

ORDINANCE 21-02

AN ORDINANCE OF THE TOWNSHIP OF MIDDLETOWN, COUNTY OF BUCKS, COMMONWEALTH OF PENNSYLVANIA, AMENDING CHAPTER 70 – “PENSIONS,” ARTICLE II – “POLICE PENSION FUND,” SECTION 202 – “AGE AND SERVICE REQUIREMENTS AND MILITARY SERVICE,” SECTION 204 – RETIREMENT OR PENSION BENEFITS,” AND SECTION 206 – “SURVIVOR’S BENEFITS: WIDOW’S, WIDOWER’S OR CHILDREN’S BENEFITS OF THE TOWNSHIP CODE OF ORDINANCES TO ENSURE COMPLIANCE WITH A COLLECTIVE BARGAINING AGREEMENT

WHEREAS, the Township of Middletown, Bucks County, Commonwealth of Pennsylvania (“Township”) has established a Police Pension Fund pursuant to the laws of the Commonwealth of Pennsylvania and for the benefit of the eligible full-time police officers of the Township; and

WHEREAS, on or about January 6, 2020, the Township entered into a Collective Bargaining Agreement (“C.B.A.”) with the Police Benevolent Association of the Township of Middletown (“Association”) for a term commencing on January 1, 2020 and ending on December 31, 2023; and

WHEREAS, on or about August 24, 2020, the Township enacted Ordinance 20-04, which amended portions of Chapter 70 – “Pensions,” Article II – “Police Pension Fund” to ensure the relevant terms of the Township’s Code of Ordinances were consistent with the C.B.A.; and

WHEREAS, the Township understands additional revisions are required; and

WHEREAS, the Board has determined it to be in the best fiscal interest of the Township to amend the Code of Ordinances to reflect the bargain reached between it and the Association as set forth in the C.B.A.

NOW, THEREFORE, the Board of Supervisors of the Township of Middletown, County of Bucks, Commonwealth of Pennsylvania, does hereby ordain and enact the following:

1. The Code of the Township of Middletown, Chapter 70 – “Pensions,” Article II – “Police Pension Fund,” Section 202 – “Age and Service Requirements and Military Service,” is hereby repealed and replaced with a new Section 202 – “Age and Service Requirements and Military Service” containing the language set forth in Exhibit “A” hereto.¹
2. The Code of the Township of Middletown, Chapter 70 – “Pensions,” Article II – “Police Pension Fund,” Section 204 – “Retirement or Pension Benefits.” is hereby repealed and replaced with a new Section 204 – “Retirement or Pension Benefits” containing the language set forth in Exhibit “B” hereto.

¹ To the extent Exhibit A of Ordinance 20-04 indicated that the title of Chapter 70 – “Pensions,” Article II – “Police Pension Fund,” Section 202 – “Age and Service Requirements and Military Service,” was titled “Survivor’s Benefits: Widow’s Widower’s or Children’s Benefits,” the title of Section 202 shall be “Age and Service Requirements and Military Service.”

3. The Code of the Township of Middletown, Chapter 70 – “Pensions,” Article II – “Police Pension Fund,” Section 206 – “Survivor’s Benefits: Widow’s Widower’s or Children’s Benefits,” is hereby repealed and replaced with a new Section 206 – “Survivor’s Benefits: Widow’s Widower’s or Children’s Benefits” containing the language set forth in Exhibit “C” hereto.
4. The provisions of this Ordinance 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 Ordinance shall not be affected thereby. It is hereby expressly declared as the intent of the Township Supervisors that this Ordinance would have been adopted had such unconstitutional or illegal provision or provisions not been included herein.
5. All other ordinances, portions of ordinances, or any section of the Code inconsistent with this Ordinance, are hereby repealed.
6. This Ordinance shall take effect five (5) days after adoption by the Board of Supervisors.

ORDAINED AND ENACTED this *19th* day of *January, 2021*.

ATTEST:

MIDDLETOWN TOWNSHIP
BOARD OF SUPERVISORS

Secretary

Chairperson

I hereby certify that the foregoing is a true and correct copy of *Ordinance #21-02*, enacted by the Board of Supervisors of the Township of Middletown, County of Bucks, Commonwealth of Pennsylvania, on the *19th* day of *January, 2021*.

SEAL

Secretary

Exhibit A

§70-202. Age and Service Requirements and Military Service.

- A. Normal Retirement. Commencing on January 1, 2001, a member who has served on the Middletown Township Police Department as a Police Officer for a total of service in the aggregate of twenty (20) years and in addition has attained the age of fifty (50) years may retire from active duty on the first day of the month following the required years of service and age and shall be entitled to receive normal pension or normal retirement benefits as hereinafter provided.

- B. Any member of the Middletown Police Department who has been a regularly appointed employee for a period of at least six (6) months and who thereafter shall enter the military service of the United States, shall have credited to the member's employment record for the pension or retirement benefits all the time spent by the member in such military service, if such member returns or has heretofore returned to the employ of the Middletown Township Police Department within six (6) months after separation from the service.

- C. Members who are retired shall be subject to service, from time to time, as a police reserve in cases of riot, tumult or preservation of the public peace until unfitted for such services, when they may be fully discharged by reason of age or disability.

- D. Any member of the Middletown Police Department may purchase retirement credit for up to five years of active military service with the United States that occurred before their employment with the Middletown Police Department, if the member is not eligible to receive a military retirement pay for that service. To purchase such credit, the member must pay an amount equal to the statewide average normal cost for borough, town, township and regional police pension plans as certified by the Public Employee Retirement Commission, not to exceed ten percent, multiplied by the member's average monthly salary during the first three years of employment as a police officer, plus interest at the rate of 4.75 percent (4.75%) compounded annually, from the participant's date of hire to the date of payment.

- E. Commencing on January 1, 2020, a member who has served on the Middletown Township Police Department as a Police Officer for a total of service in the aggregate of twenty (20) years and in addition has attained the age of fifty (50) years may retire from active duty on the first day of the month following the required years of service and age shall be entitled to receive a reduced vested pension or retirement benefits as hereinafter provided under Section 70-204(D) of this Article.

Exhibit B

§70-204. Retirement or Pension Benefits.

The pension or retirement benefits shall be payable during the balance of the participant's life following actual retirement or entry into the Deferred Retirement Option Plan (DROP) program, and for the life of his survivors subject to the limitations set forth in Section 70-206 below, after fulfillment of the age and service requirements set forth above. The basis for determining the monthly benefit shall be as follows:

- A. Monthly pension or retirement benefits other than length-of-service increments and cost-of-living increases shall be the sum equal to 1/2 of the average monthly salary of such member during the last 36 months of employment or the last 36 months prior to entering into the DROP program, whichever occurs first.
- B. Average monthly salary shall include base salary plus overtime pay.
 - (1) Base salary shall consist of base salary, longevity pay, vacation pay, and holiday pay and educational incentive pay; however, any unused vacation leave paid at retirement of seven or more weeks shall be excluded from the definition of average monthly salary used to compute the monthly pension benefit.
 - (2) Overtime pay shall consist of overtime pay, court time pay, and compensatory time wage compensation.
 - (3) A police officer may be compensated for a maximum of six weeks of unused vacation leave in the calendar year prior to entering the DROP program, However at the end of the DROP period, the employee must use any available vacation leave and shall not be compensated for any unused vacation leave at final separation.
- C. Service increment benefit.
 - (1) There shall be a service increment for all members who retire with more than 25 years of service paid as follows:
 - (a) After completion of at least 26 years of service: \$600 additional annually.
 - (b) After completion of at least 27 years of service: \$600 additional annually.
 - (2) The total maximum benefit for service increment shall be \$1,200 additional annually (this includes the \$600 annually after the 26th year of service).
- D. Reduced Vested Pension or Retirement Benefits Pursuant to Section 70-202(E). The reduced vested pension or retirement benefits (“early retirement benefits”) shall be payable during the balance of the participant’s life following actual retirement, and for the life of his survivors subject to the limitations set forth in Section 70-206 below, after fulfillment of the age and service requirements set forth above in Section 70-202(E). The early retirement benefit shall be provided to a member of the police department with twenty or more years of service who terminates employment prior to the completion of superannuation retirement age and service requirements and who files a written application for an early retirement benefit with the Board of Supervisors. The early retirement benefit shall become effective as of the date the application is filed with the Board of Supervisors

or the date designated on the application, whichever is later, and shall be the actuarial equivalent of a partial superannuation retirement benefit calculated as follows:

- (1) A partial superannuation retirement benefit shall be determined by applying the percentage that the member's years of service bear to the years of service that the member would have rendered had the member continued to be employed until his superannuation retirement date to the gross pension amount calculated using the monthly average salary during the appropriate period prior to his termination of employment.
 - (2) The actuarial equivalent of the partial superannuation retirement benefit shall be determined by actuarially reducing the partial superannuation retirement benefit to reflect that it will commence on the effective date of the early retirement rather than on the date on which the member would have completed superannuation age and service requirements. The actuarial reduction shall be calculated using the actuarial assumptions reported in the last actuarial valuation report filed with the Public Employee Retirement Commission under the act of December 18, 1984 (P.L. 1005, No. 205), known as the "Municipal Pension Plan Funding Standard and Recovery Act."
- E. Cost-of-living increases on pensions shall be paid to officers who retire with pension benefits on or after January 1, 1991; provided, however, that such cost-of-living increase shall not exceed the percentage increase in the Consumer Price Index (i.e., the CPI-U for the Philadelphia, Wilmington, and Atlantic City Metropolitan Statistical Area) from August to August from the year in which the police member last worked; provided, further, that in no case shall the total police pension fund benefits (including service increments) exceed 75% of the salary for computing retirement benefits; and provided, further, that the total cost-of-living increase shall not exceed 20% effective January 1, 2002; 25% effective January 1, 2004; and 30% effective January 1, 2008. Such benefit shall commence one full year after the employee's retirement date. Beginning with adjustments due for the year 2000, all adjustments will be made on January 1 based on the change in the Consumer Price Index from August to August. A new retiree's initial adjustment will be prorated to reflect the actual number of months retired prior to January 1, and a current retiree, who consents in writing to this change, will have the January 1 adjustment prorated to reflect the actual number of months since his or her last adjustment.
- F. Ad hoc cost-of-living increase on pensions. Each retired participant who retired prior to January 1, 1991, shall, beginning 2001, have the amount of his/her monthly benefit increased by the lesser of \$100 or the amount that will increase the participant's monthly benefit to an amount that is the lesser of 75% of the salary used in calculating the participant's original benefit or 130% of the participant's original benefit.
- G. Special ad hoc postretirement adjustment for police officers for those eligible under Section 70-204(F) by the Commonwealth of Pennsylvania. Should the Commonwealth of Pennsylvania at any time in the future mandate a special ad hoc postretirement adjustment for police officers that affects those receiving benefits under Subsection F of this section, the amount of those benefits received by those police officers under Subsection F of this section shall be reduced dollar for dollar by the amount of the special ad hoc retirement adjustment established by the commonwealth.

H. Deferred Retirement Option Plan (DROP program). Beginning January 1, 2002, an optional DROP program shall be made available to any Middletown Township police officer who has fulfilled the age and service requirements as set forth in § 70-202 above. The DROP program shall be an optional retirement program in which an eligible member of the pension plan may elect to participate, deferring receipt of normal retirement benefits while continuing employment with the Township of Middletown without the loss of any other employee benefits. The DROP plan is designed to allow a police officer to accumulate a lump sum cash amount for retirement without affecting his or her normal monthly retirement benefit as of the date that he or she becomes a DROP participant. Under DROP, the police officer effectively makes a decision to "retire" with respect to the pension plan only, yet continues to work as an active police officer. The actual date of availability of the DROP plan will commence at the ratification of the collective bargaining agreement by both the Township and the PBA or the appointment of an investment manager, whichever is later.

- (1) Eligibility. Any Middletown Township police officer who has fulfilled the age and service requirements for a normal retirement as set forth above shall be eligible to participate in the DROP program at his or her option in conformance with this agreement and after providing at least 30 days' written notice to the employer. A Middletown Township police officer electing to retire pursuant to Section 70-202(E) of this Article shall not be eligible for the DROP Program.
- (2) Entry into DROP. Election to participate by an eligible police officer shall be made on any date following the date on which the police officer fulfills the minimum age and service requirements for retirement under the pension plan. Once a police officer commences participation in the DROP program, he or she may not choose to end participation in the DROP program and resume contributions to the pension plan.
- (3) Request to enter and enrollment forms. Election to participate shall be made by completing the required request and enrollment forms, which shall show the entry date into the DROP program and the deferred retirement date for the term chosen by the police officer. The deferred retirement date shall not exceed 96 months from the date of enrollment or entry into the DROP program.
- (4) The length of the DROP. For police officers hired on or before December 31, 2019, the DROP term shall be for a period of no more than 96 months from the date of entry. For police officers hired on or after January 1, 2020, the DROP term shall be for a period of no more than 60 months from the date of entry. Termination of participation in the DROP program shall take place:
 - (a) At the end of the ninety-six- or sixty-month period (as applicable), or at any other time prior if the police officer chooses to end his or her participation earlier than 96 or 60 months (as applicable); or
 - (b) If the time limit of 96 or 60 months (as applicable) is extended in future collective bargaining agreements, any member participating in the DROP program at that time may at his or her option extend the DROP participation period to that allowed under the then current agreement; or
 - (c) If the participant is terminated from employment for reasons set forth under applicable Pennsylvania Law.

- (5) Retirement status and pension contributions. Once enrolled in the DROP program, the participant shall be retired under the pension plan for the purpose of calculating pension benefits, unless otherwise prescribed herein, but not for the purpose of employment with the Middletown Township Police Department. The DROP participant shall continue to receive all employee benefits and programs as set forth in this agreement. Once a police officer enters the DROP program, he or she shall no longer be required to make any contributions to the pension fund.
- (6) Retirement rate. Payments to DROP accounts will be made at the participant's normal retirement monthly benefit amount, which is determined by § 70-204 above at the time said police officer enters the DROP program.
- (7) Administration. DROP accounts shall be administered by an investment manager who shall be selected, and agreed upon, by both the Township and the PBA. All DROP accounts shall receive the rate of return experienced by the DROP Fund during the participant's DROP period.
- (8) Disability issues. If, while a police officer is enrolled in DROP and he or she is injured while on duty, to the extent that he or she is permanently disabled from performing police work for Middletown Township as a result of that service-connected disability, the police officer shall be retired on the basis of a service-connected disability, at the then current normal monthly retirement benefit.
- (9) Survivorship options. If a DROP participant dies during his or her participation period, all funds in that participant's account shall be disbursed to the participant's beneficiary or beneficiaries listed in the DROP contract. If the DROP participant dies after receiving the DROP account funds, further disbursements or disposition of those funds shall be determined by the deceased participant's last will and testament and/or applicable state and federal estate laws.
- (10) Conflict with existing laws. If, after the DROP plan is instituted, an agency of the Commonwealth of Pennsylvania issues an official opinion holding that this DROP plan is in conflict with Pennsylvania law, the Township and the PBA agree to meet within 30 days to discuss such opinion and bring the DROP plan into compliance with applicable law, if possible; or if no agreement can be reached, or if there is a dispute as to the validity of the official opinion, either or both parties may submit the dispute to the Court of Common Pleas of Bucks County for a declaratory judgment. If the DROP plan cannot be brought into compliance with Pennsylvania law, it shall be terminated subject to any constitutionally vested rights of the participants. It is the intention of the parties that the DROP program will only be terminated if a final determination is made that the program cannot be brought into compliance with applicable Pennsylvania law.

Exhibit C

§70-206. Survivor's Benefits: Widow's, Widower's or Children's Benefits.

- A. Survivor's benefits. Widow's, widower's or children's benefits will be paid in accordance with the laws of the Commonwealth of Pennsylvania, pursuant to Act 51 of 2009, as amended.

- B. Retirement on or Before December 31, 2019. In the event of the death of a Police Officer who retired or became disabled on or before December 31, 2019, his widow, or her widower, shall be entitled, during his or her lifetime, to sixty-five percent (65%) of the pension the Police Officer was receiving or would have been receiving had he or she been retired at the time of his or her death. If there is no surviving spouse, or if the spouse survives and subsequently dies, then benefit entitlement shall continue to the member's child or children under the age of eighteen (18) years, or if attending college, under or attaining the age of twenty-three (23) years.

- C. Retirement on or After January 1, 2020. In the event of the death of a Police Officer who retired or became disabled on or after January 1, 2020, his widow, or her widower, shall be entitled, during his or her lifetime, to seventy-five percent (75%) of the pension the Police Officer was receiving or would have been receiving had he or she been retired at the time of his or her death. If there is no surviving spouse, or if the spouse survives and subsequently dies, then benefit entitlement shall continue to the member's child or children under the age of eighteen (18) years, or if attending college, under or attaining the age of twenty-three (23) years.