

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 432

(Duly Adopted December 29, 2004)

AN ORDINANCE AMENDING CHAPTER 17 OF THE ALBURTIS CODIFIED ORDINANCES (RELATING TO POLICE PENSION PLAN) TO CONFORM TO THE REQUIREMENTS OF PENNSYLVANIA ACTS 30 AND 64 OF 2002 (INCLUDING NEW MINIMUM BENEFITS FOR POLICE OFFICERS DISABLED OR KILLED IN SERVICE AND REVISED DEFINITION OF DEATH BENEFICIARIES), AUDITOR GENERAL OPINIONS CONCERNING PERMITTED INVESTMENT IN LIFE INSURANCE CONTRACTS AND CALCULATION OF COMPENSATION, AND THE REQUIREMENTS FOR QUALIFIED PLANS UNDER THE U.S. INTERNAL REVENUE CODE (INCLUDING TECHNICAL CHANGES RELATING TO COMPENSATION, HIGHLY COMPENSATED EMPLOYEES AND THEIR FAMILIES, MAXIMUM BENEFITS PERMITTED UNDER CODE SECTION 415, AND DIRECT ROLLOVERS).

WHEREAS, Boroughs with three (3) or more full-time police officers must provide pension benefits to such employees in accordance with the provisions of Act 600 of 1955, 53 PA. STAT. ANN. § 767-778; and

WHEREAS, the Borough of Alburdis has previously established a pension plan for its full-time police officers in accordance with Act 600, which plan has been codified to Chapter 17 of the Alburdis Codified Ordinances; and

WHEREAS, Act 600 of 1955 has recently been amended by Acts 30 and 64 of 2002, which require a number of changes and benefit improvements to the plan; and

WHEREAS, Council desires to amend the plan to conform to the requirements of Acts 30 and 64 of 2002 and technical changes to the requirements for a “qualified” retirement plan under the U.S. Internal Revenue Code; and

WHEREAS, prior to the adoption of this Ordinance the Council reviewed a cost estimate of the effect of the changes made herein prepared by the plan’s actuarial firm in

accordance Section 305 of the Municipal Pension Plan Funding Standard and Recovery Act, 53 PA. STAT. ANN. § 895.305; and

WHEREAS, prior to the adoption of this Ordinance, the terms of this ordinance were negotiated with and accepted by the Albutis Police Officers' Association;

WHEREAS, on December 22, 2004, the Borough published a public notice in the *East Penn Press*, a newspaper of general circulation in the Borough of Albutis, of its intention to consider and adopt on this Ordinance on December 29, 2004;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Albutis, Lehigh County, Pennsylvania, as follows:

SECTION 1. Codified Ordinances § 17-110 (relating to Police Pension Plan—Title & General Definitions—Compensation) is amended by amending subsections (a), (b), (e)(1), and (e)(2), and adding new subsections (g) and (h), as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 17-110 Compensation.

(a) **In General.** Except as provided in subsections (b) through ~~(f)~~ (h), the “Compensation” of a Qualified Employee for a given year (or other period for which a determination is being made) shall mean the Qualified Employee’s total Wages from the Employer actually paid, made available, or includible in gross income for the year (or other determination period).

(b) **Elective Deferrals.** “Compensation” shall also include amounts not currently includible in the Qualified Employee’s gross income by reason of the application of Code § 457 (relating to compensation deferred under an eligible deferred compensation plan for state and local governments and tax exempt organizations), Code § 414(h)(2) (relating to employee contributions to governmental plans that are picked up by the

employing unit and thus are treated as employer contributions), Code § 125 (relating to cafeteria plans), Code § 132(f)(4) (relating to qualified transportation fringes; but only after July 1, 2001), Code § 402(a)(8) (relating to 401(k) contributions made by an employer at the election of the employee), Code § 402(h)(1)(B) (relating to salary reduction contributions under a simplified employee pension plan), or Code § 403(b) (relating to certain annuities purchased by charitable organizations or public schools), or any elective deferrals (within the meaning of Code § 402(g)(3)), but only with respect to contributions made to plans maintained by the Employer.

* * *

(e) Maximum Amount Which May Be Treated As Compensation.

(1) General Rule.

(A) Code § 401(a)(17). The “Compensation” of a Qualified Employee for any given year shall not exceed the amount in effect for such year under Code § 401(a)(17), as adjusted for changes in the cost of living. (For any year beginning in 1996, the amount is \$150,000.00. The amount in effect for years beginning in the following calendar years are: 1994-96—\$150,000; 1997-99—\$160,000; 2000-01—\$170,000; 2002-03—\$200,000; 2004—\$205,000.)

(B) Prior to January 1, 2002. In determining benefits or restrictions as of any date on or after the Effective Date and before January 1, 2002, the “Compensation” taken into account for any year ending on or before December 31, 1993 shall not exceed \$150,000.

(C) On and After January 1, 2002. Notwithstanding any lower restrictions set forth in subparagraph (A), in determining benefits or restrictions as of any date on or after January 1, 2002, the “Compensation” taken into account for any year ending on or before December 31, 2001 shall not exceed \$200,000.

(2) Certain Highly Compensated Employees Prior to 1997 Highly Compensated Immediate Families. The “Compensation” for any given year which begins after December 31, 1988 and before January 1, 1997 of any Qualified Employee who is a member of a Highly Com-

pensated Immediate Family shall be equal to the Compensation of the Qualified Employee for the year (determined without regard to this subsection ~~(e)~~ (e)), **multiplied** by a fraction—

(A) whose numerator is equal to the amount in effect for such year under Code § 401(a)(17); **and**

(B) whose denominator is equal to the total Compensation of all members of the Highly Compensated Immediate Family from the Employer and Related Employers for the year (determined without regard to this subsection ~~(e)~~ (e)).

* * *

* * *

(g) Lump-Sum Payments for Accumulated Unused Leave. The “Compensation” of a Qualified Employee shall not include any lump-sum payment upon retirement for accumulated unused leave (e.g., vacation, sick, or personal leave) to the extent that such amounts are not permitted to be included in Compensation by the Pennsylvania Department of the Auditor General.

(h) Extraordinary Payments Attributable to a Different Period. In determining the “Compensation” of a Qualified Employee for any particular period of time, any extraordinary payments, such as back pay awards, which are made at one time but are attributable to service for a different period of time, shall be treated as “Compensation” for the period to which they are attributable and not “Compensation” at the time of payment.

SECTION 2. Codified Ordinances § 17-120(a) (relating to Police Pension Plan—Title & General Definitions—Highly Compensated Employee—In General) and the introduction to Codified Ordinances § 17-121 (relating to Police Pension Plan—Title & General Definitions—Highly Compensated Immediate Family) are amended as fol-

lows (with deletions indicated by strike-outs and insertions indicated by double underlining):

§ 17-120 Highly Compensated Employee.

(a) **In General.** The term “Highly Compensated Employee” shall include Highly Compensated Active Employees and Highly Compensated Former Employees. However, since the term is only applicable under this Plan for purposes of the definition of Compensation prior to 1997 (other nondiscrimination requirements not being applicable to collectively-bargained government plans), this term shall only be defined for the period before January 1, 1997.

* * *

§ 17-121 Highly Compensated Immediate Family.

For the period prior to January 1, 1997, the ~~The~~ term “Highly Compensated Immediate Family” shall mean any group of persons consisting of—

* * *

SECTION 3. Chapter 17, Article I of the Codified Ordinances (relating to Police Pension Plan—Title & General Definitions) shall be amended by adding the following new § 17-128.1 after existing § 17-128:

§ 17-128.1 Salary.

The monthly “Salary” of a Qualified Employee as of any given date on or after April 17, 2002 shall mean the Qualified Employee’s base hourly rate of compensation as of that date, multiplied by 2080 and divided by 12. {The term “Salary” is defined for purposes of the new Pa. Act 2002-30 minimum disability and killed in service benefits which are

based on salary at the time of the injury causing disability or death, in contrast to the pre-existing Act 600 benefits which are based on compensation averaged over a 36-month period—“Final Monthly Average Compensation”.}

SECTION 4. Codified Ordinances § 17-302(b) (relating to Police Pension Plan—Benefits—Disability Retirement Benefit—Form and Amount of Payments) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 17-302 Disability Retirement Benefit.

* * *

(b) Form and Amount of Payments. The Disability Retirement Benefit shall be paid in a series of monthly payments—

(1) beginning on the first day of the calendar month following the calendar month of the Separation from Service, and

(2) continuing on the first day of each succeeding month until the *earlier of*—

(A) the first day of the calendar month in which the Participant ceases to be Disabled, or

(B) the first day of the calendar month in which the Participant dies,

(3) in an amount for any given month equal to—

(A) fifty percent (50%) of the Participant’s Final Average Monthly Compensation, **less**

(B) the amount of any Social Security disability payments to which the Participant is entitled for that month; ;

(4) provided that if the Participant became Disabled on or after April 17, 2002, the amount of the monthly payments shall be the

greater of the amount provided under paragraph (3) or the following amount—

(A) fifty percent (50%) of the Participant's monthly Salary at the time the disability was incurred, less

(B) the amount of any Social Security disability payments to which the Participant is entitled for that month for the same injuries which caused the Participant to become Disabled.

* * *

SECTION 5. Codified Ordinances § 17-305 (relating to Police Pension Plan—Benefits—Death Benefits) is amended by amending the introduction to subsection (a), amending the title of subsection (b), adding a new subsection (b.1), and amending subsections (c) and (d)(1), as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 17-305 Death Benefits.

(a) Qualification for Normal Death Benefit. The Beneficiaries of a Participant shall be entitled to receive a Normal Death Benefit if they are not entitled to receive a Killed in Service Death Benefit under subsection (b.1) and if the Participant dies—

* * *

(b) Normal Death Benefit—Form and Amount of Payments.

* * *

(b.1) Killed in Service Death Benefit. The Beneficiaries of a Participant who dies on or after April 17, 2002 due to injuries incurred while performing the duties of his/her employment as a Qualified Employee shall be entitled to receive a Killed in Service Death Benefit, which shall consist of a series of monthly payments—

(1) beginning on the first day of the month following the month of the Participant's death, and

(2) continuing on the first day of each succeeding month until there is no person who qualifies as a Beneficiary,

(3) in a monthly amount equal to one hundred percent (100%) of the Participant's monthly Salary as of the Participant's date of death.

(c) Beneficiaries.

(1) In General. Any given payment in the series of payments which constitutes the Normal Death Benefit or Killed in Service Death Benefit shall be paid to the person(s) who is/are a Beneficiary as of the date for which the payment is being made.

(2) Definition—Before April 17, 2002. In the case of a Participant who dies before April 17, 2002, for ~~For~~ purposes of the Normal Death Benefit, a person is a “Beneficiary” of a Participant as of the date of any given payment if:

(A) he/she is the Eligible Spouse of the Participant, is then living, and has not remarried following the death of the Participant; **or**

(B) he/she is the child of the Participant, is then living, and has not yet attained age 18, **and** there is no person as of that date who qualifies under subparagraph (A).

(2.1) Definition—On or After April 17, 2002. In the case of a Participant who dies on or after April 17, 2002, for purposes of the Normal Death Benefit and Killed in Service Death Benefit, a person is a “Beneficiary” of a Participant as of the date of any given payment if:

(A) he/she is the Eligible Spouse of the Participant and is then living; or

(B) he/she is the child of the Participant, is then living, has not yet attained age 18 (or is attending college and has not yet attained age 23), and there is no person as of that date who qualifies under subparagraph (A). For purposes of this subparagraph (B), a person is “at-

tending college” if he/she is registered at an accredited institution of higher learning and is carrying a minimum course load of seven (7) credit hours per semester.

(3) Multiple Beneficiaries. For purposes of the Normal Death Benefit and Killed in Service Death Benefit, if there is more than one Beneficiary at the time of any given payment, the amount of the payment shall be split into equal shares, one for each Beneficiary.

(d) Death Benefit Return of Accumulated Contributions.

(1) In General. If a Participant—

(A) dies at a time when his/her Beneficiaries are not eligible to receive a Normal Death Benefit or Killed in Service Death Benefit **or has no Beneficiaries, and**

(B) did not receive any payments under a Normal Retirement Benefit, Disability Retirement Benefit, Transition Disability Retirement Benefit, Vested Benefit, or Transition Vested Benefit during his/her lifetime,

then the Plan shall distribute an amount equal to the amount of the Participant’s Accumulated Contributions *plus* interest to the person(s) designated by the Participant in writing on forms prescribed by the Administrator. Recipients may be designated contingently and/or concurrently. If the Participant failed to designate a recipient or if no designated recipient shall have survived the Participant, the distribution shall be made to the estate of the Participant.

* * *

* * *

SECTION 6. Codified Ordinances § 17-306 (relating to Police Pension Plan—Benefits—Limitation on Benefits) is amended by amending subsections (a)(2), (a)(3), (a)(6), (b), (c), and (d) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 17-306 Limitation on Benefits.

(a) **Definitions.** For purposes of this Section, the following words and phrases shall have the meanings provided in this subsection (a):

* * *

(2) **Compensation.** For purposes of this Section *only*, the term “Compensation” shall have the meaning provided in § 17-110, *with the following modifications*:

(A) all references to the “Employer” shall be deemed to be references to the “Employer and any Related Employer”; and

(B) § 17-110(b) and (e) shall be deleted; for periods before January 1, 1998; and

(C) § 17-110(c), (g), and (h) shall be deleted.

(3) [RESERVED] **Compensation Limitation.** The term “Compensation Limitation” shall mean, for any Limitation Year, 100% of the Participant’s Compensation for the period of three (3) consecutive calendar years during which the Participant both was an Active Participant in this Plan and had the greatest aggregate compensation from the employer, with the following modifications, as applicable—

(A) in the case of a Participant who has incurred a Separation from Service, the Compensation Limitation shall be adjusted for changes in the cost of living since the applicable base period in the calendar year before the calendar year of the Separation from Service, in accordance with the provisions of Code § 415(d);

(B) if the Participant has fewer than ten (10.0000) Years of Service, the Computation Limitation as computed under the preceding provisions of this paragraph (3) shall be adjusted by multiplying the previously computed amount by a fraction—

(I) whose numerator is equal to the number of Years of Service in the Plan (rounded to four decimal places), *but not less than one (1.0000), and*

(II) whose denominator is ten (10.0000).

* * *

(6) Dollar Limitation. The term “Dollar Limitation” shall mean, for any Participant in any Limitation Year, the dollar amount in effect under Code § 415(b)(1)(A) for such Limitation Year as adjusted under Code § 415(d) (\$165,000 for Limitation Years ending in 2004; 160,000 for Limitation Years ending in 2002 or 2003; \$140,000 for 2001; \$135,000 for 2000; \$130,000 for 1998 or 1999; \$125,000 for 1997; \$120,000 for 1995 or 1996; \$118,800 for 1994; \$115,641 for 1993; \$112,221 for 1992; \$108,963 for 1991; \$102,582 for 1990; \$98,064 for 1989; \$94,023 for 1988; and \$90,000 for 1987) (“**Standard Adjusted Dollar Limitation**”), with the following modifications, as applicable—

(A) ~~If~~ if the series of benefit payments under this Plan commenced after the Participant attained age 65, the Dollar Limitation shall be adjusted:

~~(I)~~ to the amount equal to the annual payment under a straight life annuity for the life of the Participant commencing on the date benefit payments under this Plan actually commenced which is actuarially equivalent to a straight life annuity for the life of the Participant commencing at age 65 with an annual payment equal to the Standard Adjusted Dollar Limitation; Actuarial equivalence shall be determined in accordance with subparagraph (C), except that mortality between age 65 and the age at which benefits commence shall be ignored.

~~(II)~~ ~~with actuarial equivalence determined based on the mortality assumptions prescribed under Code § 415(b)(2)(e)(v), and interest assumptions equal to the lesser of—~~

~~(i)~~ ~~five percent (5%); or~~

~~(ii)~~ ~~the rate in effect under § 17-115(b).~~

(B) ~~If~~ if the series of benefit payments under this Plan commenced before the Participant attained age 62 ~~but after the Participant attained age 55~~, the Dollar Limitation shall be adjusted to the ~~greater~~ greater of ~~\$75,000 or:~~

~~(I)~~ the amount equal to the annual payment under a straight life annuity for the life of the Participant commencing on the

date benefit payments under this Plan actually commenced which is actuarially equivalent to a straight life annuity for the life of the Participant commencing at age 62 with an annual payment equal to the Standard Adjusted Dollar Limitation. Actuarial equivalence shall be determined in accordance with subparagraph (C), except that the Dollar Limitation shall not be reduced below the amount described in subparagraph (E), and the adjustment in the Dollar Limitation shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

~~(II) with actuarial equivalence determined based on the mortality assumptions prescribed under Code § 415(b)(2)(e)(v), and interest assumptions equal to the **greater** of—~~

~~(i) five percent (5%); **or**~~

~~(ii) the rate in effect under § 17-115(b).~~

~~(C) if the series of benefit payments under this Plan commenced before the Participant attained age 55, the Dollar Limitation shall be adjusted to the **greatest** of:~~

~~(I) the amount determined under clauses (I) and (II) of subparagraph (B);~~

~~(II) the amount equal to the annual payment under a straight life annuity for the life of the Participant commencing on the date benefit payments under this Plan actually commenced which is actuarially equivalent to a straight life annuity for the life of the Participant commencing at age 65 with an annual payment of \$75,000, with actuarial equivalence determined as described in subparagraph (B)(II); **or**~~

~~(III) if the Participant has credit for at least fifteen (15.0000) Years of Service, the dollar amount in effect under Code § 415(b)(2)(G) for such Limitation Year as adjusted under Code §§ 415(b)(2)(G) and 415(d) (originally \$50,000).~~

(C) In adjusting the Dollar Limitation, actuarial equivalence is determined as the **lesser** of—

(I) the actuarial equivalent computed using the interest rate and mortality table specified in § 17-115; or

(II) the actuarial equivalent computed using a five percent (5%) interest rate and the Applicable Mortality Table. For distributions with annuity starting dates in Plan Years beginning before January 1, 2000, the “Applicable Mortality Table” shall mean the table specified in § 17-115(a). For distributions with annuity starting dates in Plan Years beginning after December 31, 1999, the “Applicable Mortality Table” shall mean the mortality table based on the prevailing commissioner’s standard table (as described in Code § 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of Code § 807(d)(5)), that is prescribed by the Commissioner of Internal Revenue in revenue rulings, notices, or other guidance, published in the Internal Revenue Bulletin.

(D) If if the Participant has fewer than ten (10.0000) years of participation in the Plan, the Dollar Limitation as computed under the preceding provisions of this paragraph (6) shall be adjusted by multiplying the previously computed amount by a fraction—

(I) whose numerator is equal to the number of years of participation in the Plan (rounded to four decimal places), *but not less* than one (1.0000), **and**

(II) whose denominator is ten (10.0000).

For purposes of this subparagraph (D), the term “years of participation” shall have the same meaning as the term Years of Service, *except* that no Days of Service prior to the date the Participant first became a Participant in this Plan shall be credited.

(E) For Limitation Years ending before January 1, 2002, the Dollar Limitation shall not be reduced below \$75,000.00 if the benefit payments commence at or after age 55, and shall not be reduced below the actuarial equivalent of \$75,000.00 for age 55 if the benefit payments commence before age 55. For Limitation Years ending after December 31, 2001, nothing in this paragraph (6) shall permit a reduction in the accrued benefit of any Participant (as limited under this § 17-306) be-

low the Participant's accrued benefit as limited under this § 17-306 as of the last day of the last Limitation Year ending in 2001.

(F) In the case of a Participant who has at least fifteen (15.0000) Years of Service, subparagraph (B) shall not apply.

(G) In the case of a Participant receiving a Disability Retirement Benefit, or a Beneficiary receiving a Normal Death Benefit or Killed in Service Death Benefit, subparagraphs (B) and (D) shall not apply.

* * *

(b) General Rule. The amount of benefits provided under this Plan on behalf of any Participant during any Limitation Year (whether of this Plan or any other plan of the Employer or any Related Employer) shall be reduced (under the procedures of subsection (e)) to the extent necessary and possible to meet the limitations established in subsections (c) and (d). Since the limitations set forth in this Section change annually, benefit payments which had been limited by the provisions of this Section in one Limitation Year may be increased with respect to payments in following Limitation Years so long as they stay within the applicable limits in each Limitation Year. Benefit increases resulting from an increase in the Code § 415 limitations due to an amendment of the Code (as opposed to an automatic increase under the cost-of-living adjustment provisions of the Code) will be provided only to those then-current or former Participants who have an accrued benefit under this Plan immediately prior to the effective date of the Code amendment (other than an accrued benefit resulting from a benefit increase *solely* as a result of the Code amendment).

(c) Limitation for All Defined Benefit Plans.

(1) In General. The total amount of benefits which may be distributed on behalf of any Participant with respect to any Limitation Year (whether of this Plan or any other plan of the Employer or any Related Employer) under all of the defined benefit plans (as defined in Code § 415(k)) maintained by the Employer or any Related Employer (not including any benefits attributable to employee or rollover contributions, nor, for Limitation Years beginning after December 31, 2001, any multiemployer plan and as adjusted so that the benefits paid under this

Plan are equivalent to an annual benefit payable in the form of a straight life annuity with no ancillary benefits), when expressed as an Annual Benefit, shall not exceed the lesser of —

~~(1) the Dollar Limitation for that Limitation Year, or~~

~~(2) the Compensation Limitation for that Limitation Year.~~

(2) **Annual Benefit.** For purposes of this § 17-306, the term “Annual Benefit” means a benefit payable annually in the form of a straight life annuity with no ancillary benefits. If the form of benefits being paid from a defined benefit plan is other than an Annual Benefit, the form shall be adjusted to an Annual Benefit as follows:

(A) Any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account;

(B) That portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (within the meaning of the Code) shall not be taken into account;

(C) The interest rate assumption shall not be less than the greater of —

(I) the rate specified in the plan (in the case of this Plan, § 17-115(b)); or

(II) five percent (5%) in the case of a Qualified Distribution, or the Applicable Interest Rates in any other case.

(D) The mortality assumption shall be the Applicable Mortality Table (as defined in § 17-306(a)(6)(C)(II)).

(E) For purposes of this paragraph, a “Qualified Distribution” is a nondecreasing annuity payable for a period not less than the life of the Participant, or, in the case of a qualified preretirement survivor annuity, the life of the surviving spouse. A nondecreasing annuity includes a qualified joint and survivor annuity, and an annuity that decreases merely because of the cessation or reduction of Social Security supplement or qualified disability payments (as defined in Code § 411(a)(9)).

(F) For purposes of this paragraph, the “Applicable Interest Rates” shall mean —

(I) For distributions with annuity starting dates in Plan Years beginning after December 31, 1986 and before January 1, 2000: The rate or rates that would be used by the Pension Benefit Guaranty Corporation for a trustee single-employer plan to value the participant's (or beneficiary's) vested benefit ("PBGC interest rate") if the present value of such benefit does not exceed \$25,000. The PBGC interest rate(s) are determined as of the first day of the Plan Year which contains the annuity starting date.

(II) For distributions with annuity starting dates in Plan Years beginning after December 31, 1999: The applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices, or other guidance, published in the Internal Revenue Bulletin. The applicable interest rate for a distribution is the rate for the lookback month for the stability period that contains the annuity starting date for the distribution. Each calendar quarter shall constitute a "stability period," and the "lookback month" is the second full calendar month preceding the first day of the stability period.

(3) **Total Annual Benefits Not In Excess of \$10,000.** Paragraph (1) shall not apply to a Participant for a Limitation Year if—

(A) the retirement benefits payable with respect to such Participant under this Plan and all defined benefit plans of the Employer and Related Employers (without adjustment to an Annual Benefit) do not exceed \$10,000.00 for the Limitation Year or any prior Limitation Year (as modified under Code § 415(b)(5) for persons with less than ten years of participation in a defined benefit plan, other than for persons described in subsection (a)(6)(G) of this § 17-306); and

(B) the Employer and any Related Employers have never maintained a defined contribution plan in which the Participant participated.

(4) **Transition Rule.** If a Participant was a participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined benefit plans maintained by the Employer or any Related Employer, which were in existence on May 6, 1986, the limi-

tation of paragraph (1) shall not be less than the accrued benefit of the Participant as of the close of the last Limitation Year beginning before December 31, 1986, when expressed as an Annual Benefit (disregarding any changes in the terms and conditions of the plan after May 5, 1986 and any cost-of-living adjustments after May 5, 1986). This paragraph (4) applies only if defined benefit plans individually and in the aggregate satisfied the requirements of Code § 415 for all Limitation Years beginning before January 1, 1987.

(d) Overall Limitation for All Plans. For any Limitation Year beginning before January 1, 2000, the The sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction for any Participant during any Limitation Year (whether of this Plan or any other plan of the Employer or any Related Employer) shall not exceed 1.0.

* * *

SECTION 7. Chapter 17, Article I of the Codified Ordinances (relating to Police Pension Plan—Benefits) shall be amended by adding the following new § 17-306.1 after existing § 17-306:

§ 17-306.1 Special Ad-Hoc Cost of Living Adjustments.

Since no Participants have received any benefits under the Plan at any time on or before July 1, 2002, the 1989 and 2002 special ad-hoc cost of living adjustments provided by Pennsylvania law are not applicable to this Plan.

SECTION 8. Codified Ordinances § 17-309 (relating to Police Pension Plan—Benefits—Direct Rollovers of Distributions) is amended by amending subsections

(b)(3) and (b)(4), and adding a new subsection (b)(5), as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 17-309 Direct Rollovers of Distributions.

* * *

(b) Definitions. When used in this Section, the words and phrases defined in this subsection shall have the following meaning:

* * *

(3) 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:

(A) 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 ten (10) years or more;

(B) any distribution to the extent such distribution is required under Code § 401(a)(9); and

(C) the portion of any distribution that is not includible in gross income for federal income tax purposes (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), other than Qualified After-Tax Contributions (which do qualify as an Eligible Rollover Distribution).

(4) Eligible Retirement Plan. An “Eligible Retirement Plan” is—

~~(A) In-General.~~ Except as provided in subparagraph ~~(B)~~, an “Eligible Retirement Plan” is—

(A) ~~(1)~~ an individual retirement account described in Code § 408(a);

~~(B) (II)~~ an individual retirement annuity described in Code § 408(b);

~~(C) (III)~~ an annuity plan described in Code § 403(a), provided, however that this subparagraph (C) shall only apply to distributions made before January 1, 2002 if the Distributee is the employee or former employee; or

~~(D) (IV)~~ a qualified trust described in Code § 401(a) which is a defined contribution plan, provided, however that this subparagraph (C) shall only apply to distributions made before January 1, 2002 if the Distributee is the employee or former employee;

~~(E)~~ an annuity contract described in Code § 403(b), but only for distributions made after December 31, 2001; or

~~(F)~~ an eligible deferred compensation plan described in Code § 457(b) which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state, and which agrees to separately account for the amount transferred into such plan from this Plan, but only for distributions made after December 31, 2001,

that accepts the Distributee's Eligible Rollover Distribution.

~~(B) Distributions to Surviving Spouse.~~ In the case of an Eligible Rollover Distribution to a surviving spouse, an "Eligible Retirement Plan" is—

~~(I)~~ an individual retirement account described in Code § 408(a); or

~~(II)~~ an individual retirement annuity described in Code § 408(b),

that accepts the Distributee's Eligible Rollover Distribution.

~~(5) Qualified After-Tax Contributions.~~ A portion of a distribution consists of "Qualified After-Tax Contributions" if—

~~(A)~~ all of that portion consists of after-tax employee contributions which are not includible in gross income;

~~(B)~~ all of that portion is to be rolled into—

(I) an Eligible Retirement Plan described in paragraph 4(A) or 4(B); or

(II) an Eligible Retirement Plan described in paragraph 4(C) or 4(D) that agrees to separately account for the amounts so transferred, including separately accounting for the part of the rollover which is includible in gross income and the part of the rollover which is not includible in gross income; and

(C) the distribution was made after December 31, 2001.

SECTION 9. Codified Ordinances § 17-317 (relating to Police Pension Plan—Benefits—Compliance with Code § 401(a)(9)) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 17-317 Compliance with Code § 401(a)(9).

The provisions of this Article III are designed to comply with the latest commencement of benefit and minimum distribution requirements of Code § 401(a)(9) and the regulations promulgated thereunder, except as specifically required by Act 600 of 1955, 53 PA. STAT. ANN. § 767 et seq. To the extent any provision of this Article III does not provide for the payment of the minimum distributions required through any given date under Code § 401(a)(9) and the regulations promulgated thereunder (except as required by Act 600), this Plan shall be deemed amended in such a way as to comply with the minimum requirements of Code § 401(a)(9) and the regulations promulgated thereunder.

SECTION 10. Codified Ordinances § 17-603(a) (relating to Police Pension Plan—Trust & Investments—Investment of the Trust Fund—In General) and § 17-604 (relating to Police Pension Plan—Trust & Investments—Life Insurance Policies and An-

nuity Contracts) are amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 17-603 Investment of the Trust Fund.

(a) **In General.** Except as provided in this Section and §§ 17-605 (relating to Investment Managers), and 17-609 (relating to limiting directions from the Administrator), the Trustees shall have the power to invest and re-invest at any time all money or other property of any description held by them and constituting part of the Trust Fund. They may make such investments in any manner they deem advisable (subject to the duty of care required under § 17-803 and the other fiduciary requirements of Article VIII) and will not be limited to investments which are lawful for Trustees, so long as such investments are permitted under Pennsylvania law for municipal retirement plans and do not disqualify this Plan for general municipal pension system state aid. For example, without limiting the generality of the foregoing, the Trustees may invest in bonds, notes, mortgages, property, oil, gas, and mineral rights, royalties, or interests, life insurance, annuity contracts, other contracts, choses in action, and shares or certificates of participation issued by investment companies or investment trusts. However, in making investments, the Trustees shall keep in mind the need for a certain degree of liquidity in order to provide benefits under this Plan.

* * *

§ 17-604 Life Insurance Policies and Annuity Contracts.

(a) **Restrictions on Purchase.** The Trustees may ~~not~~ only invest in insurance policies on the lives of Participants to the extent approved by the Department of the Auditor General for inclusion in Act 600 municipal police pension plans eligible for general municipal pension system state aid, and may only invest in annuity contracts on the lives of Participants which are retirement annuity polices, retirement income endowment policies, disability income policies, a combination of such policies, or other annuity contracts permitted under Pennsylvania law and approved by the Depart-

ment of the Auditor General for inclusion in municipal pension plans eligible for general municipal pension system state aid.

(b) Requirements for Permitted Contracts. The Trustee may apply for permitted insurance or annuity contracts on any day of any month, and may continue to hold contracts on the lives of Inactive Participants which were purchased earlier. Each contract shall provide that the Trustees shall be the owner of such contract while it is held under this Trust, and that it may be cash surrendered or exchanged for another policy before the insured or annuitant attains the Normal Retirement Age (at least). All rights, options, and privileges which are available by the terms of such contracts shall be vested *exclusively* in or exercised *solely* by the Trustees. Benefits under such contracts shall be paid to the Trustees. The benefits of a Participant or Beneficiary under this Plan shall not be effected in any way by whether this Plan elected to invest in insurance or annuity contracts or the amount of payments received by the Trustees under such contracts; such contracts are merely investments of the Plan for the purpose of funding the Plan's benefit obligations under Article III (as are any other investments) and do not constitute independent and/or additional benefits to any Participant or Beneficiary. In the event of any conflict between the terms of this Plan and the terms of any insurance or annuity contract purchased hereunder, the Plan provisions shall control.

SECTION 11. Codified Ordinances § 17-607 (relating to Police Pension Plan—Trust & Investments—Rollovers) and § 17-608 (relating to Police Pension Plan—Trust & Investments—Plan-to-Plan Transfers) are amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 17-607 Rollovers.

No person may roll over any property to the Trust Fund which was received from other qualified plans, Code § 403(b) annuities, Code § 457 qualified deferred compensation plans, or similar programs (whether received directly or indirectly through an Individual Retirement Account,

and whether as a “Direct Rollover” under Code § 401(a)(31) or a rollover via the Participant).

§ 17-608 Plan-to-Plan Transfers.

The Trustees may not accept transfers of assets from other qualified plans, Code § 403(b) annuities, Code § 457 qualified deferred compensation plans, or similar programs, to this Plan.

SECTION 12. Codified Ordinances § 17-1007 (relating to Police Pension Plan—Miscellaneous—Construction) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 17-1007 Construction.

This Plan and Trust Agreement shall be construed and administered according to the laws of the United States of America and the Commonwealth of Pennsylvania. Further, this Plan and Trust Agreement shall be construed and administered so as to conform to the applicable requirements for qualification under Code §§ 401(a) and 501(a) and shall be deemed amended automatically to conform to such legal requirements as in effect from time to time to the extent necessary (except as may be specifically required to the contrary by Act 600 of 1955 as amended, 53 PA. STAT. ANN. § 767 et seq. notwithstanding the requirements for federal qualified plan status).

SECTION 13. The amendments to Chapter 17 of the Codified Ordinances made by this Ordinance shall be retroactively effective as of the dates set forth in the text of the amendments, or where no date is provided in the text, as of the Effective Date of the plan under § 17-112, and shall be treated as amendments to the Borough of Alburty Police

Pension Plan as set forth in Chapter 17 of the Codified Ordinances and Ordinance No. 327 (for the period prior to its codification as Chapter 17).

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, this 29th day of December, 2004, in lawful session duly assembled.

**BOROUGH COUNCIL
BOROUGH OF ALBURTIS**

Steven R. Hill, President

Attest:

Melanie Hansen, Secretary

AND NOW, this 29th day of December, 2004, the above Ordinance is hereby
APPROVED.

Russell J. Afflerbach, Mayor