

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 561

(Duly Adopted January 29, 2020)

AN ORDINANCE AMENDING CHAPTER 18 OF THE ALBURTIS CODIFIED ORDINANCES (RELATING TO NONUNIFORMED EMPLOYEES PENSION PLAN) TO (1) CHANGE THE GENERAL CLASS OF NONUNIFORMED EMPLOYEES ELIGIBLE TO PARTICIPATE IN THE PLAN AND RECEIVE ANNUAL ALLOCATIONS TO THEIR PLAN ACCOUNTS FROM THOSE WHO WORK AT LEAST 1000 HOURS IN A CALENDAR YEAR TO THOSE HIRED IN THE FUTURE WHO WORK IN A POSITION REGULARLY SCHEDULED FOR AT LEAST 35 HOURS PER WEEK THROUGHOUT THE CALENDAR YEAR (EXCEPT FOR AUTHORIZED PAID OR UNPAID TIME OFF), AND CALCULATE THEIR YEARS OF SERVICE WITH REFERENCE TO THE TIME SERVED IN SUCH A POSITION; (2) REMOVE LEASED EMPLOYEES FROM THE CLASS OF QUALIFIED EMPLOYEES; (3) CHANGE THE DEFINITION OF DISABILITY; (3) REMOVE REFERENCES TO A SUSPENDED EMPLOYER CONTRIBUTION ACCOUNT; (4) CLARIFY PROVISIONS RELATED TO ROLLOVERS AND TRANSFERS TO THE PLAN; (5) INSERT A REFERENCE TO THE PENNSYLVANIA PUBLIC EMPLOYEE PENSION FORFEITURE ACT; AND (6) AMEND VARIOUS PROVISIONS TO CONFORM TO FEDERAL STATUTORY AND REGULATORY CHANGES RELATING TO FAMILY AGGREGATION OF COMPENSATION FOR HIGHLY COMPENSATED EMPLOYEES, SPECIAL RULES RELATED TO SERVICE IN THE UNIFORMED SERVICES OF THE UNITED STATES, MAXIMUM CONTRIBUTIONS AND BENEFITS UNDER SECTION 415 OF THE INTERNAL REVENUE CODE, DIRECT ROLLOVERS OF CERTAIN PLAN DISTRIBUTIONS, RULES FOR THE PARTICIPANT-DIRECTED INVESTMENT PROGRAM, AND PROHIBITED TRANSACTIONS.

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 Alburtis Codified Ordinances; and

WHEREAS, the Borough Council desires to change the class of employees eligible to participate in the Plan and receive annual allocations to their Plan accounts, from those nonuniformed employees who work at least 1000 hours in a calendar year, to those non-uniformed employees who work in a position regularly scheduled for at least 35 hours per week throughout the calendar year (except for authorized paid or unpaid time off), effective for employees first hired on or after January 30, 2020; and

WHEREAS, the Council desires to change the definition of Disability under the Plan from a person's inability to engage in any occupation, to an inability to perform all the essential functions of his/her employment with the Borough. This definition is applicable to a Participant's eligibility to receive a contribution for a Plan Year, even though not employed on the last day of the Plan Year, if he/she separated from service due to death, disability, or retirement after age 62. This definition is also applicable to the rule granting 100% vesting to a person who separates from service due to death or disability; and

WHEREAS, the Council desires to make other changes to the Plan as set forth in this Ordinance, including changes to comply with federal statutory and regulatory changes, and other minor amendments; 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 changes the standard for employees to participate in the Plan and receive annual allocations to their Plan accounts, in general terms, from those nonuniformed employees who work at least 1000 hours in a calendar year to those nonuniformed employees who work in a position regularly scheduled for at least 35 hours per week throughout the calendar year (except for authorized paid or unpaid time off), effective for employees first hired on or after January 30, 2010. This change results in a cost savings to the Borough to the extent it has any nonuniformed employees who are

scheduled to work more than 1,000 hours but less than 1,820 hours in a calendar year. To date, there has only been one such employee since the inception of the Plan. The amount saved per year for such an employee is 7% of the employee's compensation. For the new employees, the amendment calculates Years of Service with reference to the time served in a qualifying 35-hour-per-week position. That change is unlikely to have any effect on the cost of the Plan. In addition, leased employees are no longer eligible for participation; no leased employees who could qualify have ever been employed by the Borough.

The amendment also changes the definition of the term "Disabled," from a person's inability to engage in any occupation, to an inability to perform all the essential functions of his/her employment with the Borough. In these circumstances, this could permit a departing employee to receive a contribution for the year of the departure equal to 7% of his/her compensation that year, and permit an employee with fewer than 7 years of service to become vested due to the disability rather than forfeit his/her account balance. There has never been a disability retirement since the inception of the Plan.

The amendment also amends various provisions to conform to federal statutory and regulatory changes, removes references to a suspended employer contribution account, clarifies provisions relating to rollovers and transfers to the Plan, and inserts a reference to the Pennsylvania Public Employee Pension Forfeiture Act. None of these changes are likely to have any effect on the cost of the plan.

WHEREAS, on January 22, 2020, 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 January 29, 2020;

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

SECTION 1. Codified Ordinances § 18-127 (relating to Nonuniformed Employees Pension Plan— Title and General Definitions— Qualified Employee) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-127 Qualified Employee.

(a) **In General.** The term “Qualified Employee” shall mean, as of any given date, either—

(1) any person originally hired before January 30, 2020 who is receiving remuneration for personal services rendered to the Employer (other than as an independent contractor) or who would be receiving such remuneration except for an Authorized Leave of Absence or for a temporary lay-off which has not yet become a Separation from Service; *provided* such person is ~~neither—~~ not an Excluded Person; or

(2) any person originally hired on or after January 30, 2020 who is employed by the Employer for a stated salary or compensation in a position for which work is regularly scheduled for thirty-five (35) or more hours per week throughout the calendar year (or would be so scheduled except for authorized sick time, holidays, vacation time, leave, and similar paid or unpaid time off); provided such person is not an Excluded Person.

(b) Excluded Persons. For purposes of this Section, the term “Excluded Person” shall mean any of the following—

(1) a nonresident alien who receives no remuneration from the Employer which constitutes income from sources within the United States (within the meaning of the Code);

(2) a person who is included in a unit of employees covered by a negotiated collective bargaining agreement which does not provide for his inclusion as a Qualified Employee eligible for participation in this Plan, *provided that* retirement benefits were the subject of good faith bargaining and less than two percent of the employees of the Employer who are covered pursuant to that agreement are “professionals” as defined in Treas. Regs. § 1.410(b)-9(g); ~~nor~~

(3) an employee of a police department or fire department organized and operated by the Employer, if the employee provides police protection, firefighting services, or emergency medical services for ny area within the jurisdiction of the Employer;

(4) a self-employed individual or leased employee who is not a common law employee of the Employer;

(5) a person who has not yet attained eighteen (18) years of age.

~~(b) **Leased Employees.** Any Leased Employee as of a date on or after January 1, 1984 shall be treated as a Qualified Employee of the Employer unless—~~

~~(1) such Leased Employee is not a common law employee of the Employer;~~

~~(2) Leased Employees do not constitute more than 20% of the recipient's nonhighly compensated workforce; and~~

~~(3) such Leased Employee is covered by a money purchase pension plan providing:~~

~~(A) a non-integrated employer contribution rate of at least 10% of Compensation;~~

~~(B) immediate participation; and~~

~~(C) full and immediate vesting.~~

~~However, contributions or benefits provided by the leasing organization which are attributable to services performed for the Employer shall be treated as having been provided by the Employer.~~

SECTION 2. Codified Ordinances § 18-302 (relating to Nonuniformed Employees Pension Plan— Participation & Service— Year of Service) is amended by amending subsections (a) and (b) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-302 Year of Service.

~~(a) **In-General** Persons Hired Before 1/30/2020. A person who was originally hired before January 30, 2020 is credited with one Year of Service for each Computation Period (*see* § 18-304) during which he is~~

credited with at least 1000 Hours of Service (*see* § 18-305). The Year is generally credited as of the end of the Computation Period. However, if a person Separated from Service during the Computation Period and had already been credited with at least 1000 Hours of Service, the Year will be credited as of the date of the Separation from Service.

~~(b) **Service Before Age 18.** Notwithstanding subsection (a), a person shall not be credited with a Year of Service for a Computation Period if he has not attained age 18 by the end of the Computation Period.~~

(b) **Persons Hired On or After 1/30/2020.** To determine the number of Years of Service credited as of any given day to an individual originally hired on or after January 30, 2020, one divides the total number of calendar days the person was employed by the Employer as a Qualified Employee through that given day by three hundred sixty-five and one-quarter (365.25), and rounds down to the next whole number (e.g., a calculated 2.99 rounds down to 2 Years of Service). For this purpose, time is generally measured for any continuous period of employment as a Qualified Employee from the first day the person performs an hour of service as a Qualified Employee to the last day the person performs an hour of service as a Qualified Employee, and time in non-continuous separate periods of employment as a Qualified Employee are aggregated.

* * *

SECTION 3. Codified Ordinances § 18-111 (relating to Nonuniformed Employees Pension Plan—Title and General Definitions—Disabled) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-111 Disabled.

A person shall be considered “Disabled” if ~~it has been finally determined that he is entitled to receive disability benefits under the Social Security Act~~ he/she has Separated from Service as a result of a physical or mental condition which (i) can be expected to result in death or which has

lasted or can be expected to last for a continuous period of not less than 12 months, and (ii) ~~prevents him from engaging in any occupation for wage or profit for which he is reasonably fitted by training, education, or experience~~ renders him/her unable to perform all of the essential functions of his/her employment with or without reasonable accommodation; provided that such condition was not caused by—

- (a) chronic or excessive use of intoxicants, drugs, or narcotics;
- (b) intentionally self-inflicted injury or intentionally self-induced sickness; or
- (c) an unlawful act or enterprise on the part of the individual.

SECTION 4. Codified Ordinances § 18-401(a) (relating to Nonuniformed Employees Pension Plan—Accounting—Accounts—Paper Accounts of Participants) is amended by deleting paragraph (3) (relating to Suspended Employer Contribution Account) and replacing the same with the following:

(3) [RESERVED]

SECTION 5. Codified Ordinances § 18-501(a) (relating to Nonuniformed Employees Pension Plan—Additions to Employer Contribution Accounts—Annual Allocation—In General) 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); and § 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 **7.00%** of the Qualified Recipient's Compensation *for the portion* of the Plan Year during which he was an Active Participant.

* * *

SECTION 6. Codified Ordinances Chapter 18, Article V (relating to Nonuniformed Employees Pension Plan—Additions to Employer Contribution Accounts) is amended by deleting section 18-505 (relating to Suspended Employer Contribution Accounts) in its entirety, and replacing the same with the following:

§ 18-505 [RESERVED]

SECTION 7. Codified Ordinances § 18-902 (relating to Nonuniformed Employees Pension Plan—Vesting & Forfeitures—Vesting of Other Accounts) is amended by deleting subsection (b) (relating to Suspended Employer Contribution Accounts) and replacing the same with the following:

(b) [RESERVED]

SECTION 8. Codified Ordinances Chapter 18, Article I (relating to Nonuniformed Employees Pension Plan—Title and General Definitions) is amended by deleting section 18-121 (relating to Leased Employee) in its entirety, and replacing the same with the following:

§ 18-121 [RESERVED]

SECTION 9. Codified Ordinances § 18-305 (relating to Nonuniformed Employees Pension Plan— Participation & Service—Hour of Service) is amended by deleting subsection (e) thereof (relating to Leased Employees).

SECTION 10. Codified Ordinances § 18-109(d) (relating to Nonuniformed Employees Pension Plan—Title and General Definitions—Compensation—Maximum Amount Which May Be Treated as Compensation) is amended by deleting paragraph (2) thereof (relating to Highly Compensated Immediate Families), including its subparagraphs (A) and (B), and replacing the same with the following:

(2) [RESERVED]

SECTION 11. Codified Ordinances Chapter 18, Article I (relating to Nonuniformed Employees Pension Plan—Title and General Definitions) is amended by deleting sections 18-117 (relating to Highly Compensated Employee) (including its subsections (a) through (d)), 18-118 (relating to Highly Compensated Family) (including its subsections (a) and (b)), and 18-119 (relating to Highly Compensated Immediate Family), and replacing the same with the following:

§ 18-117 [RESERVED]

§ 18-118 [RESERVED]

§ 18-119 [RESERVED]

SECTION 12. Codified Ordinances § 18-129 (relating to Nonuniformed Employees Pension Plan—Title and General Definitions—Separation from Services) is amended

by adding thereto to following new subsection (e) (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-129 Separation from Service.

* * *

(e) **Uniformed Service.** In the case of a person who is absent to perform service in the uniformed services of the United States and who could be entitled to reemployment with the Employer under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.*, following the completion of such service, the person shall incur a Separation from Service (and be entitled to commence the receipt of Plan benefits) as of the **earliest** of the following dates—

(1) the date elected by the person (which may not be earlier than the date the person files the election with the Administrator);

(2) the date of the person's death; **or**

(3) the date the Administrator determines that the person no longer is legally entitled to reemployment with the Employer,

provided that if the person complies with all of the requirements of federal law in order to be entitled to reemployment and, does in fact return to employment with the Employer within the period provided by law, the person shall thereafter be treated as not having incurred a Separation from Service with respect to the period of uniformed service. The person shall not be required or permitted to return any benefits received from the Plan prior to his/her return to employment with the Employer.

SECTION 13. Codified Ordinances § 18-301(a)(2) (relating to Nonuniformed Employees Pension Plan—Participation & Service—Participation—Active Participants—Entry Dates) is amended by adding thereto to following new subparagraph (D) (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-301 Participation.

(a) Active Participants.

* * *

(2) Entry Dates.

* * *

(D) Uniformed Service. A Qualified Employee who Separates from Service as a result of service in the uniformed services of the United States and who returns to employment with the Employer at a time when the Employer is legally obligated to reemploy the person under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et seq., shall be treated as not having incurred that Separation from Service, shall be treated as having been a Qualified Employee during the period of such uniformed service, and shall be treated as having remained an Active Participant during the period of such uniformed service.

* * *

SECTION 14. Codified Ordinances Chapter 18, Article XIV (relating to Nonuniformed Employees Pension Plan—Benefits: Miscellaneous Provisions) is amended by adding a new section 18-1408 as follows:

§ 18-1408 Survivors of Participant Who Dies While Performing Qualified Military Service.

Notwithstanding any provision of this Plan to the contrary, the survivors of any Participant who dies while performing qualified military service are entitled to any additional benefits (*other than* contributions relating to the period of qualified military service, but including vesting service credit for such period and any ancillary life insurance or other survivor benefits) that would have been provided under the Plan had the Participant resumed

employment on the day preceding the Participant's death and then terminated employment on account of death.

SECTION 15. Codified Ordinances § 18-701 (relating to Nonuniformed Employees Pension Plan—Maximum Additions—General Definitions) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-701 General Definitions.

When used in this Article, the words and phrases defined in this Section shall have the following meaning, unless the context in which they are used clearly indicates a different meaning:

(a) **Compensation.** ~~The term “Compensation” shall have the meaning provided in § 18-109, with the following modifications:~~

~~(1) all references to the “Employer” shall be deemed to be references to the “Employer and any Related Employer”; and~~

~~(2) § 18-109(b) (relating to elective deferrals) shall be deleted.~~

The term “Compensation” for a Participant for a Limitation Year shall mean:

(1) **In General.** All wages within the meaning of Code § 3401(a) (for purposes of income tax withholding at the source), and all other payments of compensation to an employee by the Employer (in the course of such employers' trade or business) for which the Employer is required to furnish the employee a written statement under Code §§ 6401(d), 6051(a)(3), and 6052, plus amounts that would be included in wages but for an election under Code §§ 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). Compensation shall be determined without regard to any rules under Code § 3401(a) that limit covered employment based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code § 3401(a)(2)).

(2) Payment During the Limitation Year. Except as otherwise provided in this subsection (a), in order to be taken into account for a Limitation Year, amounts under paragraph (1) must be actually paid or made available to the Participant (or, if earlier, includible in the gross income of the Participant) within the Limitation Year. For this purpose, an amount is treated as paid on a date if it is actually paid on that date or it would have been paid on that date but for an election under Code §§ 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b).

(3) Payment Prior to Severance from Employment. Except as otherwise provided in paragraphs (4) and (5), in order to be taken into account for a Limitation Year, amounts under paragraph (1) must be paid or treated as paid to the Participant (in accordance with the rules of paragraph (2)) prior to the Participant's severance from employment (within the meaning of Treas. Regs. § 1.415(a)-1(f)(5) with the Employer. Thus, for example, "Compensation" generally does not include severance pay or parachute payments.

(4) Regular Pay After Severance from Employment. Notwithstanding paragraph (3), a payment of an amount described in paragraph (1) after severance from employment will be considered "Compensation" for the Limitation Year which includes the date of severance from employment if it—

(A) is regular compensation for services during the Participant's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;

(B) would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and

(C) is paid by the later of 2.5 months after severance from employment with the Employer maintaining the plan or the end of the Limitation Year which includes the date of severance from employment.

(5) Leave Cashouts. Notwithstanding paragraph (3), a payment of an amount described in paragraph (1) after severance from

employment will be considered “Compensation” for the Limitation Year which includes the date of severance from employment if it—

(A) is payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued; and

(B) is paid by the later of 2.5 months after severance from employment with the Employer maintaining the plan or the end of the Limitation Year which includes the date of severance from employment.

(6) **Qualified Military Service.** For purposes of this subsection (a), a Participant who is in qualified military service (within the meaning of Code § 414(u)(5)) shall be treated as receiving Compensation from the Employer during such period of qualified military service equal to—

(A) the Compensation the Participant would have received during such period if the Participant were not in qualified military service, determined based on the rate of pay the Participant would have received from the Employer but for absence during the period of qualified military service; or

(B) if the compensation the Participant would have received during such period was not reasonably certain, the Participant’s average Compensation from the Employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(7) **Back Pay.** Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate an employee for lost wages are Compensation within the meaning of this subsection (a) for the Limitation Year to which the back pay relates, but only to the extent such payments represent wages and compensation that would otherwise be included in compensation under this subsection (a).

(8) **Maximum Amount Which May Be Treated As Compensation.**

(A) **General Rule.** Notwithstanding anything to the contrary in this subsection (a), the “Compensation” of a Participant for any

Limitation 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 Limitation Year beginning in 2020, the amount is \$285,000.00.)

(B) Short Years. If Compensation is ever required to be determined for a short Limitation Year which contains fewer than 12 months, the amount of effect for such Limitation Year under Code § 401(a)(17) shall be equal to the amount in effect under Code § 401(a)(17) for the calendar year in which the Limitation Year begins, multiplied by a fraction whose numerator is equal to the number of months in the period, and whose denominator is equal to 12.

(b) Limitation Year. The term “Limitation Year” shall mean, for this Plan, those periods which are coextensive with the Plan Year after the Effective Date of this Plan, and those periods utilized as limitation years under the Provisions of the Defined Benefit Plan (but in no case extending beyond the Effective Date). Limitation Years for other plans shall be as elected for those plans.

(c) Employer. The term “Employer” shall mean the Sponsor and all Related Employers, and, to the extent required under Treas. Regs. § 1.415(f)-1, a predecessor employer within the meaning of that regulation.

SECTION 16. Codified Ordinances § 18-702 (relating to Nonuniformed Employees Pension Plan—Maximum Additions—Definitions Relating to Defined Contribution Limitations) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-702 Definitions Relating to Defined Contribution Limitations.

When used in this Article, the words and phrases defined in this Section shall have the following meaning, unless the context in which they are used clearly indicates a different meaning:

~~(a) **Defined Contribution Plan Fraction.** [RESERVED] The “Defined Contribution Plan Fraction” is a fraction—~~

~~(1) **Numerator.** The numerator of which is the sum of the Annual Additions made on behalf of a Participant for the current and all prior Limitation Years under all of the defined contributions plans (as defined in Code §§ 415(k), 414(i), and 414(k), including nondeductible employee contributions under defined benefit plans), welfare benefit funds (as defined in Code § 419(e)) and individual medical accounts (as defined in Code § 415(l)(2)) maintained by the Employer or any Related Employer at any time (whether or not terminated); and~~

~~(2) **Denominator.** The denominator of which is the sum of the Maximum Aggregate Amounts for the current Limitation Year and each prior Limitation Year for which the Participant completed 1000 Hours of Service (regardless of whether the Employer or any Related Employer maintained a defined contribution plan at the time).~~

~~(b) **Annual Additions.** The term “Annual Additions”, for a Participant in any given Limitation Year with respect to the Defined Contribution Plans maintained by the Employer, shall mean the sum of the following amounts which are allocated on behalf of a Participant for the given Limitation Year: shall have the meaning given to the term under Treas. Regs. § 1.415(c)-1(b) (which generally includes all employer contributions, employee contributions, and forfeitures credited to the Participant’s accounts for the Limitation Year).~~

~~(1) all employer contributions under a defined contribution plan (as defined in Code § 415(k)), including elective deferrals under a Code § 401(k) cash or deferred arrangement;~~

~~(2) all employee contributions under a defined contribution plan (as defined in Code §§ 415(k), 414(i), and 414(k), including nondeductible employee contributions under defined benefit plans), *except* rollover contributions (as defined in Code §§ 402(a)(5), 403(a)(4), 403(b)(8), and 408(d)(3)) and employee contributions to a simplified employee pension which are excludable from gross income under Code § 408(k)(6);~~

~~(3) all forfeitures under a defined contribution plan (as defined in Code § 415(k));~~

~~(4) all withdrawals from maximum additions suspense accounts under a defined contribution plan (as defined in Code § 415(k));~~

~~(5) amounts allocated after March 31, 1984 to an individual medical account (as defined in Code § 415(l)(2)) which is part of a pension or annuity plan maintained by the Employer or any Related Employer; and~~

~~(6) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in Code § 419A(d)(3)) under a welfare benefit fund (as defined in Code § 419(e)) maintained by the Employer or any Related Employer.~~

~~(c) **Maximum Aggregate Amount.** The term “Maximum Aggregate Amount”, for any Limitation Year, shall mean the lesser of —~~

~~(1) 125% of the dollar limitation in effect for the Limitation Year under Code § 415(e)(1)(A), as adjusted under Code §§ 415(b)(1)(A) and 415(d) (\$30,000 for 1996; \$25,000 for years before Code § 415(e) was enacted); or~~

~~(2) 35% of the Participant’s Compensation for the Limitation Year.~~

(c) **Defined Contribution Plan.** The term “Defined Contribution Plan” shall have the meaning provided in Treas. Regs. § 1.415(c)-1(a)(2) (including mandatory employee contributions to a defined benefit plan maintained by the Employer which are not treated as employer pick-up contributions under Code § 414(h)(2), and employee contributions to a separate account in a defined benefit plan maintained by the Employer to the extent that benefits are based on the separate account).

(d) Maximum Permissible Amount.

(1) In General. The Subject to the special rules relating to certain medical benefits and employee stock ownership plans under Treas. Regs. § 1.415(c)-1(e) and (f), the term “Maximum Permissible Amount”, for any Limitation Year, shall mean the lesser of—

(A) \$30,000 (or, if greater, one-fourth of the defined benefit dollar limitation set forth in Code § 415(b)(1)(A) as in effect for the

~~Limitation Year) The defined contribution dollar limitation in effect for the Limitation Year under Code § 415(c)(1)(A) as adjusted under Code § 415(d) for changes in the cost of living (\$57,000 for 2020); or~~

(B) ~~25%~~ 100% of the Participant's Compensation for the Limitation Year (not including any amounts described in subsection (b)(5) and subsection (b)(6)) ~~plus~~ all amounts described in subsection (b)(5) and subsection (b)(6) for the ~~Limitation Year~~.

(2) **Short Year.** If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, for purposes of the short Limitation Year, the number in paragraph (1)(A) shall be multiplied by the following fraction:

$$\frac{\text{number of months in the short Limitation Year (including fractional parts of a month)}}{12}$$

If the Plan is terminated as of a date other than the last day of the Limitation Year, the Plan is deemed to have been amended to change its Limitation Year and the Maximum Permissible Amount shall be determined by prorating for the resulting short Limitation Year.

(3) **Family Aggregation.** *Observation:* ~~The family aggregation rules of § 18-109(d)(2) apply in determining the Compensation of certain Qualified Employees, and thus the 25% limitation of paragraph (1)(B) is applied to a person's compensation as reduced under § 18-109(d). However, there is no family aggregation with respect to the \$30,000 limitation of paragraph (1)(A). Therefore, for example, if in 1996 a Highly Compensated Employee earned \$750,000 and his spouse earned \$250,000, the Highly Compensated Employee's Compensation would be \$150,000, and his spouse's Compensation would be \$50,000; the Maximum Permissible Amount for the Highly Compensated Employee would be \$30,000, and the Maximum Permissible Amount for the spouse would be \$12,500.~~

SECTION 17. Codified Ordinances Chapter 18, Article VII (relating to Nonuniformed Employees Pension Plan—Maximum Additions) is amended by deleting section 18-703 (relating to Definitions Relating to Defined Benefit Limitations) in its entirety, and replacing the same with the following:

§ 18-703 [RESERVED]

SECTION 18. Codified Ordinances § 18-704 (relating to Nonuniformed Employees Pension Plan—Maximum Additions—General Rule) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-704 General Rule.

The amount of Annual Additions which would otherwise be allocated 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 § 18-707) to the extent necessary and possible ~~to meet the limitations established in § 18-705 and § 18-706~~ so that the total amount of Annual Additions which may be allocated on behalf of any Participant during that Limitation Year (whether of this Plan or any other plan of the Employer) under all of the Defined Contributions Plans maintained by the Employer shall not exceed the Maximum Permissible Amount.

SECTION 19. Codified Ordinances Chapter 18, Article VII (relating to Nonuniformed Employees Pension Plan—Maximum Additions) is amended by deleting sections 18-705 (relating to Limitations for All Defined Contribution Plans) and 18-706 (relating to Overall Limitation for All Plans) in their entirety, and replacing the same with the following:

§ 18-705 [RESERVED]

§ 18-706 [RESERVED]

SECTION 20. Codified Ordinances § 18-707 (relating to Nonuniformed Employees Pension Plan—Maximum Additions—Procedure for Reducing Contributions) is amended by amending subsections (a), (b), (c), (d), (f)(1), and (f)(2), and by adding a new subsection (f)(4.1) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-707 Procedure for Reducing Contributions.

(a) **Timing of Reductions.** ~~Reductions in allocations made on behalf of a Participant under this Article shall be made as soon after the end of a Limitation Year (whether it be a Limitation Year under this Plan or one under another plan of the Employer or any Related Employer) as is administratively feasible to determine the Participant's actual Compensation for such Limitation Year (which amount is necessary to determine the limitations of § 18-705 and § 18-706).~~ Reductions pursuant to this Article in the amount of contributions and allocations made on behalf of a Participant shall be made as soon as is administratively feasible, preferably before contributions and allocations are made.

(b) ~~**Additions Affected.** [RESERVED] For purposes of this Section, Annual Additions shall only be reduced to the extent that such reductions lower the Defined Contribution Plan Fraction. Accordingly, Annual Additions shall be reduced “in full” whenever further reductions will not affect the Defined Contribution Plan Fraction.~~

(c) ~~**Priority vs. Defined Benefit Plans.** [RESERVED] Annual Additions under this Plan shall be reduced in full before benefits are reduced under any defined benefit plans of the Employer or any Related Employer.~~

(d) ~~**Priority vs. Medical and Welfare Plans,** Annual Additions under this Plan shall be reduced in full before Annual Additions are reduced~~

under any ~~welfare benefit funds (as defined in Code § 419(e)) and individual medical accounts (as defined in Code § 415(l)(2)) of the Employer or any Related Employer~~ or post-retirement medical accounts for key employees (as described in Code § 419A(d)) maintained by the Employer.

* * *

(f) Priority vs. Contemporaneous Allocations Under All Defined Contribution Plans. * * *

(1) Nondeductible Employee Contributions. First, nondeductible employee contributions under this Plan and other defined contribution plans of the Employer or any Related Employer shall be reduced, or, if already made, shall be returned to the Participant and not allocated. (See subsection ~~(h)~~ (g) for the treatment of any related matching contributions.)

(2) Elective Deferrals. Second, elective deferrals under any other plans of the Employer or any Related Employer shall be reduced, or, if already made, shall be distributed to the Participant. This distribution shall not be subject to any of the provisions of Articles XII, XIII, or XIV, and shall not be considered in determining whether the Participant has satisfied the minimum distribution requirements under those Articles and Code § 401(a)(9). (See subsection (g) for the treatment of any related matching contributions.)

* * *

(4.1) Other Allocations. Fifth, any allocations not described in paragraphs (1) through (4) or (5) of this subsection (f), or in subsection (g), shall be reduced.

* * *

* * *

SECTION 21. Codified Ordinances Chapter 18, Article VIII (relating to Nonuniformed Employees Pension Plan—Qualified Rollovers) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

Article VIII — ~~Qualified Rollovers~~ & Transfers to the Plan

§ 18-801 Rollovers.

No person may roll over any property to the Plan and Trust Fund which was received from other qualified plans, individual retirement accounts/annuities, Code § 403(a) or § 403(b) annuities, Code § 457 eligible deferred compensation plans, or any other plan, account, annuity, or arrangement (whether received directly or indirectly through an Individual Retirement Account or Annuity, and whether as a “Direct Rollover” under Code § 401(a)(31) or a rollover via the Participant).

§ 18-802 Plan-to-Plan Transfers.

The Trustees may not accept transfers of cash or other assets to the Plan and Trust Fund from other qualified plans, individual retirement accounts/annuities, Code § 403(a) or § 403(b) annuities, Code § 457 eligible deferred compensation plans, or any other plan, account, annuity, or arrangement to this Plan.

SECTION 22. Codified Ordinances § 18-1307 (relating to Nonuniformed Employees Pension Plan—Form of Benefits—Direct Rollover of Distributions) is amended by amending subsections (b)(2), (b)(3)(C), and (b)(4), and by adding a new subsection (c), as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-1307 Direct Rollover of Distributions.

* * *

(b) **Definitions.** * * *

* * *

(2) Distributee. A “Distributee” includes an employee or former employee. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the Alternate Payee under a Qualified Domestic Relations Order, as defined in Code § 414(q), are “Distributee’s” with regard to the interest of the spouse or former spouse. A “Distributee” also includes the employee’s or former employee’s nonspouse designated beneficiary, in which case the distribution can only be transferred to a traditional IRA (under Code § 408(a) or (b)) or Roth IRA (under Code § 408A) established on behalf of the nonspouse designated beneficiary for the purpose of receiving the distribution.

(3) Eligible Rollover Distribution. * * *

* * *

~~(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) any hardship distribution.~~

(4) Eligible Retirement Plan.

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

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

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

~~(III) an annuity plan described in Code § 403(a);~~

or

~~(IV) a qualified trust described in Code § 401(a) which is a defined contribution plan;~~

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

(II) a Roth individual retirement account or annuity described in Code § 408A;

(III) a qualified trust described in Code § 401(a), including both defined benefit and defined contribution plans;

(IV) an annuity plan described in Code § 403(a);

(V) an annuity contract described in Code § 403(b); or

(VI) an eligible deferred compensation plan described in Code § 457(b) which is maintained by an eligible governmental employer described in Code § 457(e)(1)(A), and which agrees to separately account for the amounts transferred into such plan from this Plan,

that accepts the Distributee's Eligible Rollover Distribution.

~~(B) **Distributions to Surviving Spouses.** 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),~~

(B) **After-Tax Employee Contributions.** In the case of any portion of a distribution that consists of after-tax employee contributions which are not includible in gross income, an "Eligible Retirement Plan" is—

(I) an individual retirement account or annuity described in Code § 408(a) or (b) or a Roth individual retirement account or annuity described in Code § 408A; or

(II) a qualified plan under Code § 401(a), or an annuity contract described in Code § 403(b), that agrees to separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible,

that accepts the Distributee's Eligible Rollover Distribution.

(c) **Automatic Rollovers.** In the event of a mandatory distribution made from the Plan to a Participant in an amount greater than One Thousand Dollars (\$1,000.00), which is made before the Participant attains age 62 and without the Participant's consent, if the Participant does not elect to have such distribution paid directly to an Eligible Retirement Plan specified by the Participant in a Direct Rollover in accordance with this Section, and does not affirmatively elect to receive the distribution directly from the Plan at the time and in the manner prescribed by the Administrator, then the Administrator will pay the distribution in a Direct Rollover to an individual retirement account or annuity described in Code § 408(a) or (b) designated by the Administrator. The Administrator shall notify the Participant of this possibility as required by law, and shall notify the Participant that the distribution may be transferred to another individual retirement plan. See IRS Notice 2005-5; 29 CFR 2550.404a-2.

SECTION 23. Codified Ordinances Chapter 18, Article XVI (relating to Nonuniformed Employees Pension Plan—Trust & Investments) is amended by replacing existing section 18-1605 in its entirety with a new section 18-1605 to read as follows:

§ 18-1605 Participant-Directed Investments.

Participants, Beneficiaries, and/or Alternate Payees may direct the Trustees to invest all or a portion of the amounts allocated to their Plan accounts in particular investments in accordance with the provisions of Article XVI.

SECTION 24. Chapter 18 of the Codified Ordinances (relating to Nonuniformed Employees Pension Plan) is amended by adding a new Article XVI, as follows:

Article XVI A — Participant-Directed Investments

§ 18-1621 Program Authorized.

Participants may direct the Trustees to invest all or a portion of the amounts allocated to their Plan accounts in particular investments in accordance with the provisions of this Article. A Participant may also direct the Trustees to resume responsibility for any portion of such investments. Participant directions shall expire to the extent that amounts which have been so directed are forfeited or distributed, or are invested in investments which are no longer permitted under the participant-directed investment program. Investment directions by a Participant under this Article shall relieve the Administrator and the Trustees of all fiduciary responsibilities in the management of such funds. Beneficiaries and Alternate Payees have the same rights under this Article as Participants.

§ 18-1622 Definitions.

For purposes of this Article—

(a) **Affiliate.** The term “Affiliate” shall include:

(1) any person directly or indirectly controlling, controlled by, or under common control with the person. For purposes of this paragraph (1), the term “control” means, with respect to a person other than an individual, the power to exercise a controlling influence over the management or policies of such person;

(2) any officer, director, partner, employee, an employee of an affiliated employer, relative (as defined in ERISA § 3(15)), brother, sister, or spouse of a brother or sister, of the person; **and**

(3) any corporation or partnership of which the person is an officer, director, or partner.

(b) **Average Annual Total Return.**

(1) **In General.** The term “Average Annual Total Return” shall mean the average annual compounded rate of return that would equate an initial investment in a designated investment alternative to the ending

redeemable value of that investment calculated with the before tax methods of computation prescribed in Securities and Exchange Commission Form N-1A, N-3, or N-4, as appropriate, except that such method of computation may exclude any front-end, deferred, or other sales loads that are waived for the Participants of the covered individual account plan. Nothing in this Article requires disclosure of returns for periods before the inception of a Designated Investment Alternative.

(2) Transitional Rule. For Plan Years beginning before October 1, 2021, if the Administrator reasonably and in good faith determines that it does not have the information on expenses attributable to the Plan that is necessary to calculate, in accordance with paragraph (1), the 5-year and 10-year Average Annual Total Returns for a Designated Investment Alternative that is not registered under the Investment Company Act of 1940, the Administrator may use a reasonable estimate of such expenses **or** the most recently reported Total Annual Operating Expenses of the Designated Investment Alternative as a substitute for such expenses, and shall inform Participants of the basis on which the returns were determined.

(c) Designated Investment Alternative. The term “Designated Investment Alternative” shall mean a *specific* investment identified by a Plan Fiduciary as an available investment alternative under the participant-directed investment program. An investment alternative permitted under the participant-directed investment program which is *not* specifically identified by a Plan Fiduciary, such as an investment alternative covered by a general rule that allows Participants to invest in any asset administratively feasible for the Plan to hold and not otherwise prohibited under the program, is *not* a “Designated Investment Alternative”, and the information production and other requirements applicable to Designated Investment Alternatives shall not apply to such a non-specified investment alternative.

(d) Total Annual Operating Expenses. The term “Total Annual Operating Expenses” shall mean:

(1) In the case of a Designated Investment Alternative that is registered under the Investment Company Act of 1940, the annual operating expenses and other asset-based charges before waivers and reimbursements (*e.g.*, investment management fees, distribution fees, service fees,

administrative expenses, separate account expenses, mortality and expense risk fees) that reduce the Designated Investment Alternative's rate of return, expressed as a percentage, calculated in accordance with the required Securities and Exchange Commission form, *e.g.*, Form N-1A (open-end management investment companies) or Form N-3 or N-4 (separate accounts offering variable annuity contracts); **or**

(2) In the case of a Designated Investment Alternative that is not registered under the Investment Company Act of 1940, the sum of the fees and expenses described in the following subparagraphs before waivers and reimbursements, for the Designated Investment Alternative's most recently completed fiscal year, expressed as a percentage of the Designated Investment Alternative's average net asset value for that year:

(A) Management fees as described in the Securities and Exchange Commission Form N-1A that reduce the Designated Investment Alternative's rate of return;

(B) Distribution and/or servicing fees as described in the Securities and Exchange Commission Form N-1A that reduce the Designated Investment Alternative's rate of return; **and**

(C) Any other fees or expenses not included in subparagraphs (A) or (B) that reduce the Designated Investment Alternative's rate of return (*e.g.*, externally negotiated fees, custodial expenses, legal expenses, accounting expenses, transfer agent expenses, recordkeeping fees, administrative fees, separate account expenses, mortality and expense risk fees), excluding brokerage costs described in Item 21 of Securities and Exchange Commission Form N-1A.

§ 18-1623 Investment Instructions.

(a) **In General.** The Trustees shall identify a specific fiduciary or agent to receive investment instructions, and all investment instructions must be made through such fiduciary or agent. All Participant investment instructions shall be made on such written forms (or in accordance with such online procedures) as may be prescribed by the Trustees or the identified fiduciary or agent. Instructions may relate to amounts allocated to the

Participant's accounts to date and/or to amounts as they are so allocated in the future. Each Participant who is qualified to participate in the participant-directed investment program shall have an opportunity to obtain written confirmation of such instructions.

(b) Restrictions and Procedures.

(1) In General. The Trustees may promulgate nondiscriminatory rules restricting Participant directions to such times, investments, amounts, and features as may be necessary or desirable to avoid undue administrative expenses or complexity in the overall operation of the Participant-directed investment program, *provided* that such rules comply with requirements of this subsection (b) and of § 18-1624. For example, without limiting the foregoing, the Trustees may restrict investment to identified specific investment alternatives.

(2) Range of Risk and Return Characteristics. The Trustees shall permit a sufficient number and variety of investment alternatives to provide Participants with a reasonable opportunity to materially affect the potential return on amounts in their accounts and the degree of risk to which such amounts are subject.

(3) General Frequency Standard. The rules applicable to any given investment alternative made available under the participant-directed investment program must permit Participants to give investment instructions with a frequency which is appropriate in light of the market volatility to which the investment alternative may reasonably be expected to be subject.

(4) Core Investment Funds. The rules applicable to each of the investment alternatives included in the group of "core funds" described in § 18-1624 must permit a Participant to give instructions no less frequently than once within any three month period.

(5) Investment Alternative Available to Receive Transfers. Under the rules established by the Trustees, **either**—

(A) at least *one* of the "core funds" described in § 18-1624 must permit a Participant to transfer *into* that fund as frequently as Participants are permitted to give investment instructions with respect to

any investment alternative included in the participant-directed investment program which permits Participants to give investment instructions more frequently than once within any three month period; **or**

(B) with respect to each investment alternative which permits Participants to give investment instructions more frequently than once within any three month period, Participants are permitted to direct their investments *from* such investment alternative *to* a Liquid Investment as frequently as they are permitted to give investment instructions with respect to such investment alternative, **and**, with respect to the Liquid Investment, Participants are permitted to direct investments *from* the Liquid Investment *to* at least *one* of the “core funds” described in § 18-1624 as frequently as they are permitted to give investment instructions with respect to that core fund. For purposes of this subparagraph (B), a “Liquid Investment” is an income producing, low risk, liquid fund, subfund, or account.

(6) **Employer Securities.** The participant-directed investment program shall not permit Participant to directly or indirectly acquire any securities of the Employer or any Related Employer or Affiliate.

(7) **Annuity Contracts.** If the Trustees permit investment in annuity contracts under the participant-directed investment program, an Active Participant may only direct investment in annuity contracts which are on his/her own life.

(c) **Compliance With Instructions.** The fiduciary or agent receiving the instructions shall be obligated to comply with such instructions, unless an instruction, if implemented—

(1) would not be permitted under this Article or would otherwise not be in accordance with the provisions of this Plan;

(2) would not comply with the procedures, limitations, or restrictions established by the Trustees for the participant-directed investment program;

(3) would cause a Fiduciary to maintain the indicia of ownership of any assets of the Plan outside the jurisdiction of the district courts of the United States other than as permitted under the standards of ERISA § 404(b) and 29 C.F.R. § 2550.404b-1;

(4) would jeopardize the Plan's tax qualified status under the Code;

(5) could result in a loss in excess of a Participant's account balance;

(6) would result in a prohibited transaction described in § 18-1805;

(7) would result in the acquisition of a "collectible", as that term is defined in Code § 408(m) and the regulations thereunder;

(8) would generate income that would be taxable to the Plan;

(9) would result in a direct or indirect—

(A) sale, exchange, or lease of property between the Employer or any Affiliate of the Employer and the Plan except for the acquisition or disposition of any interest in a fund, subfund, or portfolio managed by the Employer or any Affiliate of the Employer;

(B) loan to the Employer or any Affiliate of the Employer;

(C) acquisition or sale of any employer real property (as defined in ERISA § 407(d)(2)); **or**

(D) acquisition or sale of any employer security; **or**

(10) would violate any applicable law, statute, regulation, rule, order, or decree.

(d) Unavailable Investments. In the event the Trustees find that an investment meeting the requirements of this Trust cannot be procured for a Participant under this Article, **or** a given investment is or becomes unavailable, the Trustees shall report the same to the Participant as soon as practicable and request further instruction.

§ 18-1624 Core Investment Funds.

Throughout the time that a Participant-directed investment program is in effect under this Section, the permitted investment alternatives under the program shall include a group of at least three (3) investment funds—

(a) each of whose underlying assets are diversified so as to minimize the risk of large losses;

(b) each of which has materially different risk and return characteristics;

(c) which in the aggregate enable the Participant by choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the Participant;

(d) each of which, when combined with investments in the other funds in the group, tends to minimize through diversification the overall risk of a Participant's portfolio; **and**

(e) each of which is either—

(1) An investment company described in § 3(a) of the Investment Company Act of 1940, or a series investment company described in § 18(f) of the Investment Company Act of 1940, or any of the segregated portfolios of such company;

(2) A common or collective trust fund or a pooled investment fund maintained by a bank or similar institution, a deposit in a bank or similar institution, or a fixed rate investment contract of a bank or similar institution;

(3) A pooled separate account or a fixed rate investment contract of an insurance company qualified to do business in a state; **or**

(4) Any entity whose assets include plan assets by reason of a plan's investment in the entity (such as a "group trust" as defined in Rev. Rul. 81-100).

These investment funds may be Designated Investment Alternatives, or they may merely be permitted without specific identification under a general rule allowing investment in broad categories of assets or in all assets which are administratively feasible for the Plan to hold.

§ 18-1625 Notice of Limited Liability.

The Administrator (or person designated by the Administrator to act on its behalf) shall provide each Participant who is qualified to participate

in the participant-directed investment program with an explanation that the Plan is intended to constitute the kind of plan described in ERISA § 404(c) and 29 C.F.R. § 2550.404c-1, and that the Fiduciaries of the Plan may be relieved of liability for any losses which are the direct and necessary result of investment instructions given by such Participant.

§ 18-1626 Disclosure of Plan-Related Information.

The Administrator (or person designated by the Administrator to act on its behalf) shall provide to each Participant the following Plan-related information, based on the latest information available to the Plan:

(a) General Information. On or before the date on which a Participant can first direct his investments, and at least annually thereafter:

(1) an explanation of the circumstances under which Participants may give investment instructions (including the persons to whom instructions may be given, the times when instructions may be given, and the manner in which instructions may be given;

(2) an explanation of any specified limitations on such instructions under the terms of the Plan, including any restrictions on transfers to or from a Designated Investment Alternative (such as absolute restrictions, minimum investment periods, penalties, or valuation adjustments);

(3) a description of or reference to plan provisions or provisions of the participant-directed investment program relating to the exercise of voting, tender, and similar rights appurtenant to a Participant's investment in an investment alternative, as well as any restrictions on such rights;

(4) an identification of any Designated Investment Alternatives offered under the Plan;

(5) an identification of any designated Investment Managers;
and

(6) a description of any "brokerage windows," "self-directed brokerage accounts," or similar Plan arrangements that enable Participants to select investments beyond those designated by the Plan. If the participant-directed investment program does not limit the investment alternatives

to Designated Investment Alternatives, a general statement of the types of non-identified investments that are permitted and the types which are prohibited, as provided under the rules established for the participant-directed investment program, shall be a sufficient description of such investments, *provided that* Participants are encouraged to obtain and review materials relating to any such non-identified investments prior to actually making an investment.

(b) Administrative Expenses.

(1) Initial and Annual Disclosures. On or before the date on which a Participant can first direct his investments, and at least annually thereafter, an explanation of any fees and expenses for general plan administrative services (*e.g.*, legal, accounting, recordkeeping), which may be charged against the individual accounts of Participants and are not reflected in the Total Annual Operating Expenses of any Designated Investment Alternative, as well as the basis on which such charges will be allocated (*e.g.*, pro rata, per capita) to, or affect the balance of, each individual account.

(2) Quarterly Disclosures. At least quarterly, a statement that includes—

(A) the dollar amount of the fees and expenses described in paragraph (1) that are actually charged (whether by liquidating shares or deducting dollars) during the preceding quarter to the Participant's account for individual services;

(B) a description of the services to which the charges relate (*e.g.*, plan administration, including recordkeeping, legal, accounting services); **and**

(C) if applicable, an explanation that, in addition to the fees and expenses disclosed pursuant this paragraph (2), some of the Plan's administrative expenses for the preceding quarter were paid from the Total Annual Operating Expenses of one or more of the Plan's Designated Investment Alternatives (*e.g.*, through revenue sharing arrangements, Rule 12b-1 fees, sub-transfer agent fees).

(c) Individual Expenses.

(1) Initial and Annual Disclosures. On or before the date on which a Participant can first direct his investments, and at least annually thereafter, an explanation of any fees and expenses that may be charged against the individual account of a Participant on an individual, rather than on a plan-wide, basis (*e.g.*, fees attendant to processing Plan loans or Qualified Domestic Relations Orders, fees for investment advice, fees for brokerage windows, commissions, front- or back-end loads or sales charges, redemption fees, transfer fees, and similar expenses, and optional rider charges in annuity contracts) and which are not reflected in the Total Annual Operating Expenses of any Designated Investment Alternative.

(2) Quarterly Disclosures. At least quarterly, a statement that includes—

(A) the dollar amount of the fees and expenses described in paragraph (1) that are actually charged (whether by liquidating shares or deducting dollars) during the preceding quarter to the Participant's account for individual services; **and**

(B) a description of the services to which the charges relate (*e.g.*, loan processing fee).

(d) Changes to Disclosed Information. If there is a change to the information described in subsections (a), (b)(1), or (c)(1), each Participant must be furnished a description of such change at least thirty (30) days, but not more than ninety (90) days, in advance of the effective date of such change, unless the inability to provide such advance notice is due to events that were unforeseeable or circumstances beyond the control of the Administrator, in which case notice of such change must be furnished as soon as reasonably practicable.

§ 18-1627 Automatic and Periodic Disclosure of Investment-Related Information.

Except as provided in § 18-1628, the Administrator (or person designated by the Administrator to act on its behalf) shall provide to each Participant the following investment-related information on or before the date on

which a Participant can first direct his investments, and at least annually thereafter, based on the latest information available to the Plan and in the format described in § 18-1629:

(a) **Identifying Information.** Such information shall include:

- (1) The name of each Designated Investment Alternative; **and**
- (2) The type or category of the investment (*e.g.*, money market fund, balanced fund (stocks and bonds), large-cap stock fund, employer stock fund, employer securities).

(b) **Performance Data.**

(1) **Return Not Fixed.** For Designated Investment Alternatives with respect to which the return is not fixed, the Average Annual Total Return of the investment for 1-, 5-, and 10-calendar year periods (or for the life of the alternative, if shorter) ending on the date of the most recently completed calendar year; as well as a statement indicating that an investment's past performance is not necessarily an indication of how the investment will perform in the future.

(2) **Fixed Return.** For Designated Investment Alternatives with respect to which the return is fixed or stated for the term of the investment, both the fixed or stated annual rate of return and the term of the investment. If, with respect to such a Designated Investment Alternative, the issuer reserves the right to adjust the fixed or stated rate of return prospectively during the term of the contract or agreement, the current rate of return, the minimum rate guaranteed under the contract, if any, and a statement advising Participants that the issuer may adjust the rate of return prospectively and how to obtain (*e.g.*, telephone or Web site) the most recent rate of return required under this Section.

(c) **Benchmarks.** For Designated Investment Alternatives with respect to which the return is not fixed, the name and returns of an appropriate broad-based securities market index over the 1-, 5-, and 10-calendar year periods (or for the life of the alternative, if shorter) comparable to the performance data periods provided under subsection (b)(1), and which is not administered by an Affiliate of the investment issuer, its investment adviser, or a principal underwriter, unless the index is widely recognized and used.

(d) Fee & Expense Information.

(1) Return Not Fixed. For Designated Investment Alternatives with respect to which the return is not fixed:

(A) the amount and a description of each shareholder-type fee (fees charged directly against a Participant's investment, such as commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees, and purchase fees, which are not included in the Total Annual Operating Expenses of any Designated Investment Alternative) and a description of any restriction or limitation that may be applicable to a purchase, transfer, or withdrawal of the investment in whole or in part (such as round trip, equity wash, or other restrictions);

(B) the Total Annual Operating Expenses of the investment expressed as a percentage (*i.e.*, expense ratio), calculated in accordance with § 18-1622(d);

(C) the Total Annual Operating Expenses of the investment for a one-year period expressed as a dollar amount for a \$1,000 investment (assuming no returns and based on the percentage described in subparagraph (B));

(D) a statement indicating that fees and expenses are only one of several factors that Participants should consider when making investment decisions; **and**

(E) a statement that the cumulative effect of fees and expenses can substantially reduce the growth of a Participant's retirement account and that Participants can visit the Employee Benefit Security Administration's Web site for an example demonstrating the long-term effect of fees and expenses.

(2) Fixed Return. For Designated Investment Alternatives with respect to which the return is fixed for the term of the investment, the amount and a description of any shareholder-type fees and a description of any restriction or limitation that may be applicable to a purchase, transfer, or withdrawal of the investment in whole or in part.

(e) **Internet Web Site Address.** An Internet Web site address that is sufficiently specific to provide Participants access to the following information regarding the Designated Investment Alternative:

(1) The name of the Designated Investment Alternative's issuer;

(2) The Designated Investment Alternative's objectives or goals in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;

(3) The Designated Investment Alternative's principal strategies (including a general description of the types of assets held by the investment) and principal risks in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;

(4) The Designated Investment Alternative's portfolio turnover rate in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;

(5) The Designated Investment Alternative's performance data described in subsection (b), updated on at least a quarterly basis, or more frequently if required by other applicable law; **and**

(6) The Designated Investment Alternative's fee and expense information described in subsection (d).

(f) **Glossary.** A general glossary of terms to assist Participants in understanding the Designated Investment Alternatives, or an Internet Web site address that is sufficiently specific to provide access to such a glossary along with a general explanation of the purpose of the address.

(g) **Annuity Options.** If a Designated Investment Alternative is *part of* a contract, fund, or product that permits Participants to allocate contributions towards the *future* purchase of a stream of retirement income payments guaranteed by an insurance company, the information set forth in § 18-1628(a)(1) through (7) with respect to the annuity option, to the extent such information is not otherwise included in investment-related fees and expenses described in subsection (d).

§ 18-1628 Special Rules Relating to Automatic and Periodic Disclosure of Investment-Related Information.

(a) **Annuity Options.** In the case of a Designated Investment Alternative that is a contract, fund, or product that permits Participants to allocate contributions towards the current purchase of a stream of retirement income payments guaranteed by an insurance company, the Administrator (or person designated by the Administrator to act on its behalf) shall provide the following information with respect to each such option *in lieu of* the information required by § 18-1627(a) through (e):

- (1) The name of the contract, fund, or product;
- (2) The option's objectives or goals (*e.g.*, to provide a stream of fixed retirement income payments for life);
- (3) The benefits and factors that determine the price (*e.g.*, age, interest rates, form of distribution) of the guaranteed income payments;
- (4) Any limitations on the ability of a Participant to withdraw or transfer amounts allocated to the option (*e.g.*, lock-ups) and any fees or charges applicable to such withdrawals or transfers;
- (5) Any fees that will reduce the value of amounts allocated by Participants to the option, such as surrender charges, market value adjustments, and administrative fees;
- (6) A statement that guarantees of an insurance company are subject to its long-term financial strength and claims-paying ability; **and**
- (7) An Internet Web site address that is sufficiently specific to provide Participants access to the following information:
 - (A) The name of the option's issuer and of the contract, fund, or product;
 - (B) Description of the option's objectives or goals;
 - (C) Description of the option's distribution alternatives/guaranteed income payments (*e.g.*, payments for life, payments for a specified term, joint and survivor payments, optional rider payments), including any limitations on the right of a Participant to receive such payments;

(D) Description of costs and/or factors taken into account in determining the price of benefits under an option's distribution alternatives/guaranteed income payments (*e.g.*, age, interest rates, other annuitization assumptions);

(E) Description of any limitations on the right of a Participant to withdraw or transfer amounts allocated to the option and any fees or charges applicable to a withdrawal or transfer; **and**

(F) Description of any fees that will reduce the value of amounts allocated by Participants to the option (*e.g.*, surrender charges, market value adjustments, and administrative fees).

(b) Fixed Return Investments. In the case of a Designated Investment Alternative with respect to which the return is fixed for the term of the investment, the Administrator (or person designated by the Administrator to act on its behalf) shall, *in lieu of* complying with the requirement of § 18-1627(e), provide an Internet Web site address that is sufficiently specific to provide Participants access to the following information regarding the Designated Investment Alternative:

(1) The name of the Designated Investment Alternative's issuer;

(2) The Designated Investment Alternative's objectives or goals (*e.g.*, to provide stability of principal and guarantee a minimum rate of return);

(3) The Designated Investment Alternative's performance data described in § 18-1627(b)(2), updated on at least a quarterly basis, or more frequently if required by other applicable law; **and**

(4) The Designated Investment Alternative's fee and expense information described in § 18-1627(d)(2).

§ 18-1629 Comparative Format For Furnishing Investment-Related Information.

(a) In General. The Administrator (or person designated by the Administrator to act on its behalf) shall provide the information required

under § 18-1627 or § 18-1628 in a chart or similar format that is designed to facilitate a comparison of such information for each Designated Investment Alternative available under the Plan, that prominently displays the date, and that includes):

(1) A statement indicating the name, address, and telephone number of the Administrator (or person(s) designed by the Administrator to act on its behalf) to contact for the provision of the information required by § 18-1631 (relating to Investment-Related Information to be Provided Upon Request);

(2) A statement that additional investment-related information (including more current performance information) is available at the listed Internet Web site addresses (*see* § 18-1627(e), § 18-1628(a)(7), and § 18-1628(b)); **and**

(3) A statement explaining how to request and obtain, free of charge, paper copies of the information required to be made available on a Web site pursuant to § 18-1627(e), § 18-1628(a)(7), and § 18-1628(b).

(b) Additional Information. Nothing in this Article shall preclude the Administrator (or person designated by the Administrator) from including additional information that the Administrator (or designee) determines appropriate for such comparisons, provided such information is not inaccurate or misleading.

(c) Use of Model Comparative Chart. The Administrator (or person designated by the Administrator) shall be deemed to have satisfied the requirements of this Section if it uses and accurately completes the model comparative chart in the Appendix to 29 C.F.R. § 2550.404a-5.

§ 18-1630 Investment-Related Information to be Provided Subsequent to Investment.

The Administrator (or person designated by the Administrator to act on its behalf) shall furnish to each investing Participant, subsequent to an investment in a Designated Investment Alternative, any materials provided to the Plan relating to the exercise of voting, tender, and similar rights

appurtenant to the investment, to the extent such rights are passed through to such Participant under the terms of the Plan.

§ 18-1631 Investment-Related Information to be Provided Upon Request.

The Administrator (or person designated by the Administrator to act on its behalf) shall furnish to each investing Participant, either at the times specified in § 18-1627 or upon request, the following information related to Designated Investment Alternatives—

(a) Copies of prospectuses (or, alternatively, any short-form or summary prospectus, the form of which has been approved by the Securities and Exchange Commission) for the disclosure of information to investors by entities registered under either the Securities Act of 1933 or the Investment Company Act of 1940, or similar documents relating to Designated Investment Alternatives that are provided by entities that are not registered under either of these Acts;

(b) Copies of any financial statements or reports, such as statements of additional information and shareholder reports, and of any other similar materials relating to the Plan's Designated Investment Alternatives, to the extent such information is provided to the Plan;

(c) A statement of the value of a share or unit of each Designated Investment Alternative as well as the date of the valuation; **and**

(d) A list of the assets comprising the portfolio of each Designated Investment Alternative which constitute "plan assets" within the meaning of 29 C.F.R. § 2510.3-101, and the value of each such asset (or the proportion of the investment alternative which it comprises).

§ 18-1632 Miscellaneous Rules Relating to Disclosures.

(a) **Fees & Expenses.** Except as otherwise explicitly required under this Article, in any disclosure of information by the Administrator to Participants under this Article, fees and expenses may be expressed in terms of a monetary amount, formula, percentage of assets, or per capita charge.

(b) **Understandable Disclosures.** The information required to be prepared by the Administrator for disclosure under this Article shall be written in a manner calculated to be understood by the average Plan Participant.

§ 18-1633 Independent Control by Participants.

(a) **In General.** The Trustees shall not interfere with the exercise of independent control by Participants regarding transactions related to the participant-directed investment program (including, without limitation, the acquisition or disposition of investments, and the exercise of any voting, tender, and similar rights appurtenant to a Participant's ownership interest in an investment alternative).

(b) **Improper Influence.** No Plan Fiduciary or Plan sponsor shall subject any Participant to improper influence with regard to any transaction related to the participant-directed investment program.

(c) **Concealment of Material Non-Public Facts.** No Plan Fiduciary shall conceal any material non-public facts regarding an investment from a Participant, *unless* the disclosure of such information by the Plan Fiduciary to the Participant would violate any provision of federal law or any provision of state law which is not preempted by ERISA.

(d) **Incompetent Participant.** No Plan Fiduciary shall accept the instructions of any person whom the Plan Fiduciary knows is legally incompetent.

(e) **Transactions Involving a Fiduciary.** In the case of any transaction permitted under the participant-directed investment program and this Article which involves the sale, exchange, or leasing of property between the Plan and a Plan Fiduciary or an Affiliate of a Plan Fiduciary, or a loan to a Plan Fiduciary or an Affiliate of a Plan Fiduciary, the Participant shall not be required to pay more than, or shall not receive less than, "adequate consideration" (as defined in ERISA § 3(18) and the regulations thereunder) in connection with the transaction. (In general terms, "adequate consideration" for a security traded on a registered national securities exchange is the prevailing price on such market; for a security not so traded for which there is a generally recognized market, the current offering price for the security;

and for an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the Plan Fiduciary.)

(f) **Investment Advice.** Neither the Employer nor any Plan Fiduciary should provide any investment advice to a Participant related to the participant-directed investment program.

§ 18-1634 Incidents of Ownership Appurtenant to Participant Investments.

The Trustees may provide each Participant who has a Plan account invested in whole or in part in any investment directed by the Participant under this Article with a reasonable opportunity to give instruction with respect to voting, tender, or similar rights appurtenant to the Participant's ownership interest in that investment. To the extent that the Trustees do not pass through such rights to Participants, they shall not be protected from fiduciary liability with respect to the exercise or non-exercise of those rights.

§ 18-1635 Segregation; Expenses.

The portion of any Participant's Plan accounts which are invested according to Participant instructions under this Article shall be segregated from the rest of the Trust Fund. Such portion shall not share in any gains or losses of the general Trust Fund, but shall instead reap the benefits and bear the expenses of the segregated investments. Where more than one Participant is investing in the same investment, it is not necessary that the assets allocable to each Participant be physically segregated from those of other Participants, so long as they are segregated from other investments and the Trustees maintain adequate records to disclose the portions of the investment associated with each Participant. The Plan and Trust may charge a Participant's account for the reasonable expenses of carrying out investment instructions, *provided* that procedures are established to periodically inform the Participant of the actual expenses incurred with respect to his/her individual account.

§ 18-1636 ERISA § 404(c) Requirements.

Although this Plan is not subject to ERISA Title I, Part 4 fiduciary requirements, the Participant-directed investment program established under this Article is generally intended to satisfy the requirements established by the U.S. Department of Labor for “ERISA § 404(c) plans”, and this Plan shall be deemed to incorporate by reference all requirements for ERISA § 404(c) plans not otherwise stated, except to the extent the Plan’s language clearly evidences an intent not to follow a particular requirement. (*Cf.* 29 C.F.R. § 2550.404c-1 and § 2550.404a-5.) Nonetheless, any failure by a Plan Fiduciary to satisfy any of the provisions of this Article that are designed to comply with requirements for ERISA § 404(c) plans, shall not subject the Plan, any Fiduciary, or the Employer to any liability to any Participant, Alternate Payee, or Beneficiary *except* to the extent such liability would exist under Pennsylvania law for a municipal government retirement plan even if the ERISA § 404(c) plan requirements had not been included in this Article, and for those purposes it shall be deemed that such provisions are not included in this Plan.

SECTION 25. Codified Ordinances § 18-1606(a) (relating to Nonuniformed Employees Pension Plan—Trust & Investments—Investment by Investment Managers—In General) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-1606 Investment by Investment Managers.

(a) **In General.** The Administrator may appoint one or more persons qualified under subsection (b) to be Investment Managers under this Plan, with powers to manage, acquire, and/or dispose of specified assets in the Trust. Each such appointment shall specify the powers granted to the Investment Manager, the assets involved, and the duties and responsibilities, if any, of the Trustees with respect to the assets subject to investment

by the Investment Manager. The Administrator shall have the authority and responsibility for establishing operational and administrative procedures to coordinate the activities of the Trustees and any Investment Manager. The Trustees shall have no obligation to take any action with respect to those assets of the Trust subject to the direction of an Investment Manager without receipt of written directions acceptable to the Trustees from the Investment Manager, and the Trustees shall be under no duty to review such directions. The Administrator may revoke an appointment under this Section or change its terms at any time. Upon receipt of a written notice from the Administrator of the resignation or removal of an Investment Manager, the Trustees shall assume management responsibility for the assets previously appointed to the direction of the Investment Manager. The Investment Manager may not invest in any assets in which the Trustees are precluded from investing under §§ 18-1603 (relating to Investment of the Trust Fund) or 18-1604 (relating to Life Insurance Policies and Annuity Contracts).

* * *

SECTION 26. Codified Ordinances § 18-1805 (relating to Nonuniformed Employees Pension Plan—Fiduciaries—Prohibited Transactions) is amended by amending subsections (a) and (c), and adding new subsections (d), (e), (f), and (g), as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 18-1805 Prohibited Transactions.

(a) General Rule. * * *

* * *

(4) transfer, or allowance of actual or beneficial use, of Plan income or assets-;

(5) act by a Disqualified Person who is a Fiduciary whereby he deals with Plan income or assets in his own interest or for his own account; or

(6) receipt of any consideration for his own personal account by any Disqualified Person who is a Fiduciary from any party dealing with the Plan in connection with a transaction involving Plan income or assets.

* * *

(c) **Definitions.** The terms used in subsections (a) and (b) of this Section shall be interpreted in the same manner as corresponding terms utilized in Code § 4975, and Title I, Part 4 and Section 3(14) of ERISA.

(d) **Code § 503 Rule.** Fiduciaries shall not engage on behalf of the Plan or Trust, either directly or indirectly, in any Section 503 Prohibited Transaction or in any other transaction which is prohibited under Code § 503.

(e) **Section 503 Prohibited Transactions.** For purposes of this Section, the term “Section 503 Prohibited Transaction” means any transaction in which the Plan or Trust:

(1) lends any part of its income or corpus, without receipt of adequate security and a reasonable rate of interest, to a Section 503 Disqualified Person;

(2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to a Section 503 Disqualified Person;

(3) makes any part of its services available on a preferential basis to a Section 503 Disqualified Person;

(4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money’s worth, from a Section 503 Disqualified Person;

(5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money’s worth, to a Section 503 Disqualified Person; or

(6) engages in any other transaction which results in a substantial diversion of its income or corpus to a Section 503 Disqualified Person.

(f) **Section 503 Disqualified Persons.** For purposes of this Section, the term “Section 503 Disqualified Person” shall mean—

- (1) the Employer;
 - (2) a person who has made a substantial contribution to the Plan or Trust;
 - (3) a member of the family (as defined in Code § 267(c)(4)) of an individual described in paragraph (2); and
 - (4) a corporation controlled by a person described in paragraphs (1) or (2) through the ownership, directly or indirectly, of 50% or more of the total combined voting power of all classes of stock entitled to vote or 50% or more of the total value of shares of all classes of stock of the corporation.
- (g) Definitions. The terms used in subsections (e) and (f) of this Section shall be interpreted in the same manner as corresponding terms utilized in Code § 503.

SECTION 27. Codified Ordinances Chapter 18, Article XX (relating to Nonuniformed Employees Pension Plan—Miscellaneous) is amended by adding a new section 18-2014 to read as follows:

§ 18-2014 Public Employee Pension Forfeiture Act.

Notwithstanding anything to the contrary contained in this Chapter, all benefits with respect to a Participant under this Plan are subject to partial or complete forfeiture in accordance with the provisions of the Public Employee Pension Forfeiture Act, 43 PA. STAT. ANN. § 1311 *et seq.* Any amounts so forfeited which are subject to restitution to the Employer or another person or entity under the Act shall be so paid in accordance with the restitution order. Any amounts so forfeited which are not subject to restitution to the Employer or other person or entity under that Act shall, at such time as the Administrator reasonably determines that all proceedings related to the forfeiture and/or restitution under the Act have commenced and have concluded, be allocated among the accounts of persons who were Active Participants in this Plan as of the date of the forfeiture in proportion to their

Compensation for the last Plan Year which ended before the date of the forfeiture.

SECTION 28. Sections 1 through 9 of this Ordinance shall take effect on January 30, 2020. Sections 10, 11, and 17 through 20 shall take effect as of January 1, 2000. Section 12 shall take effect as of January 1, 2009. Sections 13 and 14 shall take effect as of January 1, 2008. Sections 15 and 16 shall take effect as of January 1, 2008. Sections 17 through 20 shall take effect as of January 1, 2020. Section 21 shall take effect on January 7, 2020. Section 22 shall take effect as of January 1, 2002, except the amendment of § 18-1307(b)(2) shall take effect as of January 1, 2010, the addition of § 18-1307(c) shall take effect March 28, 2005, and other references to Roth IRAs shall take effect as of January 1, 2008. Sections 23 and 24 shall take effect as of January 1, 2012. Sections 25 through 27 shall take effect on January 30, 2020.

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Albur-
tis, this 29th day of January, 2020, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURTIS

Ronald J. DeIaco, President

Attest:

Sharon Trexler, Borough Manager

AND NOW, this 29th day of January, 2020, the above Ordinance is hereby AP-
PROVED.

Kathleen Palmer, Mayor