hold contributions other than deemed IRA contributions. The deemed IRA trusts shall satisfy the applicable requirements of §§408 and 408A of the Code, which requirements are set forth in subsection .5 and .6, respectively, and shall be established with a trustee or custodian meeting the requirements of §408(a)(2) of the Code (“deemed IRA trustee”). To the extent that the assets of any deemed IRAs established pursuant to this Section are held in a deemed IRA trust satisfying the requirements of this subsection .3, such deemed IRA trust, and any amendments thereto, is hereby adopted as a trust maintained under this plan with respect to the assets held therein, and the provisions of such deemed IRA trust shall control so long as any assets of any deemed IRA are held thereunder.
4. Reporting duties. The deemed IRA trustee shall be subject to the reporting requirements of §408(i) of the Code with respect to all deemed IRAs that are established and maintained under the plan.
5. Deemed traditional IRA requirements. Deemed IRAs established in the form of traditional IRAs shall satisfy the following requirements:

- A. Exclusive benefit. The deemed IRA account shall be established for the exclusive benefit of an employee or his or her beneficiaries.
- B. Maximum annual contributions.
 - (1) Except in the case of a rollover contribution (as permitted by §§402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) and 457(e)(16) of the Code), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed:

\$3,000 for any taxable year beginning in 2002 through 2004;
\$4,000 for any taxable year beginning in 2005 through 2007;
\$5,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living-increases under §219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.
 - (2) In the case of an employee who is 50 or older, the annual cash contribution limit is increased by:

\$500 for any taxable year beginning in 2002 through 2005;
\$1,000 for any taxable year beginning in 2006 and thereafter.
 - (3) No contributions will be accepted under a simple IRA plan established by any employer pursuant to §408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its simple IRA plan will be accepted from a simple IRA, that is an IRA used in conjunction with a simple IRA plan, prior to the expiration of the two-year period beginning on the date the employee first participated in that employer's simple IRA plan.
- C. Collectibles. If the deemed IRA trust acquires collectibles with within the meaning of §408(m) of the Code after December 31, 1981, deemed IRA trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.
- D. Life insurance contracts. No part of the deemed IRA trust funds will be invested in life insurance contracts.
- E. Minimum required distributions.
 - (1) Notwithstanding any provision of this deemed IRA to the contrary, the distribution of the employee's interest in the account shall be made in accordance with the requirements of §408(a)(6) of the Code and the Income Tax Regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company,

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distributions thereunder must satisfy the requirements of Q&A-4 of §1.401(a)(9)-6T of the Income Tax Regulations (or §1.401(a)(9)-6 of the Income Tax Regulations, as applicable), rather than subsections .5.E(2), (3) and (4) below and subsection .5.F. The minimum required distributions calculated for this IRA may be withdrawn from another IRA of the employee in accordance with Q&A-9 of §1.408-8 of the Income Tax Regulations.

- (2) The entire value of the account of the employee for whose benefit the account is maintained will commence to be distributed no later than the first day of April following the calendar year in which such employee attains age 70½ (the “required beginning date”) over the life of such employee or the lives of such employee and his or her beneficiary.
- (3) The amount to be distributed each year, beginning with the calendar year in which the employee attains age 70½ and continuing through the year of death shall not be less than the quotient obtained by dividing the value of the IRA (as determined under subsection .5.F(3) as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of §401(a)(9)-9 of the Income Tax Regulations, using the employee’s age of his or her birthday in the year. However, if the employee’s sole beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the employee, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of §1.401(a)(9)-9 of the Income Tax Regulations, using the ages as of the employee’s and spouse’s birthdays in the year.
- (4) The required minimum distribution for the year the employee attains age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.

F. Distribution upon death.

- (1) Death on or after required beginning date. If the employee dies on or after the required beginning date, the remaining portion of his or her interest will be distributed at least as rapidly as follows:
 - (a) If the beneficiary is someone other than the employee’s surviving spouse, the remaining interest will be distributed, over the remaining life expectancy of the beneficiary, with such life expectancy determined using the beneficiary’s age as of his or her birthday in the year following the year of the employee’s death, or over the period described in subsection .5.E(1)(c) below if longer.

- (b) If the employee's sole beneficiary is the employee's surviving spouse, the remaining interest will be distributed over such spouse's life or over the period described in subsection .5.E(1)(c) below if longer. Any interest remaining after such spouse's death will be distributed over such spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death, or, if the distributions are being made over the period described in subsection .5.E(1)(c) below, over such period.
 - (c) If there is no beneficiary, or if applicable by operation of subsection .5.E(1)(a) or .5.E(1)(b) above, the remaining interest will be distributed over the employee's remaining life expectancy determined in the year of the employee's death.
 - (d) The amount to be distributed each year under subsection .5.E(1)(a), (b), or (c), beginning with the calendar year following the calendar year of the employee's death, is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of §1.401 (a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's or employee's age in the year specified in subsection .5.E(1)(a), (b), or (c) and reduced by one for each subsequent year.
- (2) Death before required beginning date. If the employee dies before the required beginning date, his or her entire interest will be distributed at least as rapidly as follows:
- (a) If the beneficiary is someone other than the employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the employee's death, over the remaining life expectancy of the beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the employee's death, or, if elected, in accordance with subsection .5.E(2)(c) below.
 - (b) If the employee's sole beneficiary is the employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the employee's death (or by the end of the calendar year in which the employee would have attained age 70½, if later), over such

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spouse's life, or, if elected, in accordance with subsection .5.E(2)(c) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's beneficiary's remaining life expectancy determined using such beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with subsection .5.E(2)(c) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

- (c) If there is no beneficiary, or if applicable by operation of subsection .5.E(2)(a) or (2)(b) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the beneficiary's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under subsection .5.E(2)(b) above).
 - (d) The amount to be distributed each year under subsection .5.E(2)(a) or (b) is the quotient to be obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of §1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's age in the year specified in subsection .5.E(2)(a) or (b) and reduced by one for each subsequent year.
 - (e) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of §1.408-8 of the Income Tax Regulations.
 - (f) If the sole beneficiary is the employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a beneficiary.
- G. Nonforfeitable. The interest of an employee in the balance in his or her deemed IRA account is nonforfeitable at all times.
- H. Reporting. The deemed IRA trustee of a deemed traditional IRA shall furnish annual calendar-year reports concerning the status of the deemed

IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.

- I. Substitution of deemed IRA trustee. If the deemed IRA trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of §1.408-2(e) of the Income Tax Regulations and § 1.408-2T of the Income Tax Regulations.
6. Deemed Roth IRA requirements. Deemed IRAs established in the form of Roth IRAs shall satisfy the following requirements:
 - A. Exclusive benefit. The deemed Roth IRA shall be established for the exclusive benefit of an employee or his or her beneficiaries.
 - B. Maximum annual contributions.
 - (1) Maximum permissible amount. Except in the case of a qualified rollover contribution or recharacterization (as defined in subsection .6.B(6) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the employee's Roth IRAs for a taxable year does not exceed the applicable amount (as defined in subsection .6.B(2) below), or the employee's compensation (as defined in subsection .6.B(8) below) if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the employee's compensation is referred to as a "regular contribution." A "qualified rollover contribution" is a rollover contribution that meets the requirements of §408(d)(3) of the Code, except the one-rollover-per-year rule of §408(d)(3)(B) does not apply if the rollover contribution is from another IRA other than a Roth IRA (a "nonRoth IRA"). Contributions may be limited under subsections .6.B(3) through (5) below.
 - (2) Applicable amount. The applicable amount is determined under subsection .6.B(2)(a) or (b) below:
 - (a) If the employee is under age 50, the applicable amount is:

\$3,000 for any taxable year beginning in 2002 through 2004;
\$4,000 for any taxable year beginning in 2005 through 2007;
and,
\$5,000 for any taxable year beginning in 2008 and years thereafter.
 - (b) If the employee is 50 or older, the applicable amount is:

\$3,500 for any taxable year beginning in 2002 through 2004;

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\$4,500 for any taxable year beginning in 2005;
\$5,000 for any taxable year beginning in 2006 through 2007; and,
\$6,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limits in subsection .6.B(2)(a) and (b) above will be adjusted by the Secretary of the Treasury for cost-of-living increases under §219(b)(5)(C) of the Code. Such adjustments will be in multiples of \$500.

- (3) If subsection .6.B(3)(a) and/or (b) below apply, the maximum regular contribution that can be made to all the employee's Roth IRAs for the taxable year is the smaller amount determined under subsection .6.B(3)(a) or (b).
- (a) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income ("modified ACT," defined in subsection .6.B(7) below) in accordance with the following table:

Modified AGI

Filing Status	Full Contribution	Phase-out Range	No Contribution
Single or Head of Household	\$95,000 or less	Between \$95,000 and \$110,000	\$110,000 or more
Joint Return or Qualifying Widower	\$150,000 or less	Between \$150,000 and \$160,000	\$160,000 or more
Married-Separate Return	\$0	Between \$0 and \$10,000	\$10,000 or more

If the employee's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of \$10 and not reduced below \$200.

- (b) If the employee makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the employee's Roth IRAs for that taxable year is reduced by the regular contributions made to the employee's nonRoth IRAs for the taxable year.
- (4) Qualified rollover contribution limit. A rollover from a nonRoth IRA cannot be made to this IRA if, for the year the amount is distributed from the nonRoth IRA,(a) the employee is married and files a

separate return, (b) the employee is not married and has modified AGI in excess of \$100,000 or (c) the employee is married and together the employee and the employee's spouse have modified AGI in excess of \$100,000. For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year.

- (5) **Simple IRA limits.** No contributions will be accepted under a simple IRA plan established by any employer pursuant to §408(p) of the Code. Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its simple IRA plan will be accepted from a simple IRA, that is, an IRA used in conjunction with a simple IRA plan, prior to the expiration of the two-year period beginning on the date the employee first participated in that employer's simple IRA plan.
- (6) **Recharacterization.** A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in §1.408A-5 of the Income Tax Regulations as a regular contribution to this IRA, subject to the limits in subsection .6.B(3) above.
- (7) **Modified AGI.** For purposes of subsections .6.B(3) and (4) above, an employee's modified AGI for a taxable year is defined in §408A(c)(3)(C)(i) of the Code and does not include any amount included in adjusted gross income as a result of a rollover from a nonRoth IRA (a "conversion").
- (8) **Compensation.** For purposes of subsection .6.B(1) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips and bonuses) and includes earned income, as defined in §401(c)(2) of the Code (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, §401(c)(2) of the Code shall be applied as if the term trade or business for purposes of §1402 of the Code included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including, but not limited to, interest and dividends) or amounts not includable in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includable in the employee's gross income under §71 of the Code with respect to a divorce or separation instrument described in subparagraph (A) of §71(b)(2) of the Code. In the case of a married employee filing a joint return, the greater compensation of his or her spouse is treated as his

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or her own compensation but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a nonRoth IRA.

- C. Collectibles. If the deemed IRA Trust acquires collectibles within the meaning of §408(m) of the Code after December 31, 1981, deemed IRA trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.
- D. Lift insurance contracts. No part of the deemed IRA trust funds will be invested in life insurance contracts.
- E. Distributions before death. No amount is required to be distributed prior to the death of the employee for whose benefit the account was originally established.
- F. Minimum required distributions.
 - (1) Notwithstanding any provision of this IRA to the contrary, the distribution of the employee's interest in the account shall be made in accordance with the requirements of §408(a)(6) of the Code, as modified by §408A(c)(5), and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of §1.401(a)(9)-6T of the Temporary Income Tax Regulations (taking into account §408A(c)(5) of the Code) (or §1.401(a)(9)-6 of the Income Tax Regulations, as applicable), rather than the distribution rules in subsections .6.F(2), (3) and (4) below.
 - (2) Upon the death of the employee, his or her entire interest will be distributed at least as rapidly as follows:
 - (a) If the beneficiary is someone other than the employee's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the year of the employee's death, over the remaining life expectancy of the beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the employee's death, or, if elected, in accordance with subsection .6.F(2)(c) below.
 - (b) If the employee's sole beneficiary is the employee's surviving spouse, the entire interest will be distributed starting by the end of the calendar year following the calendar year of the employee's death (or by the end of the calendar year in which the employee would have attained age 70½, if later), over such spouse's life, or, if elected, in accordance with subsection

.6.F(2)(c) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's beneficiary's remaining life expectancy determined using such beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with subsection .6.F(2)(c) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

- (c) If there is no beneficiary, or if applicable by operation of subsection .6.F(2)(a) or (2)(b) above, the entire interest will be distributed the end of the calendar year containing the fifth anniversary of the employee's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under subsection .6.F(2)(b) above).
 - (d) The amount to be distributed each year under subsection .6.F(2)(a) or (b) is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of §1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's age in the year specified in subsection .6.F(2)(a) or (b) and reduced by one for each subsequent year.
- (3) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of §1.408-8 of the Income Tax Regulations.
 - (4) If the sole beneficiary is the employee's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a beneficiary.
- G. Nonforfeitable. The interest of an employee in the balance in his or her account is nonforfeitable at all times.

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- H. Reporting. The deemed IRA trustee of a deemed Roth IRA shall furnish annual calendar-year reports concerning the status of the deemed IRA account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.
- I. Substitution of deemed IRA trustee. If the deemed IRA trustee is a non-bank trustee or custodian, the non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of §1.408-2(e) of the Income Tax Regulations and §1.408-2T of the Income Tax Regulations.

(Ord. 785, 3/12/2013, Art. IX)

§1-560. Non-Assignability.

- 1. General. Except as provided in §1-558 and subsection .2, no participant or beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.
- 2. Domestic relations orders.
 - A. Allowance of transfers. To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (1) relates to the provision of child support, alimony payments, or marital property rights and (2) is made pursuant to a state domestic relations law, and (3) is permitted under §§414(p)(11) and (12) of the Code, any portion of a participant's account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the participant (an "alternate payee"). Where necessary to carry out the terms of such an order, a separate account shall be established with respect to the alternate payee who shall be entitled to make investment selections with respect thereto in the same manner as the participant. Any amount so set aside for an alternate payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the plan at a time or in a form that is not permitted under §457(b) of the Code and is explicitly permitted under the uniform procedures described in subsection .2.D below. Notwithstanding the foregoing sentence, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a participant is made pursuant to the domestic relations law of any State, then the amount of the participant's account shall be paid in the manner and to the person or persons so directed in the domestic relations order.

Such payment shall be made without regard to whether the participant is eligible for a distribution of benefits under the plan. The administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.

- B. Release from liability to participant. The employer's liability to pay benefits to a participant shall be reduced to the extent that amounts have been paid or set aside for payment to an alternate payee to subsection .2.A of this Section and the participant and his or her beneficiaries shall be deemed to have released the employer and the plan administrator from any claim with respect to such amounts.
 - C. Participation in legal proceedings. The employer and administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in subsection .2.A or any legal order relating to the garnishment of a participant's benefits, unless the full expense of such legal action is borne by the participant. In the event that the participant's action (or inaction) nonetheless causes the employer or administrator to incur such expense, the amount of the expense may be charged against the participant's account and thereby reduce the employer's obligation to pay benefits to the participant. In the course of any proceeding relating to divorce, separation, or child support, the employer and administrator shall be authorized to disclose information relating to the participant's account to the alternate payee (including the legal representatives of the alternate payee), or to a court.
 - D. Determination of validity of domestic relations orders. The administrator shall establish uniform procedures for determining the validity of any domestic relations order. The administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.
- 3. IRS levy. Notwithstanding subsection .1, the administrator may pay from a participant's or beneficiary's account balance the amount that the administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that participant or beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the participant or beneficiary.
 - 4. Mistaken contribution. To the extent permitted by applicable law, if any contribution (or any portion of a contribution) is made to the plan by a good faith mistake of fact, then after the payment of the contribution, and upon receipt in good order of a proper request approved by the administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the participant or, to the extent required or permitted by the administrator, to the employer.

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5. Payments to minors and incompetents. If a participant or beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the administrator, benefits will be paid to such persons as the administrator may designate for the benefit of such participant or beneficiary. Such payments shall be considered a payment to such participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the plan.
6. Procedure when distributee cannot be located. The administrator shall make all reasonable attempts to determine the identity and address of a participant or a participant's beneficiary entitled to benefits under the plan. For this purpose, a reasonable attempt means (A) the mailing by certified mail of a notice to the last known address shown on the employer or Administrator's records, (B) notification sent to the Social Security Administration or the Pension Benefit Guarantee Corporation (under their program to identify payees under retirement plans), and (C) the payee has not responded within 6 months. If the administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the trust shall continue to hold the benefits due such person.

(Ord. 785, 3/12/2013, Art. X)

§1-561. Relationship to Other Plans and Employment Agreements.

This plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this plan shall be deemed to constitute an employment contract or agreement between any participant and the employer or to give any participant the right to be retained in the employ of the employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a participant and the employer.

(Ord. 785, 3/12/2013, Art. XI)

§1-562. Amendment or Termination of Plan.

1. The employer may at any time amend this plan provided that it transmits such amendment in writing to the administrator at least 30 days prior to the effective date of the amendment. The consent of the administrator shall not be required in order for such amendment to become effective, but the administrator shall be under no obligation to continue acting as administrator hereunder if it disapproves of such amendment.
2. The administrator may at any time propose an amendment to the plan by an instrument in writing transmitted to the employer at least 30 days before the

effective date of the amendment. Such amendment shall become effective unless, within such 30-day period, the employer notifies the administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the administrator shall be under no obligation to continue acting as administrator hereunder.

3. The employer may at any time terminate this plan. In the event of termination, assets of the plan shall be distributed to participants and beneficiaries as soon as administratively practicable following termination of the plan. Alternatively, assets of the plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same state if (A) all assets held by the plan (other than deemed IRAs) are transferred; (B) the receiving plan provides for the receipt of transfers; (C) the participants and beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (D) the participants or beneficiaries whose deferred amounts are being transferred is not eligible for additional annual deferrals in the receiving plan unless the participants or beneficiaries are performing services for the employer maintaining the receiving plan.
4. Except as may be required to maintain the status of the plan as an eligible deferred compensation plan under §457(b) of the Code or to comply with other applicable laws, no amendment or termination of the plan shall divest any participant of any rights with respect to compensation deferred before the date of the amendment or termination.

(Ord. 785, 3/12/2013, Art. XII)

§1-563. Applicable Law.

1. This plan and trust shall be construed under the laws of the State where the employer is located and is established with the intent that it meet the requirements of an “eligible deferred compensation plan” under §457(b) of the Code, as amended. The provisions of this plan and trust shall be interpreted wherever possible in conformity with the requirements of that section of the Code.
2. In addition, notwithstanding any provision of the plan to the contrary, the plan shall be administered in compliance with the requirements of §414(u) of the Code.

(Ord. 785, 3/12/2013, Art. XIII)

§1-564. Gender and Number.

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

(Ord. 785, 3/12/2013, Art. XIV)

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by VantageTrust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

- (a) *Incorporation of ICMA Declaration by Reference; ICMA By-Laws.* Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

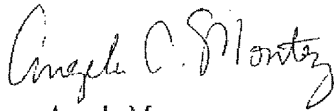
Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

- 1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 - 2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
- (b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:
 - 1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
 - 2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
 - 3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.

4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
- (c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
- (d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By: 

Name: Angela Montez

Title: Assistant Secretary

E. Deferred Retirement Option Plan.

§1-571. Purpose.

At the request of its regular, full-time police officers, the Borough of Beaver hereby establishes a Deferred Retirement Option Plan (DROP). The terms of such plan are as set forth below.

(Ord. 805, 3/10/2015, §1)

§1-572. Definitions.

The following words and phrases as used in this plan shall have the meaning set forth in this Section:

BOROUGH—the Borough of Beaver, Beaver County Pennsylvania.

DROP—Deferred Retirement Option Plan

DROP ACCOUNT—separate account created to accept DROP participants' monthly pension check while a DROP participant, as well as any interest thereon.

“FUND” OR “PLAN”—the Beaver Borough Police Pension Plan.

PARTICIPANT—a police officer who meets the eligibility for and has executed the proper documents for participation in DROP and has had such application approved by the Borough.

POLICE OFFICERS—police officers of the Beaver Borough Police Department.

(Ord. 805, 3/10/2015, §1)

§1-573. Participation.

1. Eligibility. Effective January 1, 2015, police officers who have not retired prior to the implementation of the DROP program, may enter into DROP on the first day of any month following completion of 25 years of credited service and attaining the age of 55.
2. Written election. A police officer electing to participate in the DROP must complete and execute a “DROP Participation Election Form” prepared by the Borough, which shall evidence the member’s election to participate in the DROP. The form must be signed by the police officer and be notarized and submitted to the Borough prior to the date on which the member wishes DROP participation to commence. The DROP Participation Election Form shall include an irrevocable notice to the Borough, by the police officer member, that the police officer shall resign from employment with the Borough Police Department effective on a

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specific date (the “resignation date”). In no event shall the resignation date be shorter than 12 months or longer than 60 months. A police officer shall cease to work as a police officer on the officer’s resignation date, unless the Borough terminates or honorably discharges the officer prior to the resignation date. In addition, upon providing 90 days notice to the Borough, which may be waived by the Borough in its sole discretion, a participant may resign from employment while in DROP status.

In addition to the above information, the DROP Participation Election Form shall also advise the employee of the following: (A) an explanation of the participant’s rights and obligations while in DROP; (B) that, as a condition of DROP participation, the participant foregoes active participation in the Police Pension Plan and foregoes any recalculation of pension benefits to include salary increases occurring after DROP participation commences; and (C) that the DROP participant’s service while in DROP will not count as pension service nor will it entitle a participant to any service increment benefits to which the participant was not entitled prior to commencing DROP participation. A DROP participant must also complete any and all retirement documents required by the Police Pension Plan Administrator, and such documents must be filed and presented to the Borough for approval of retirement and payment of pension. Once a DROP Participation Election Form has been approved by the Borough, it is irrevocable. Likewise, once a DROP participant enters the DROP program, the participant may not subsequently leave and then reenter the DROP, even if the employee separates from employment and subsequently begins employment with the Borough again.

3. Benefit calculation. For all retirement fund purposes, continuous service of a police officer participating in the DROP shall remain as it existed on the effective date of commencement of participation in the DROP. Service thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Beaver Borough Police Pension Plan. The average monthly compensation of the police officer for pension calculation purposes shall remain, as it existed on the effective date of commencement of participation in the DROP. Earnings or increases in earnings thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Pension Plan. The pension benefit payable to the members shall increase only as a result of cost of living adjustments in effect on the effective date of the member’s participation in the DROP or by applicable cost of living adjustments granted thereafter.
4. Payments to the DROP account. The monthly retirement benefits that would have been payable had the police officer elected to cease employment and receive a normal retirement benefit, shall, upon the police officer commencing participation in DROP, be paid into the separate account established to receive the participant’s monthly pension payments. This account shall be designated the DROP account. DROP participants shall not have the option of self-directed investment of their individual DROP accounts while in the DROP. Instead, the monies shall be invested in the PSABMRT so as to generate a rate of return of no less than 0% and no more than 4.5%.

5. Accrual of non-pension benefits. After a police officer elects to participate in the DROP program, all other contractual benefits shall continue to accrue with the exception of those provisions relating to the Police Pension Plan.
6. Payout. Within 45 days of the termination date set forth in the police officer's DROP option notice or within 45 days of the date on which the Borough separates the member from employment or, upon providing the 90-day notice set forth in this plan, the officer resigns from employment, the retirement benefits payable to the police officer or the police officer's beneficiary, if applicable, shall be paid to the police officer or beneficiary and shall no longer be paid to the participant's DROP account. The payout options available to the DROP participant shall be as follows:
 - A. The balance of the DROP participant's account, less withholding taxes, if any, remitted to the Internal Revenue Service, shall be paid to the participant or the participant's surviving beneficiary.
 - B. The balance of the DROP participant's account shall be paid directly to the custodian of an eligible retirement plan as defined by Internal Revenue Code Section 402(c)(8)(b), or in the case of an eligible rollover distribution to the surviving spouse of a deceased DROP participant, an eligible retirement plan that is an individual retirement account or an individual retirement annuity as defined by Internal Revenue Code Section 402(c)(9).
 - C. If the DROP participant or beneficiary fails to make an election within 60 following the date of termination of DROP participation, then the Borough shall implement Subsection A above.
7. Service connected disability during DROP. If a DROP participant becomes temporarily incapacitated due to a service-connected injury during his participation in DROP, that police officer shall continue to participate in the DROP as if fully employed. The police officer shall receive disability pay in the same amount as disabled police officers that are not participating in DROP. In no event shall a police officer on temporary disability have the ability to draw from his DROP account. However, notwithstanding any other provision in this Subsection, if a police officer is disabled and has not returned to work as of the date of his required resignation, then such resignation shall take precedence over all other provisions herein and said officer shall be required to resign. Nothing contained in this plan shall be construed as conferring any legal rights upon any police officer or other person to a continuation of employment nor shall participation in the DROP supersede or limit in any way the right of the Borough honorably discharge a police officer based upon an inability to perform his or her full duties as a police officer. If a DROP participant becomes eligible for a service-connected disability pension and his employment is terminated due to an inability to continue in service on grounds that render him eligible for a service-connected disability pension, the monthly normal retirement benefit of the DROP participant shall be reclassified as being on account of a service-connected disability. In no event shall an Act 44 participant's monthly retirement benefit

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be recalculated. The Act 44 participant's monthly retirement benefit shall remain 50% as calculated at the time of entry into the DROP.

8. **Death.** If a DROP participant dies, the participant's eligibility for DROP shall terminate upon the date of death. In such case, if the DROP account balances have not yet been paid out, the participant's legal beneficiary shall have the same rights and options as the participant to withdraw/roll over the account balance.
9. **Forfeiture of benefits.** Notwithstanding a police officer's status as a DROP participant, a current or former participant who is convicted or pleads guilty to engaging in criminal misconduct which constitutes a "crime related to public office or public employment," as that phrase is defined in Pennsylvania's Pension Forfeiture Act, 43 P.S. §§1311–1314, shall forfeit his right to receive a pension, including any amounts currently deposited in the DROP account. In such a case, the participant shall only be entitled to receive the contributions, if any, made by the participant to the police pension fund, without interest.
10. **Cost of management for DROP program.** The police officers and the Borough agree that any costs or fees associated with the management of the DROP accounts shall be paid directly from the pension fund and not by the Borough.
11. **Amendment.** Any amendments to the DROP ordinance shall be consistent with the provisions covering individual retirement option plans set forth in any applicable collective bargaining agreement and shall be binding upon all future DROP participants and upon all DROP participants who have balances in their individual retirement option accounts. The DROP plan may only be amended by a written instrument, not by any oral agreement or past practice.
12. **Effective date.** The effective date of the DROP program shall be January 1, 2015.
13. **Construal of provisions.** A police officer's election to participate in the DROP program shall in no way be construed as a limitation on the Borough's right to suspend or to terminate a police officer for just cause or to grant the police officer an honorable discharge based upon a physical or mental inability to perform his or her duties.
14. **Severability.** The provisions of the DROP program shall be severable: and if any of its provisions shall be held to be unconstitutional or illegal, the validity of any of the remaining provisions of the DROP program shall not be affected thereby. It is hereby expressly declared as the intent of the Borough that the DROP program would have been adopted had such unconstitutional or illegal provision or provisions not been included herein. In the event that the DROP program is declared invalid or illegal by a court of competent jurisdiction or through an administrative determination of the Office of the Auditor General, the police officers shall have the right to bargain in accordance with Act 111 over deletion of this benefit. It is expressly understood that this shall not involve bargaining over a replacement provision.

(Ord. 805, 3/10/2015, §1)

Part 6

Historic Review Commission

§1-601. Declaration of Policy.

It is hereby determined and declared as a matter of public policy that:

- A. Section 26 of Article I of the Constitution of Pennsylvania makes the Commonwealth trustee for the preservation of the scenic, historic and esthetic values of the environment.
- B. As a municipal corporation and local government unit of the Commonwealth, this Borough likewise has a right and responsibility to conserve such values for the benefit of its residents and visitors.
- C. The State Legislature has enacted a History Code which states that it is in the public interest for political subdivision of the Commonwealth to engage in comprehensive programs of historic preservation for the enjoyment, education and inspiration of all the people, including future generations.
- D. The irreplaceable historical, architectural, archaeological and cultural heritage of this Borough should be preserved and protected for the benefit of all the people, including future generations.
- E. The protection and preservation of historic resources in this Borough promote public prosperity and general welfare.

(Ord. 661, 3/9/1993, §601)

§1-602. Historic Review Commission.

- 1. Creation. A Historic Review Commission is hereby established.
- 2. Membership. The Commission shall have 16 members and shall consist of the President, Vice President and Chairman of the General Government Committee of the Borough Council; the Mayor; the Borough Manager; the Borough Solicitor; the Borough Zoning Officer; the Chairman of the Borough Planning Commission; the President and the Vice President of the Beaver Area Heritage Foundation; and six additional persons (who need not be Borough residents) chosen by the President of Council on the basis of knowledge of archaeology, architecture or local history and culture.
- 3. Compensation. A member of the Commission shall serve without compensation.

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4. Meetings. The Commission shall meet upon the call of its Chairman, who shall be the President of the Borough Council. At all meetings of the Commission, a majority of its members shall constitute a quorum for the transaction of business. The act of a majority of the members at a meeting at which a quorum is present shall be the act of the Commission. The order of business at any meeting shall be:
 - A. Call to order.
 - B. Determination of quorum.
 - C. Proof of proper notice or waiver thereof.
 - D. Reading and approval of correction of minutes of previous meeting.
 - E. Disposition of unfinished business.
 - F. Presentation and disposition of new business.
 - G. Adjournment.

(Ord. 661, 3/9/1993, §602; as amended by Ord. 665, 6/8/1993, §1; and by Ord. 675, 3/15/1995, §1)

§1-603. Functions.

The Historic Review Commission shall have the power and duty to:

- A. Serve as the official agency of the Borough for the conservation of its cultural heritage.
- B. Compile, maintain and revise an inventory of historic resources in the Borough, to be known as the "Beaver Register of Historic Places." As used here, the term "historic resource" means a building, structure, architecture, heritage, archaeology or culture of the Commonwealth or the Borough of Beaver.
- C. Notify the owner(s) of any building, structure, object, place, site or area put on the Beaver Register of Historic Places of such status and the effect thereof.
- D. Commence and prosecute an action in equity to restrain any violation §1-604.

(Ord. 661, 3/9/1993, §603)

§1-604. Effect of Registration.

A building, structure, object, site or area listed on the Beaver Register of Historic Places shall not be demolished, renovated, altered or built upon without the prior written permission of the Commission. In granting such permission, the Commission may attach reasonable conditions and safeguards deemed necessary to effectuate the purposes of this Part.

(Ord. 661, 3/9/1993, §604)

§1-605. Enforcement.

Any violation of §1-604 of this Part shall constitute a public nuisance and shall be subject to abatement by injunctive relief in an action in equity.

(Ord. 661, 3/9/1993, §605)

Part 7

Municipal Claims and Tax Liens

§1-701. Purposes.

The purposes of this Part are to:

- A. Make interest collectible on all municipal claims filed by the Borough.
- B. Enable the Borough to recover the reasonable attorney's fees incurred by it in the collection of delinquent accounts.

(Ord. 682, 7/9/1996, §701)

§1-702. Interest.

- 1. Interest shall be collectible on all municipal claims filed by this Borough at the rate of 10% per year from the date of completion of the underlying work.
- 2. On any municipal claims filed arising out of a municipal project which required this Borough to issue bonds to finance the project; interest shall be collectible at either the interest rate payable on such bond issue or 12% per year, whichever is less.

(Ord. 682, 7/9/1996, §702)

§1-703. Schedule of Fees.

The following schedule of attorney's fees shall apply to the collection of delinquent accounts on municipal claims of the Borough:

- A. One hundred fifty dollars for the preparation and filing of each claim.
- B. Twenty-five dollars for the preparation and mailing of written notice of claim filing to the property owner.
- C. Fifty dollars for the preparation and filing of a suggestion of nonpayment and averment of default to revive and continue in effect the lien of a previously filed claim.
- D. Twenty-five dollars for the preparation of a praecipe for satisfaction of a claim and lien and the mailing thereof to the property owner for filing.

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- E. One hundred fifty dollars for the preparation and filing of a praecipe for issuance of writ of scire facias.
- F. One hundred dollars per hour for professional services of the Borough's attorney in all proceedings (including but not limited to trial) and held upon a writ of scire facias.

(Ord. 682, 7/9/1996, §703)

§1-704. Authority.

This Part is enacted pursuant of §§3 and 9 of the Municipal Claim and Tax Lien Law (Act No. 153 of 1923, as amended.)

(Ord. 682, 7/9/1996, §704)

Part 8

Municipal Records

§1-801. Purpose.

The purpose of this Part is to establish specific policies and procedures, in conformity with applicable State law, pertaining to the retention and disposition of public records of the Borough of Beaver.

(Ord. 759, 2/12/2008)

§1-802. Definitions.

As used in this Part, the following words and phrases shall have the meanings specified:

BOROUGH — the Borough of Beaver.

ENTITY — any officer, agency, department, board, commission or administrative unit of the Borough.

MUNICIPAL RECORDS MANUAL — the document so titled adopted by the Local Government Records Committee of the Commonwealth of Pennsylvania and published by the Pennsylvania Historical and Museum Commission.

PUBLIC RECORDS — any papers, books, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by an entity under law or in connection with the exercise of its powers and the discharge of its duties.

(Ord. 759, 2/12/2008)

§1-803. Intent.

The Borough hereby declares its intent to follow the schedules and procedures for the retention and disposition of records as set forth in the Municipal Records Manual.

(Ord. 759, 2/12/2008)

§1-804. Police Records.

Records of the Police Department of the Borough shall be retained, and may be disposed of, in accordance with the provisions of Chapter 8 of the Municipal Records Manual.

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(Ord. 759, 2/12/2008)

§ 1-805. Disposal.

1. Any disposal of public records of the Borough must be approved in advance by a resolution adopted by the Council.
2. Any entity of the Borough desiring to dispose of any public record(s) shall submit a written proposal to the Borough Solicitor in which the records are identified. The Solicitor shall review the proposal for its conformity to the appropriate schedule in the Municipal Records Manual, and shall then prepare an appropriate resolution as to disposition for consideration by the Council at a public meeting.

(Ord. 759, 2/12/2008)