

ORDINANCE NO. 234INDEX

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AN ORDINANCE ESTABLISHING AND REGULATING THE EMPLOYEES' PENSION PLAN OF THE BOROUGH OF ALBURTIS, LEHIGH COUNTY, PENNSYLVANIA.

BE IT ORDAINED AND ENACTED BY THE BOROUGH OF ALBURTIS in Borough Council assembled, and it is hereby ordained and enacted by the authority of the same as follows:

SECTION I. Establishment of Employees' Pension Plan

Under the provisions of the Acts of the General Assembly of Pennsylvania, and any other statutes now or hereafter pertaining or applicable thereto, there is hereby established the Employees' Pension Plan of the Borough of Alburtis, hereinafter referred to as the Plan.

SECTION II. Maintenance and Regulations of Plan

The Plan is to be maintained by a charge against all full time employees of the Borough, except police employees, by payments made to the Borough by the Commonwealth of Pennsylvania for the purpose of retirement or disability pensions for employees under any present or future law providing therefore, by appropriations thereto as may be lawfully made by the Borough by gifts, grants devises and bequests received by the Plan and by receipts from investments of the Plan. The Plan shall be under the direction of the Borough Council under such regulations as it may from time to time, by ordinance or resolution, prescribe for the benefit of such employees of the Borough as shall receive honorable discharge therefrom by reason of age and service, or disability. All pensions as shall be allowed to those who are retired by reason of disability shall be in conformity with the uniform scale.

SECTION III. Retirement Board

The Employees' Pension Plan of the Borough of Alburtis created by this Ordinance shall be managed and administered and shall be vested in a Retirement Board of the Borough which shall consist of three members as follows:

A. The President of the Borough Council shall be a member of the Retirement Board.

B. The remaining members shall be appointed by Borough Council for three-year terms, commencing the first Monday in January and so staggered that the term of office of at least one member, but not more than two members shall expire each calendar year.

C. The members of the existing Retirement Board established under prior ordinances shall continue in the office until the end of the term for which they were appointed; their successors shall be appointed as provided by this ordinance.

D. Any member of the Retirement Board may be removed by the Borough Council with cause or may resign by delivering his written resignation to the Secretary of Borough Council.

E. The members of the Retirement Board must be legal residents of the Borough of Alburtis.

F. The members of the Retirement Board shall elect a Secretary who may, but need not be, one of the members of the Retirement Board; may appoint from its number such committees with such powers as shall determine; and may adopt such rules and regulations appropriate for the conduct of business of the Retirement Board subject to the approval thereof by Borough Council. The Retirement Board may, with the approval of Borough Council, or Borough Council may appoint a corporate fiduciary to act as Trustee, to act under an appropriate Agreement of Trust to be prepared by the Borough Solicitor and approved by Borough Council.

SECTION IV. Eligibility

All present members continue to be members of the Plan. All future full time regular employees of the Borough, except police employees, shall become members of the Plan on the Anniversary Date next following the completion of one (1) year of service, and attainment of age twenty-one (21), provided, however, employment is prior to age fifty-five (55). Each such employee shall in writing authorize the Borough to regularly deduct from his pay the amount of his contribution to the Plan as provided hereby, designating a beneficiary or beneficiaries to whom payments shall be made in the event of such employee's death while an employee of the Borough and while a member of the Plan, and stipulate and agree that he shall be bound by the provisions of the law pertaining to the Plan and of this Ordinance and of any future statute or ordinance pertaining thereto. Nothing in this section shall be construed to drop any present members of the Plan. Eligible employees do not have the right to waive participation in the Plan.

SECTION V. Duties of Trustee

The Borough Treasurer shall forthwith remit to the Trustee all funds received by him for the purposes of the Plan or appropriated thereto by the Borough, with memorandum as to the source thereof, and shall secure its receipt therefor. The Trustee shall receive the same and invest any funds not currently required for disbursement in the manner and in the kinds of securities permitted by the Trust Agreement. It shall pay benefits out of the Plan only at such times, to such persons and in such amounts as may be certified to it by the Secretary of the Retirement Board at direction of the Retirement Board. The Trustee shall annually submit to Borough Council a detailed report of its administration of the Plan, which reports when so submitted shall be open to inspection by any interested party.

SECTION VI. Gifts to Plan

The Plan is hereby authorized to receive by gift, grant, devise or bequest any money or other property, real, personal or mixed, in trust for the benefit of the Plan, and the care, management, investment, and disposal of such trust funds or property shall be vested in the Trustee having the management of the Plan, and the said trust funds or property shall be administered in accordance with the regulations governing the Plan, subject to such directions not inconsistent therewith as the donors of such funds or property may prescribe.

SECTION VII. Age and Service Requirements

Beginning on the first day of the month following the effective date of this Ordinance:

- A. An employee of the Borough who has attained the age of sixty-five (65) years may retire on the first day of the month next after his sixty-fifth birthday or on the first day of any subsequent month thereafter, providing such employee shall have completed ten (10) years of service. An employee who has not completed ten (10) years of service when he has attained the age of sixty-five (65) years may retire on the first day of the month next after the completion of ten (10) years of service, or on the first day of any month thereafter, or an employee whose normal retirement age will fall after his sixty-fifth birthday elect to retire on his sixty-fifth birthday, or any subsequent birthday, prior to his normal retirement age, on a pension fractionally reduced in an amount equivalent to the number of years of actual service at his age sixty-five (65) years bears to ten (10) years of service.
- B. An employee of the Borough who has not attained the age of sixty-five (65), but who has attained the age of sixty-two (62) or more, may exercise an Early Retirement Option providing such employee shall at that time have completed ten (10) years of service.
- C. An employee may continue in the employment of the Borough after obtaining his Normal Retirement Date if the employee voluntarily agrees to such continued employment. Such continuing employee's Retirement Benefit will be paid to him upon his actual retirement and will be computed in accordance with Section VIII A.

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SECTION VIII. Retirement Benefits

Payments made under provisions of this Ordinance shall not be a charge on any other fund of the Borough or under its control, save the Plan hereby established. The basis for determining any pension payable under this Ordinance, upon the retirement of any employee of the Borough meeting the service and age qualifications of this Ordinance, shall be derived from the employee's compensation, where such compensation is defined as regular basic remuneration, including overtime but excluding discretionary bonuses and all other forms of extra compensation, and shall be calculated as follows:

A. The Retirement Benefit shall be in an amount equal to twenty percent (20%) of an employee's average annual compensation. "Average Annual Compensation" means the average of the five (5) highest years of compensation of the ten (10) year period preceding an employee's actual retirement date. The actual retirement benefit will be payable in equal monthly installments beginning on a member's actual retirement date and continuing for the retired member's lifetime and ceasing with the installment payable during the month of his death.

B. If an employee shall terminate his employment because he has become eligible to receive disability benefit under the Federal Old Age Survivors and Disability Insurance Act as amended effective November 1, 1960, the Retirement Board shall certify to the Trustee, and the Trustee shall begin to pay such disabled employee a disability benefit and shall continue to pay such benefit until the Federal benefit ceases. The disability benefit shall be of equivalent value to the normal retirement allowance based on the disabled employee's annual rate of compensation and his years of service at the time he becomes eligible to receive the disability benefit.

The time during which any employee has obtained disability under the terms of this Ordinance shall not be counted toward future time for qualifying for regular pension payments after retirement.

C. An employee of the Borough who is entitled to elect an Early Retirement Option under the provisions of Sub Section VII-B above, and who files such an Option in writing with the Retirement Board, shall receive an Early Retirement Benefit in an amount equal to the Normal Retirement Benefit he would have received at his Normal Retirement Age subject to a reduction of five-ninths (5/9ths) of one percent (1%) for each month that his Early Retirement Date precedes his Normal Retirement Date.

SECTION IX. Death Benefits

The payment of death benefits to a beneficiary or beneficiaries designated by the employee and last filed with the Borough Council is limited to the return of the vested interest attributable to the employees' contributions to the Plan.

SECTION X. Employment of Actuary and Payments into Plan

(a) Borough Council shall employ an actuary and fix his compensation and shall provide for the legal and administrative expenses of the Plan. The actuary shall determine the present liability on account of pensions payable under this Ordinance to employees for service prior to the date of this establishment of the Plan. The unfunded liability shall be paid entirely by the Borough, provided that it may be funded over a period not exceeding twenty-five (25) years. The actuary shall determine the amount which shall be contributed annually to the Plan for the

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service of employees subsequent to the establishment of the Plan, known as "Future Service Costs."

(b) The regular contribution of the Borough shall be paid over to the Trustee and shall consist each year of the amount required to fund all the benefits provided under this Ordinance according to the calculations of an independent pension consultant retained by the Retirement Board.

(c) Employees who are members of the Plan, shall pay into the Plan at least monthly, an amount equal to two (2) percent of the first Four Thousand (\$4,000.00) Dollars of annual compensation plus an additional three (3) percent of annual compensation over Four Thousand (\$4,000.00) Dollars for each employee. The remainder of the needed annual contribution as determined by the actuary, shall be the obligation of the Borough, and shall be paid by it to the Plan by annual appropriation.

(d) It shall be the duty of the Borough Council to apply all payments of the Plan above enumerated in accordance with the provisions of this Ordinance.

(e) Interest shall be accumulated and credited to participant's contributions at the rate of five and one-half (5½) percent or such rate as is hereinafter set by resolution of the Borough Council of Alburtis.

(f) Interest shall be computed at the end of each Plan year, beginning September 30, 1985, and shall be credited to the contributor's account.

(g) Interest should be computed for the full amount on deposit at the beginning of the Plan year, plus five and one half (5½) percent (or such rate as set by resolution of Borough Council) of the current year's total deposit divided by two.

SECTION XI. Refund of Employee Contributions

Any employee, other than police employees, who for any reason whatsoever shall be unable to receive a pension after having contributed any charge to the Plan established pursuant to the provisions of this Ordinance shall be entitled to a refund of all such monies paid by him into such Plan within one (1) month after discontinuance of his employment in the Borough without interest. If such discontinuance is due to death, such money shall be paid to his designated beneficiary or beneficiaries, or in the absence of such designation, to his personal representative.

SECTION XII. Guarantee of Share

No person participating in the Plan established pursuant to the provisions of this Ordinance who becomes entitled to receive a benefit therefrom shall be deprived of his right to an equal share therein upon the basis upon which he first became entitled thereto.

SECTION XIII. Optional Allowance

A. An employee who is eligible for a retirement allowance as provided in Section VII above may, by written notice given to the Committee at any time prior to thirty (30) days before the date he actually retires, elect or revoke any election to convert his early, normal or deferred retirement allowance into the optional allowance described in Section XIII B and designate or revoke the designation of a contingent annuitant. Such contingent annuitant shall be limited to an employee's lawfully married spouse, or dependent child.

B. The amount of the optional allowance shall be a reduced retirement allowance which is of equivalent actuarial value to the early, normal or deferred retirement allowance as the case would otherwise be, in accordance with tables adopted by the Committee upon recommendation of the Pension Consultant who is retained by it. The allowance shall be a retirement allowance payable during an employee's life with the provision that after his death the same allowance shall be paid during the life of and to the contingent annuitant nominated by him by written designation filed with the Trustee when the employee elected the option.

C. Except as otherwise provided in D below, if an employee or his designated contingent annuitant dies before the employee's earliest retirement date his election of the optional retirement allowance shall be automatically revoked.

D. If an employee is eligible for an early, normal or deferred retirement allowance and such employee has elected to receive a joint and survivor allowance in lieu of the retirement allowance to which he is otherwise eligible and such employee dies prior to his actual retirement date, the election of the optional retirement allowance shall remain effective and the contingent annuitant, if living, shall receive the optional allowance for life. If the contingent annuitant dies during such continuing employment and before the employee actually retires the election of the optional retirement allowance shall automatically be revoked.

SECTION XIV. Saving of Benefits from Legal Attachment

Any payments herein provided for shall not be subject to attachment, execution, levy, garnishment or other legal process, and shall be payable only to the employee or his designated beneficiary or beneficiaries, and shall not be subject to assignment or transfer.

SECTION XV. Forfeitures

Any forfeitures occurring as a result of the termination of employment or in any other manner shall not be applied to increase the benefits that any employee would otherwise receive under the Plan and the said forfeitures shall be applied to reduce the Borough's contribution in the then current or next succeeding year.

SECTION XVI. Employment not guaranteed for members of Plan

The establishment of the Plan shall not be construed as conferring any legal rights upon any employee or other person to a continuation of employment nor shall it interfere with the rights of the Borough to discharge any employee or to treat him without regard to the effect which such treatment might have upon him as a member of the Plan.

SECTION XVII. Termination of Plan

A. The Borough Council may terminate the Plan for any reason at any time. In case of termination of the Plan or discontinuance of required contributions the funds of the Plan shall be used for the exclusive benefit of members and contingent beneficiaries under the Plan except that, if the Borough, because of erroneous actuarial calculations, shall have contributed funds in excess of the amount required to satisfy all liabilities of the Plan for benefits, then such excess shall be returned to the Borough.

B. 1. In the event of such termination or upon complete discontinuance of the Borough's contributions, the Borough Council shall determine on the basis of actuarial valuation, where applicable, the share of the funds of the Plan allocatable to each member:

a. Any benefits that employees have accrued to date of termination or discontinuance of the Plan to the extent that these benefits are then funded or credited to their accounts shall be non-forfeitable and payable to them under provisions of paragraph B2 to the extent not restricted by subparagraphs b, b(1), and b(2) hereof.

b. In the event that such benefits are not funded or credited on an individual basis, they shall be payable in the following order;

(1) Each retired member or his contingent beneficiary receiving a pension payment and each member not yet retired who has reached his normal retirement date shall be entitled to a share equal to the reserve computed to be required to provide his full benefits.

(2) If there are sufficient funds to provide the benefits under A above, each member shall be entitled to a share equal to the reserve computed to be required to provide his accrued benefits, or, if funds are insufficient, to a share which has been reduced pro rata.

(2) The Borough Council may require that all shares be withdrawn in cash or in immediate or deferred annuities or other periodic payments, as it may determine.

SECTION XVIII. Limitation on Benefits in Case of Early Termination of Plan or Membership

A. Employees subject to Limitation. Notwithstanding any provision in the Plan to the contrary as of the date of the establishment of the Plan, the benefits of each of the twenty-five (25) highest paid employees (including any such high paid employees who are not members of the Plan at the time but may later become members) whose anticipated annual retirement benefit provided by Borough contributions will exceed fifteen hundred (\$1500.00) dollars shall be subject to the limitation described below.

B. Period of Limitation. The limitation shall apply to the benefits of employees described in paragraph A above if

1. The Plan is terminated within ten (10) years after its establishment; or

2. The benefits of said employees become payable within ten (10) years after the date of the establishment of the Plan; or

3. The benefits of said employee become payable after the Plan has been in effect for ten (10) years and the full current cost of the Plan have not been funded at the end of the ten (10) year period, the limitation of benefits shall continue in effect until the full current costs are funded for the first time.

C. The Limitation. During the period of limitation, the benefits provided for employees described in Paragraph A above shall be paid in full which have been provided by the Borough's contributions not exceeding the larger of the following amounts:

1. Twenty thousand (\$20,000.00) Dollars; or

2. An amount equal to twenty (20%) percent of the first fifty thousand (\$50,000.00) dollars of a member's average annual compensation for the five (5) calendar years immediately preceding the payment of the benefit multiplied by the number of years since the date of the establishment of the plan to the following dates:

- a. The date of termination of the Plan; or
- b. In the case of an employee described in subparagraph B1, the date the benefit becomes payable if before the date of termination of the Plan, or
- c. In the case of an employee described in subparagraph B2, the date of the failure to meet the full current cost of the Plan.
- d. With respect to sub-division a and b above, the date of the failure to meet the full current cost of the Plan shall be substituted for the date of the termination or the date of the payment of the benefit in the event that such failure to pay such costs should occur prior to date of termination of payment.

D. Application of the Limitation to Specific Benefits

1. Benefits on Termination of the Plan

a. If the Plan is terminated within the period of limitation, the termination benefits which any of the employees described in paragraph A of this section may receive from the Borough's contribution shall not exceed the benefits set forth in paragraph C of this section.

b. In the event of the termination of the Plan, distribution to the unretired members other than employees described in Paragraph A of this section shall include an equitable apportionment among such other members of all excess benefits purchased by the Borough contributions for the employees described in paragraph A of this section in the manner following: to each such other member in the ratio that the reserve liability then attributable to him bears to the total reserve liability under the Plan.

2. Termination of Employment -- If the member described in the Paragraph A of this section, leaves the employ of the Borough or withdraws from membership in the Plan, the benefits which he may receive from the Borough's contributions shall not at any time within the period of limitation exceed the benefits set forth in Paragraph C herein.

3. Death Benefits -- The limitation shall not restrict the full payment of any insurance, death, or survivors benefits on behalf of a member who dies while the Plan is in full effect and its full current costs have been met.

4. These conditions shall not restrict the current payment of full retirement benefits called for by the Plan for any retired member while the Plan is in full effect and its full current costs have been met.

SECTION XIX. Voluntary Contributions

At any time after the Effective Date of the Plan, a Member may make a voluntary contributions under the Plan, provided that a Member's voluntary contributions in any year may not, together with all voluntary contributions made by that Member in prior years, exceed ten (10) percent of the aggregate basic compensation received by that Member for all years that he has been a Member under the Plan and provided further that at no time shall Employer contributions or the

benefits be geared to such contributions by Members. The voluntary contributions of any Member shall be fully vested (non-forfeitable) in the Member at all times. The amount of a Member's voluntary contributions plus any earnings credited to such contributions shall be payable at death, disability, retirement, or termination of employment.

A Member may withdraw any voluntary contributions that he may have made under the Plan. The exercise of this right by a Member shall in no way affect his membership in the Plan, past or future contributions by the Employer on his behalf, or the basic benefits provided by any contributions of the Employer. The amount of such Member's voluntary contributions excluding any earnings of the Fund credited to a Member's voluntary contributions shall be payable in a lump sum by the Trustee within thirty (30) days following the Member's election to withdraw such voluntary contributions. The earnings, including subsequent earnings, on such voluntary contributions that are withdrawn, shall be payable at the end of one (1) year from the date said voluntary contributions were withdrawn.

Any Member who withdraws the value of his account, and such Member continues to be an Employee of the Employer, such Member shall be ineligible for participation in the Employees' voluntary contribution plan for a period of one (1) full year from the date of withdrawal.

The voluntary contributions may be used to purchase an investment annuity, with investment decisions made by the Member.

SECTION XX. Administrative Expenses

The expenses of administration of the Plan established by this Ordinance, including the compensation of the actuary and the Trustee of the Plan, exclusive of the payment of retirement or disability benefits, shall be paid by the Borough by appropriations made by the Borough Council, or by the Trustee at the direction of the Borough Council.

SECTION XXI. Amendment

Insofar as the provisions of this Ordinance are the same as statutory provisions, they shall be subject to change or repeal to comply with any future statutory provisions, and the provisions of this Ordinance may be amended or repealed if statutory authority be granted therefor or if statutory restrictions or mandates are eliminated and discretion vested in the Borough.

SECTION XXII. Severability

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

SECTION XXIII. Saving Clause

The passage of this ordinance and the repeal by it of any prior enabling ordinances relating to the establishment and regulation of an Employees' Pension Plan of the Borough of Alburty, Lehigh County, Pennsylvania, shall not invalidate the Retirement Board of the Borough created under such ordinance nor shall it invalidate any actions of said Board taken under such ordinances. This ordinance, in such respect, shall be deemed a continuation and codification of such prior enabling ordinances.

SECTION XXIV. Codification

This Ordinance represents a codification of the ordinances of the Borough of Alburdis relating to Employees' Pension Plans or Employees' Pension Funds and may be advertised as such.

ENACTED AND ORDAINED this 26th day of December, 1984.

Gulian P. Paine
President of Council

ATTEST:

Joseph Scheller
Borough Secretary

APPROVED this 26th day of December, 1984.

Charles Gerwin
Mayor