

**BOROUGH OF ALBURTIS  
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 495

(Duly Adopted March 30, 2011)

AN ORDINANCE AMENDING CHAPTER 18 OF THE ALBURTIS CODIFIED ORDINANCES (RELATING TO NONUNIFORMED EMPLOYEES PENSION PLAN) TO PROVIDE THAT THE CONTRIBUTION PERCENTAGE FOR A PLAN YEAR SHALL BE INCREASED TO THE EXTENT NECESSARY SO THAT (1) NET EARNINGS ON STATE AID CONTRIBUTED TO THE PLAN, FROM THE TIME OF CONTRIBUTION TO THE TIME ALLOCATED TO PARTICIPANT ACCOUNTS ON THE LAST DAY OF THE PLAN YEAR, ARE USED TO PROVIDE ADDITIONAL PARTICIPANT BENEFITS BEYOND THE REQUIRED 7.00% CONTRIBUTION FOR THAT PLAN YEAR RATHER THAN BEING USED TOWARDS THE REQUIRED 7.00% CONTRIBUTION, AND (2) ANY STATE AID CONTRIBUTED TO THE PLAN FOR A PLAN YEAR IN EXCESS OF THE AMOUNT REQUIRED TO FUND ALLOCATIONS TO PARTICIPANT ACCOUNTS FOR THAT PLAN YEAR SHALL BE USED TO PROVIDE ADDITIONAL PARTICIPANT BENEFITS BEYOND THE REQUIRED 7.00% CONTRIBUTION RATHER THAN BEING TRANSFERRED TO THE POLICE PENSION PLAN IF THE EXCESS DOES NOT EXCEED TWO HUNDRED FIFTY DOLLARS (\$250.00).

**WHEREAS**, the Borough of Alburtis has established a pension plan for its nonuniformed employees; and

**WHEREAS**, the provisions of that plan have been codified to Chapter 18 of the Al-  
burtis Codified Ordinances; and

**WHEREAS**, the Borough Council desires to insure that all net Income on state aid contributed to the plan during a Plan Year from the time of contribution until allocated to Participant accounts on the last day of the Plan Year, and all net Income during a Plan Year on Borough contributions to the Plan not derived from state aid from the time of contribution until allocated to Participant accounts, are allocated to the accounts of active participants as of the last day of the Plan Year in addition to the regular allocation of seven percent (7.00%) of compensation paid in that Plan Year, rather than being used towards the regular allocation of seven percent (7.00%) of compensation; and

**WHEREAS**, in the event that state aid contributed to the Plan during a Plan Year exceeds the amount required to fund required allocations to Plan Participants for the Plan Year (which can occur because state aid contributions are made before the end of the Plan Year while the actual required allocations are not known until the end of the Plan because an employee's qualification for a contribution and the amount of his/her compensation for the Plan Year cannot be determined until the end of the Plan Year), Borough Council desires to allocate the excess state aid to the accounts of active participants as of the last day of the Plan Year in addition to the regular allocation of seven percent (7.00%) of compensation paid in that Plan Year, rather than transfer the excess to the Police Pension Plan, if the excess does not exceed two hundred fifty dollars (\$250.00); and

**WHEREAS**, prior to the adoption of this Ordinance the Council reviewed the following cost estimate provided by the Borough Solicitor of the effect of the changes made herein, as required by Section 305(d) of the Municipal Pension Plan Funding Standard and Recovery Act, 53 PA. STAT. ANN. § 895.305(d):

The amendment requires that all income earned during a Plan Year on amounts contributed by the Borough to the Plan (whether derived from state aid or from Borough funds), from the time of contribution until the time they are allocated to the accounts of individual participants, shall be allocated to the accounts of active participants as of the last day of the Plan Year *in addition to* the regular allocation of seven percent (7.00%) of compensation paid in that Plan Year. The Plan as so amended would not permit this income to be used *towards* the regular allocation of seven percent (7.00%) of compensation; only the principal amount of the contributions could be used to fund the regular allocation. Thus, the amount the Borough must contribute to the Plan is greater than it would be if income were used towards the regular 7.00% allocation. In the past decade, the greatest net amount of such income in any year was \$106.98, and the amount is typically less than \$30.00.

The amendment also addresses the situation where the amount of state aid contributed to the Plan during a Plan Year exceeds the amount required to fund required allocations to participants for that Plan Year. Under the existing provisions of the Plan, any such excess is to be transferred to the Police Pension Plan. However, when the amount of the excess is small (under \$250.00), Council prefers to use the excess to provide additional benefits for the nonuniformed Plan participants, and the amendment so provides. These benefits do not require the Borough to make any additional contributions to the Plan beyond the state aid already

contributed. However, if the excess had been transferred to the Police Pension Plan as an additional contribution beyond the amount required to be contributed to that Plan for that Plan Year, it would potentially cause a small reduction in the amount of contributions required to be made to the Police Pension Plan in future Plan Years. From a present value perspective, the cost to the Borough of this Plan amendment is the amount of the excess in any Plan Year there is such an excess. In the past decade, there has only been a small excess on one occasion, in the amount of \$112. The maximum cost for a Plan Year is \$250.

**WHEREAS**, on March 23, 2011, the Borough published a public notice in the *East Penn Press*, a newspaper of general circulation in the Borough of Alburdis, of its intention to consider and adopt on this Ordinance on March 30, 2011;

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

**SECTION 1.** Effective January 1, 2010, Codified Ordinances § 18-403 (relating to Nonuniformed Employees Pension Plan—Accounting—Allocation of Income) is amended by amending subsection (b) and adding a new subsection (c) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 18-403 Allocation of Income.**

\* \* \*

(b) **Special Rule —~~Suspense Account.~~** If the only account(s) assigned to a segregated portion of the Trust Fund ~~are~~ is the Suspense Account and/or the only accounts assigned to a segregated portion of the Trust Fund are the Suspense Account and the Early Employer Contributions Account, the Income of such segregated portion shall be allocated among all the other accounts described in § 18-401(a) through (c) with a positive balance as of the day the Income is determined, according to each account's portion of the following total:

\* \* \*

**(c) Special Rule—Early Employer Contributions Account.** If the only account assigned to a segregated portion of the Trust Fund is the Early Employer Contributions Account, the Income of such segregated portion for a Plan Year (if greater than zero) shall be allocated as of the last day of the Plan Year among the Employer Contribution Accounts of the Qualified Recipients for that Plan Year by increasing the percentage in effect under § 18-501 (relating to Additions to Employer Contribution Accounts—Annual Allocation) as described in that section. All of such Income must be used to provide additional credits for Qualified Recipients beyond those which would have been received in the absence of such Income.

**SECTION 2.** Effective January 1, 2010, Codified Ordinances § 18-501 (relating to Nonuniformed Employees Pension Plan—Additions to Employer Contribution Accounts—Annual Allocation) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 18-501 Annual Allocation.**

**(a) In General.** Subject to the provisions of Article VII (relating to Maximum Additions), § 18-504(b) (relating to Uniformed Service), and § 18-505 (relating to Suspended Employer Contribution Account), and subject to modification under subsection (b), as of the last day of each Plan Year, the Employer Contribution Account of each Qualified Recipient (*see* § 18-502(a)) shall be credited with an amount equal to:

**(a)** ~~For the 1996, 1997, and 1998 Plan Years: 4.65% of the Qualified Recipient's Compensation for the portion of the Plan Year during which he was an Active Participant; or~~

**(b)** ~~For the 1999 through 2006 Plan Years: 7.00% of the Qualified Recipient's Compensation for the portion of the Plan Year during which he was an Active Participant.~~

(e) ~~For the 2007 and Subsequent Plan Years:~~ **7.00%** of the Qualified Recipient's Compensation *for the portion* of the Plan Year during which he was an Active Participant.

**(b) Increase.** ~~However, the~~ The percentage under subsection (a) shall be increased ~~above 7.00%~~ for any given Plan Year if and to the extent necessary so that the total amount of credits provided for that Plan Year under this Section and § 18-504(b) (relating to Payment of Employer Contributions—Uniformed Service) is not less than the sum of:

**(1)** the greater of—

**(A)** the total amount which would be credited for all Qualified Recipients for that Plan Year under subsection (a) prior to the application of this subsection (b), plus the amount of credits during that Plan Year under § 18-504(b) (relating to Uniformed Service); or

**(B)** the maximum amount of withdrawals able to be made for that Plan Year from the Suspense Account and the Forfeiture Account under § 18-503 (relating to Funding of Credits); plus

**(2)** any Income to be allocated to the Employer Contribution Accounts of Qualified Recipients for the Plan Year under § 18-403(c) (relating to Early Employer Contributions Account); and

**(3)** any amount to be allocated to the Employer Contribution Accounts of Qualified Recipients for the Plan Year under § 18-504(d)(2)(A) (relating to contributions of state aid in excess of the amount required).

**SECTION 3.** Codified Ordinances § 18-504(d)(2) (relating to Nonuniformed Employees Pension Plan—Additions to Employer Contribution Accounts—Payment of Employer Contributions—Mistake of Fact) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

**§ 18-504 Payment of Employer Contributions.**

\* \* \*

(d) **Mistake of Fact.** The actual required Employer contributions for a given Plan Year cannot be known until the end of the Plan Year, since an employee's qualification for a contribution and the amount of his/her Compensation for the Plan Year cannot be determined until that time. Consequently, the estimates made by the Employer in determining the minimum municipal obligation for the Plan Year and in making contributions to the Plan during the Plan Year most likely will be either higher or lower than the actual required contributions. Therefore, for the 1999 and succeeding Plan Years:

\* \* \*

(2) If there otherwise would remain ~~remains~~ a positive balance in the Early Employer Contributions Account as of the last day of the Plan Year after making the required allocations to Participants under § 18-501 (and after the Income earned by any segregated portion of the Trust Fund to which the Early Employer Contributions Account is assigned has been allocated to other accounts under § 18-403), then:

(A) That that portion of the Early Employer Contributions Account as of the last day of the Plan Year which otherwise would remain and which is attributable to grants by the Commonwealth under the General Municipal Pension System State Aid Program shall be transferred to the Borough of Alburtis Police Pension Plan and Trust, together with the Income earned on that amount from the last day of the Plan Year until the date of the transfer, except that if such portion does not exceed Two Hundred Fifty Dollars (\$250.00), then such portion shall instead be allocated as of the last day of the Plan Year among the Employer Contribution Accounts of the Qualified Recipients for that Plan Year by increasing the percentage in effect under § 18-501 (relating to Additions to Employer Contribution Accounts—Annual Allocation) as described in that section.

(B) That portion of the Early Employer Contributions Account which is *not* attributable to state aid shall either be:

~~(I) (A)~~ returned to the Employer (if so directed by the Administrator within one year after the date the contributions were made to the Plan); **or**

~~(II) (B)~~ treated as a new Employer contribution for the following Plan Year, and retained in the Early Employer Contributions Account.

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**DULY ORDAINED** and **ENACTED** by the Borough Council of the Borough of Al-  
burtis, this 30<sup>th</sup> day of March, 2011, in lawful session duly assembled.

BOROUGH COUNCIL  
BOROUGH OF ALBURTIS

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Steven R. Hill, President

Attest:

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Sharon Trexler, Executive Secretary

**AND NOW**, this 30<sup>th</sup> day of March, 2011, the above Ordinance is hereby **APPROVED**.

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Robert W. Mader, Mayor