

BOROUGH OF MOUNT PENN
BERKS COUNTY, PENNSYLVANIA

ORDINANCE NO. 751

AN ORDINANCE OF THE BOROUGH OF MOUNT PENN, BERKS COUNTY COMMONWEALTH OF PENNSYLVANIA, AMENDING AND RESTATING THE BOROUGH OF MOUNT PENN NON-UNIFORMED EMPLOYEES' PENSION PLAN PROVIDING FOR A PENSION PLAN FOR FULL-TIME, NON-UNIFORMED EMPLOYEES OF THE BOROUGH OF MOUNT PENN.

WHEREAS, it is deemed to be in the best interests of the Borough of Mount Penn and in the maintenance of good government that a pension program be maintained to provide for the retirement of full-time, non-uniformed employees;

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Borough Council of the Borough of Mount Penn, Berks County, Pennsylvania as follows:

SECTION I: DEFINITIONS

- 1.1 "ACCRUAL SERVICE" – shall mean the total of an Employee's Continuous Employment expressed as whole years and fractional parts of a year (to two decimal places) on the basis that 365 days equal one year. Such total shall be equal to the period from date of hire to date of determination.
- 1.2 "ACCRUED BENEFIT" – shall mean the amount of a Participant's monthly retirement benefit accrued as of any date equal to the product of (a) and (b) below:
 - (a) An amount equal to 2% of Average Compensation.
 - (b) Accrual Service on a date of determination.
- 1.3 "AVERAGE COMPENSATION" – shall mean, on any given date, the average of a Participant's monthly Compensation for those five consecutive calendar years (all years, if less than five) which give the highest average out of the ten latest calendar years (all years, if less than ten) ending before a determination date.
- 1.4 "COMPENSATION" – shall mean the total earnings paid or made available to the Employee by the Employer during a Plan Year.
- 1.5 "ELIGIBILITY SERVICE" – shall mean the total of an Employee's Continuous Employment from date of hire to the date of determination. Eligibility Service shall be determined on the basis that thirty days equal one month and 365 days equal one year. The Eligibility Service requirement shall be waived for

an Employee who was a participant under the Antietam Valley Municipal Authority Pension Plan and/or the Mount Penn Borough Municipal Authority Pension Plan.

- 1.6 "EMPLOYER" – shall mean Borough of Mount Penn, Berks County, Commonwealth of Pennsylvania.
- 1.7 "EMPLOYEE" – shall mean an individual who is employed as a full-time non-uniformed employee by the Employer.
- 1.8 "CONTINUOUS EMPLOYMENT" - shall mean an employee's period of continuous employment with the Employer. For purposes of this Section, an employee's employment shall not be deemed to have been interrupted by any periods of authorized leave of absence expressly granted by the Employer; nor shall it be deemed interrupted by any period of absence during which he/she served in the Armed Forces of the United States of America, provided the employee returns to employment with the Employer at the time and under the circumstances required to give him/her re-employment rights under any Federal or State law. In the event an employee does not return to employment within the specified period or at the end of an authorized leave of absence, he/she shall be deemed to have terminated employment when he/she originally left the service of the Employer.
- 1.9 "ENTRY DATE" – shall mean the date on which an eligible Employee has completed 90 days of Eligibility Service.
- 1.10 "FUND" – shall mean the Borough of Mount Penn Non-Uniformed Employees' Pension Plan Trust Fund.
- 1.11 "PARTICIPANT" – shall mean any individual who has met the requirements set forth in Section IV of this ordinance.
- 1.12 "PLAN" – shall mean Borough of Mount Penn Non-Uniformed Employees' Pension Plan.
- 1.13 "PLAN YEAR" – shall mean the calendar year.
- 1.14 "QUALIFIED PRE-RETIREMENT SURVIVOR ANNUITY" – shall mean a straight life annuity payable to the surviving spouse of a Participant. The monthly benefit payable to the spouse shall be equal to the survivorship percentage of the retirement benefit that would have been payable to the Participant if the retirement date had occurred on the date benefits start to the spouse and he/she had retired under the joint and 50% survivor form. A former spouse will be treated as a surviving spouse to the extent provided

under a qualified domestic relations order as described in Internal Revenue Code Section 414(p).

- 1.15 "VESTING SERVICE" – shall mean the total of an Employee's Continuous Employment expressed as whole years and fractional parts of a year (to two decimal places) on the basis that 365 days equal one year. Such total shall be equal to the period from date of hire to date of determination, however, a Participant's vesting service with Antietam Valley Municipal Authority Pension Plan and/or Mount Penn Borough Municipal Authority Pension Plan Shall be included as Vesting Service under this Plan.

SECTION II: FUNDING OF PENSIONS

- 2.1 This Plan is to be funded and maintained by any of the following methods or combinations of each:
- (a) STATE AID – Funds which are received from the Commonwealth of Pennsylvania pursuant to the Municipal Pension Plan Funding Standard and Recovery Act (known as "Act 205"), which are directed to this Plan as approved by the Borough Council.
 - (b) BOROUGH CONTRIBUTIONS – Contributions from the general fund of the Borough of Mount Penn, as necessary, with appropriate approval by the Borough Council.
 - (c) GIFTS, GRANTS, DEVISES OR BEQUESTS – The sums which may be received by the Borough of Mount Penn in the form of gifts, grants, devises or bequests, may to the extent authorized by law, be contributed to the Fund with the approval of the Borough Council.
 - (d) Any other sums received or contributed to the Borough of Mount Penn, to the extent authorized by law and with prior approval of the Borough Council.

SECTION III: ADMINISTRATION

- 3.1 Subject to the control and direction of Borough Council, the Insurance/Pension Committee ("Committee"), shall have full responsibility for administration of the Plan and Fund. The Committee shall hold, invest, re-invest and distribute all funds and property received pursuant hereto in trust for the purposes of this ordinance. The Committee may receive at any time, gifts, grants, devises or bequests to the Fund of any money or property, real or personal or mixed, to be held by the Committee in trust for the benefit of this fund and in accordance with the provisions hereof. The Committee shall be subject to such rules and regulations as may from time to time be adopted by Borough Council through ordinance or resolution.

3.2 The Committee shall have full power and authority either directly or through their designated representatives, to do all acts execute, acknowledge and deliver all instruments, and to exercise for the sole benefit of the participants hereunder, any and all powers and discretions necessary to implement and effectuate the purposes of this ordinance, including for purposes of illustration, but not limited to, any of the following:

- (a) To hold, invest and re-invest all funds received pursuant to this ordinance in such investments as may be authorized a legal Investments under the laws of the Commonwealth of Pennsylvania;
- (b) To retain any property which may at any time become an asset of the Fund, as long as the Committee may deem it advisable; and
- (c) To make distribution of the monies in the Fund, in accordance with the terms of this ordinance.
- (d) To appoint a trustee, custodian or investment manager to hold, invest and reinvest Plan funds in accordance with this ordinance. Such trustee, custodian or investment manager may be removed, or resign by giving 60 days written notice to the other party. The Committee shall maintain the authority to oversee and review the performance of the trustee, custodian or investment manager both on an investment and administrative basis. Plan funds may be invested in pooled funds designated for employee benefit trust funds.

3.3 Any administrative expense which is an allowable administrative expense under Act 205 of the Commonwealth of Pennsylvania will be payable from the assets of the Fund. If administrative expenses are not or cannot be paid from the Fund, the expense will be paid by the Borough of Mount Penn.

SECTION IV. ELIGIBILITY

4.1 Each full-time, non-uniformed employee of the Borough of Mount Penn will be eligible to participate on the Entry Date following the completion of ninety (90) days of Eligibility Service. No one will be eligible for this Plan if they are Police officers, part-time employees or members of a bargaining unit.

SECTION V: RETIREMENT BENEFITS

- 5.1 The normal retirement date to receive benefits from the Fund shall be the first day of the month coinciding with or next following the sixtieth (60th) birthday. The normal retirement benefit shall be equal to the amount specified under Section VI.
- 5.2 If a Participant remains in the employ of the Employer subsequent to his normal retirement date, he/she shall continue to be eligible to participate hereunder. The late retirement date shall be the first day of the month coincident with or next following the date when a Participant actually retires. The late retirement benefit shall be equal to the greater of (a) or (b) below:
- (a) The Accrued Benefit on the late retirement date.
 - (b) The Accrued Benefit on the normal retirement date, multiplied by the factor shown below corresponding to the number of years the late retirement date follows the normal retirement date.

NUMBER OF YEARS LATE RETIREMENT DATE FOLLOWS NORMAL RETIREMENT

DATE	FACTOR
1	1.06
2	1.12
3	1.19
4	1.26
5	1.34
6	1.42
7	1.50
8	1.58
9	1.67
10	1.76

The above factors shall be prorated for a partial year (counting a partial month as a complete month).

- 5.3 A Participant may retire on an early retirement date. The early retirement date shall be on the first of the month coincident with or next following the date on which a Participant ceases to be an Employee and meets the following requirements: (a) Attainment of age fifty-five (55) and; (b) completion of twenty (20) years of Vesting Service.

A Participant's retirement benefit on the early retirement date shall be equal to the Accrued Benefit on such specified date, multiplied by the factor shown below corresponding to the number of years the early retirement date precedes the normal retirement date:

NUMBER OF YEARS EARLY
RETIREMENT DATE PRECEDES
NORMAL RETIREMENT DATE

FACTOR

1	.9333
2	.8667
3	.8000
4	.7333
5	.6667
6	.6333
7	.6000
8	.5667
9	.5333
10	.5000

The above factors shall be prorated for a partial year (counting a partial month as a complete month).

SECTION VI: NORMAL RETIREMENT BENEFIT

- 6.1 The basis for determining the monthly normal retirement benefit to a Participant retiring under Section 5.1 shall be two percent (2%) of the Participant's Average Compensation multiplied by the years of Accrual Service.
- 6.2 Such retirement benefit shall be payable from the assets of the Fund established pursuant to this ordinance.
- 6.3 The normal form of annuity under the Plan is a straight life annuity. However, upon retirement, a Participant may elect to receive benefits in a form different than the normally prescribed annuity form. Any such alternative form must be the actuarial equivalent of the normal form of annuity. Alternative options include, but are not limited to, the following:
- (a) A life annuity coupled with a guarantee that payments will be made for a certain period of years, such as 5 or 10 years;
 - (b) A joint and contingent survivor annuity, whereby the annuity is to continue to the participant's spouse after the death of the retired Participant as a specified percentage of the annuity being paid while the participant survived.

SECTION VII: DISABILITY BENEFITS

- 7.1 If a Participant becomes "Totally and Permanently Disabled" (as defined in Section 7.2), such Participant shall be entitled to receive a disability benefit.
- 7.2 "Totally and Permanently Disabled" or "Total and Permanent Disability" shall mean that a Participant is disabled, as a result of a sickness or injury, to the extent that he is prevented from engaging in any substantial gainful activity, and is eligible for and receives a disability benefit under Title II of the Federal Social Security Act.

Notwithstanding any other provision of this Plan, no Participant shall be deemed to be "Totally and Permanently Disabled" for the purposes of this Plan if his incapacity results from chronic alcoholism or addiction to narcotics, engagement in felonious criminal enterprise, or resulted from an intentionally self-inflicted injury, or if such disability was incurred while in the armed services of any country.

- 7.3 If a participant becomes Totally and Permanently Disabled before his/her retirement date (normal retirement date, if earlier), a disability benefit shall be payable to him/her. The disability benefit payable to a Participant who meets the retirements above is an immediate monthly benefit equal to 50% of Average Compensation.
- 7.4 Monthly disability benefit payments shall begin on the earliest first day of the month on or after the date the Participant meets the requirements under this section. Such payments shall continue through the first day of the month before the earliest of the normal retirement date, the date of death or the day following the date he/she is no longer Totally and Permanently Disabled.
- 7.5 If the payments continue through the first day of the month before the Participant's normal retirement date, retirement benefits shall be provided on the normal retirement date under the provisions of Section VI as if he/she were an active Participant. The Accrued Benefit shall be equal to the Accrued Benefit determined on the date he/she became Totally and Permanently Disabled. However, such Accrued Benefit shall not be less than the amount of monthly disability payment paid under this section. If, before the Participant's normal retirement date, he/she recovers and returns to active work for the Employer within one month of recovery, the payments shall stop and he/she shall again become an active Participant. If, before the Participant's normal retirement date, he/she recovers and does not return to active work for the Employer within one month of recovery, the payments shall stop and his benefits shall be redetermined, on the date he ceased to be an Employee, under the vested benefits section of Section IX.

SECTION VIII: DEATH BENEFITS

- 8.1 If a Participant (whether or not in the active service of the Employer) dies before the retirement date, death benefits shall be payable as set forth under this Section VIII.
- 8.2 A Qualified Pre-Retirement Survivor Annuity shall be payable if the following requirements are met:
- (a) The Participant is survived by a spouse to whom he/she was continuously married throughout the one-year period ending on the date he/she dies.
 - (b) The Participant's vesting percentage on the date of death was greater than zero.

If the requirements above are met on the date the Participant dies, a Qualified Pre-Retirement Survivor Annuity shall be payable. Payment of the spouse's benefit shall begin on the first day of the month on or after the date of the Participant's death and continue as long as the spouse lives.

If a single sum death benefit would otherwise be payable under Section 8.3 below, the monthly benefit payable to the spouse under the Qualified Pre-Retirement Survivor Annuity shall not be less than the monthly benefit which is the actuarial equivalent of the single sum death benefit at the date benefits start.

- 8.3 If the requirements in Section 8.2 above have not been met on the date an active participant dies, a single sum death benefit shall be payable to the Participant's beneficiary. The single sum death benefit shall be equal to the present value of a deferred monthly retirement benefit beginning on the Participant's normal retirement date and payable under the normal form. The deferred monthly retirement benefit shall be equal to the Participant's Accrued Benefit as of the date of death. However, the single sum death benefit shall not be less than \$500. If the requirements of Section 8.2 above have been met on the date such Participant dies, but the Participant's spouse dies before the Qualified Pre-Retirement Survivor Annuity starts, the present value of the Qualified Pre-Retirement Survivor Annuity, determined as of the date of the spouse's death, shall be paid to the spouse's beneficiary.

Before a single sum death benefit will be paid on account of the death of a Participant who would have met all the requirements in Section 8.2 above if he/she had had a spouse to whom he/she had been continuously married throughout the one-year period ending on the date of his death, it must be

established to the satisfaction of a plan representative that there is no spouse or that the Participant had not been continuously married throughout the one-year period ending on the date of his death.

8.4 If a Participant dies on or after normal retirement date and before retirement, the death benefit shall be payable in like manner as provided under Sections 8.2 and Section 8.3 above.

8.5 Any death benefit after retirement date will be determined by the form of retirement benefit in effect on a Participant's retirement date.

SECTION IX: TERMINATION BENEFITS AND VESTING

9.1 A Participant who terminates employment before retirement or death (and, if applicable, before the date a disability payment begins) shall be entitled to a deferred vested benefit. Such Participant's vested benefit shall be a percentage of the Accrued Benefit based on a vesting percentage shown in the following schedule using the number of whole years of Vesting Service:

VESTING SERVICE (WHOLE YEARS)	VESTING PERCENTAGE
Fewer than 3	0%
3	20%
4	40%
5	60%
6	80%
7	100%

Notwithstanding the preceding, the vesting percentage shall be 100% for an Employee on or after the earlier of (a) the date he/she reaches the normal retirement date or (b) the date he/she meets the requirements for an early retirement date.

9.2 The payment of a terminated Participant's vested Accrued Benefit shall begin at such Participant's normal retirement date. Such Participant may also elect to receive the vested benefit at the early retirement date, if applicable, with the deferred vested benefit equal to the Accrued Benefit multiplied by the early retirement factor set forth in Section 5.3.

9.3 The payment of a terminated Participant's vested benefit may also begin on a late retirement date. For a Participant who terminates employment on or before the normal retirement date, the amount payable shall be equal to the

vested Accrued benefit multiplied by the late retirement factor in Section 5.2. For a Participant who terminated employment after the normal retirement date, the amount payable is equal to the greater of (a) or (b) below:

- (a) An amount equal to the Accrued Benefit on the day before the date of termination of employment.
 - (b) The Accrued Benefit on the normal retirement date multiplied by the late retirement factor in Section 5.2.
- 9.4 A Participant eligible to receive a vested benefit will have it paid in the normal form. The Participant maybe permitted to receive the vested benefit in any form authorized for payment of retirement benefits under Section 6.3, provided, however, that he/she may elect an optional form of payment only with the consent of the Employer.
- 9.5 If the Participant dies before the retirement date, death benefits shall be distributed according to the death benefit provisions of Section VIII.

SECTION X: EFFECTIVE DATE AND REPEALER

- 10.1 This ordinance shall become effective immediately upon the adoption of the same by the Borough Council. All ordinances, or parts of ordinances, inconsistent with the provision of this ordinance are hereby repealed insofar as they are inconsistent with this ordinance.

If any sentence, clause, section or part of this ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not effect or impact any other remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Borough Council that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

DULY ORDAINED and ENACTED this 29th day of November, 2005.

BOROUGH COUNCIL
BOROUGH OF MOUNT PENN

BY: Thomas A. Stawron
President of Borough Council

ATTEST:

A. J. Stowski
Borough Secretary

The within Ordinance is hereby approved this 29th day of November 2005.

BY: D. Regina Krasnowsky
Mayor

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