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**Part 1**

**Elected Officers**

**A. Office of Mayor**

**§1-101. Compensation of Mayor.**

The salary of the Mayor shall be as fixed from time to time by Borough Council. It shall be payable in monthly installments and he shall also be paid by the Borough an automobile allowance of such sum as may be fixed by Council, payable monthly.

(Ord. 621, 12/14/1983)

**§1-102. Emergency Powers of Mayor.**

The Mayor is authorized, if he finds that the Borough or any part of it is suffering or is in imminent danger of suffering a riot, disturbance or disorderly assembly or other occurrence which will seriously and substantially endanger the peace, safety and welfare of the Borough or its inhabitants, to declare by proclamation of state of emergency and take the following specified measures throughout the Borough or any part of it:

- A. Prohibit or limit the number of persons who may gather or congregate upon the public highways or public sidewalks, or in any outdoor place.
- B. Halt access or egress upon public highways to or from the Borough or any part of it.
- C. Establish a curfew limiting the hours when persons may go upon or travel the public streets and sidewalks. During that curfew, it shall be unlawful for any person, except Borough officials, police, firemen, or their duly authorized agents or persons to whom a permit has been issued by police authorities, to be on any street, sidewalk or outdoor place within the Borough.
- D. Require the closing of places dispensing alcoholic beverages and prohibit the dispensing of alcoholic beverages.
- E. Prohibit or restrict the sale of gasoline or other nonflammable liquids.
- F. Prohibit the sale, carrying or possession on the public streets or sidewalks or any public place by anyone except police, of weapons including, but not limited to, firearms, air rifles, slingshots, knives, razors, fire bombs, Molotov cocktails, or other inflammable items or devices or missiles of any kind.
- G. Prohibit any interference in any way with the functions of firemen or the operations of any fire equipment.

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(Ord. 527, 7/8/1969, §1)

### **§1-103. Duration of State of Emergency.**

The state of emergency declared by the Mayor shall exist for the period set forth in the proclamation but not in excess of two weeks. However, the state of emergency may be extended for additional periods of two weeks.

(Ord. 527, 7/8/1969, §2)

### **§1-104. Penalties.**

Any person, firm or corporation who shall violate any provision of this Part 1 shall, upon conviction thereof, be sentenced to pay a fine of not more than \$300; and/or to imprisonment for a term not to exceed 90 days.

(Ord. 527, 7/8/1969, §3; as amended by Ord. 591, 8/8/1978, §1; and by Ord. 621, 12/14/1983)

## **B. Council**

### **§1-111. Time, Day and Place of Regular Meetings.**

The regular meetings of the Council of the Borough of Beaver shall convene on the second Tuesday of each month at 7:30 p.m. (prevailing time) in Council Room, Borough Municipal Building, 469 Third Street, Beaver, Pennsylvania.

(Ord. 621, 12/14/1983)

**Part 2**

**Appointed Officers**

**A. Manager.**

**§1-201. Office of Manager Created.**

An office to be called the office of Borough Manager is established and created for the Borough.

(Ord. 409, 1/9/1951, §1)

**§1-202. Appointment of Manager.**

While the office of a Manager exists, Council shall, from time to time whenever there is a vacancy, elect by a vote of a majority of all its members one person to fill the office of Manager, for an indefinite term, and subject to removal by Council at any time by a vote of a majority of its members.

(Ord. 409, 1/9/1951, §2)

**§1-203. General Authority of Manager.**

The Manager shall carry on the business of the Borough under the direction of Council, and his duties shall consist of those prescribed by §§1-205 and 1-206, as well as the general management of all Borough business not specifically given by statute or other ordinances or other officials of the Borough.

(Ord. 409, 1/9/1951, §3)

**§1-204. Compensation and Bond of Manager.**

The compensation of the Manager shall be fixed by Council from time to time, and the Manager shall give bond in a sum to be fixed by Council with surety approved by Council, conditioned for the faithful performance of his duties.

(Ord. 409, 1/9/1951, §4)

**§1-205. Specific Duties of Manager.**

The duties of the Manager shall consist of the following:

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- A. The Manager shall be the chief administrative officer of the Borough responsible to Council as a whole for the proper and efficient administration of the affairs of the Borough, including all Borough business not specifically vested in some other officer or person by statute, ordinance or resolution.
- B. The Manager shall supervise and be responsible for the activities of all municipal departments, except that he shall not exercise any supervision or authority over the Police Department other than such duties as may be delegated to him from time to time by the Mayor.
- C. He shall hire, appoint, suspend or remove all municipal employees in accordance with §1-206, except as otherwise provided by law or ordinance, and excepting that all employees covered by the civil service provisions of the Borough Code shall be hired, suspended, or discharged in accordance with those provisions. The Manager shall at the next succeeding meeting of Council report any action taken under authority of this subsection.
- D. He shall prepare and submit the annual operating budget for the succeeding year to Council in sufficient time prior to the close of the preceding fiscal year to allow for its adoption as required by law. He shall submit such explanatory budget message as may be required and obtain from all employees and other persons estimates of revenues and expenditures and other supporting data as may be required to fully explain his proposed budget.
- E. He shall submit to Council with his proposed budget, a complete written report on the finances and administrative activity of the municipality for the current year.
- F. He shall, subject to other requirements by law, ordinance or resolution, generally superintend and manage all of the day-to-day fiscal affairs of the municipality. He shall continually examine and review all accounts in which the municipality is concerned, either as debtor or creditor, and prepare and present to Council such written reports and financial statements as may be required.
- G. He shall keep Council fully informed and advised as to the financial condition and the conduct of business affairs of the Borough and its future needs, submitting such periodic reports and making such recommendations for action concerning the fiscal and other business affairs of the municipality as he deems necessary.
- H. He shall attend all Council meetings and all committee meetings, at which his presence is requested, and shall have the right to take part in discussion in those meetings of Council or its committee but shall have no vote in those meetings. He shall prepare an agenda for each meeting of Council for the conduct of the business of Council, subject, however, to the right of the Council President to authorize deviation from the order of business listed in

the agenda. Each councilman shall be supplied with a copy of the agenda no later than the Friday preceding the regular monthly meeting.

- I. He may employ experts or consultants to perform work or advise or assist in the business of the Borough. However, the approval of Council shall be necessary if the cost of any such expert or consultant exceeds a sum set by Council from time to time by resolution.
- J. He shall be responsible for the letting of contracts and shall supervise the performance and execution of contracts unless those duties are imposed by law, ordinance or resolution upon some other officer or person.
- K. He shall act as purchasing officer of the Borough and shall purchase, subject to the requirements of the Borough Code, all supplies and equipment required by any agency, board, department or officer of the Borough. He shall keep an account of those purchases and from time to time make full written report of them to Council.
- L. He shall be responsible for investigating all complaints regarding Borough affairs, problems, personnel and actions, and shall, when appropriate, take appropriate action, keeping a record of those complaints investigated or reported to him and the action, if any, taken on them.
- M. He shall keep appropriate records as required by law, and he shall be authorized to certify and attest to the execution of all ordinances, contracts or other instruments. He shall have custody of the municipal corporate seal.
- N. He shall, where authorized by law, ordinance or resolution, acknowledge and execute documents, contracts, obligations or other papers, on behalf of the municipality.
- O. He shall have the duty to enforce ordinances and regulations of the municipality.
- P. He shall have the authority to represent the Borough in deliberation with other governmental bodies.
- Q. He may hold such other municipal offices or departments or boards of the municipality as Council may from time to time direct.
- R. The above list shall be construed as a general guideline of the extent of the Manager's powers and duties. The listing of a power and duty in the above list shall not be construed to deny Council the right to remove that power or duty from the list or to add any power or duty by ordinance or resolution.

(Ord. 577, 4/13/1976, §1)

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### **§1-206. Manager's Authority Over Employees.**

Except as required by civil service provisions of the Borough Code, the Manager and pertinent committee of Council involved, with the approval of Council, shall have the right to hire, discharge or suspend Borough employees, and he shall have the right solely to direct the Borough employees. All actions of Council relating to the Borough employees shall be conducted through the Manager.

(Ord. 577, 4/13/1976, §2)

### **§1-207. Substitute Appointed in Case of Absence or Disability of Manager.**

In the absence of, or upon the disability of the Manager, he shall nominate and appoint an employee of the Borough who shall perform his duties during such absence or disability. In the event such a substitute is required for longer than two weeks, his continued appointment shall require the approval of Council.

(Ord. 577, 4/13/1976, §3)

### **§1-208. Residence of Manager.**

The Manager shall, within two years after his appointment, fix his residence within the Borough.

(Ord. 577, 4/13/1976, §4)

## **B. Independent Auditor.**

### **§1-209. Office of Independent Auditor.**

The office of Independent Auditor is hereby created for this Borough. The office of Elected Auditor is hereby abolished.

(Added by Ord. 743, 10/12/2004)

### **§1-210. Appointment of Independent Auditor.**

While the office of an Independent Auditor exists, the Council shall annually, by resolution, appoint a competent public accountant, or certified public accountant, or firm of public accountants, or firm of certified public accountants to perform the duties of such office. The appointed Independent Auditor shall hold office at the pleasure of the Council and shall be subject to removal at any time.

(Added by Ord. 743, 10/12/2004)

**§1-211. Duties of Independent Auditor.**

The duties of the Independent Auditor shall be:

A. To make an independent examination of the accounting records of the Borough for each fiscal year.

B. To perform the other duties and exercise the powers conferred by the Borough Code.

(Added by Ord. 743, 10/12/2004)

**§1-212. Compensation of Independent Auditor.**

The compensation of the Independent Auditor shall be as fixed by the Council from time to time.

(Added by Ord. 743, 10/12/2004)



**Part 3**

**Authorities, Commissions and Agencies**

**A. Municipal Authority.**

**§1-301. Desire and Intention to Organize Authority.**

Council signifies and expresses its desire and intention to organize an authority under an Act known as “Municipal Authorities Act of 1945,” approved May 2, 1945, P.L. 382, its amendments and supplements.

(Res. 12/11/1956, §1)

**§1-302. Purpose of Organization of Authority.**

The said authority shall be organized for the purpose of acquiring, holding, constructing, improving, maintaining and operating, owning, leasing, either in the capacity of lessor or lessee, sewers, sewer systems or parts thereof, and sewage treatment works. [See also §1-304B]

(Res. 12/11/1956, §2)

**§1-303. Beaver Borough Municipal Authority Named.**

The name of the proposed authority is to be the Beaver Borough Municipal Authority.

(Res. 12/11/1956, §3)

**§1-304. Articles of Incorporation of Beaver Borough Municipal Authority.**

The proposed articles of incorporation of the said authority are as follows:

- A. The name of the authority shall be Beaver Borough Municipal Authority.
- B. The Authority is formed for the purpose of acquiring, holding, constructing, improving, maintaining and operating, owning, leasing, either in the capacity of lessor or lessee, sewers, sewer systems or parts thereof, and sewage treatment works, reservoir or reservoirs, tank or tanks for water storage, water works, water supply works and water distribution systems, and land facilities for parking spaces for the parking of vehicles of any kind.<sup>1</sup>

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<sup>1</sup> Amending Ordinances 478 and 508, added to the authorized purposes of the Authority.

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- C. No other authority organized under the “Municipal Authorities Act of 1945,” approved May 2, 1945, P.L. 382, its amendments and supplements, or under the act approved the 28th day of June, 1935, P.L. 463, is in existence in or for the incorporating municipality.
- D. The name of the incorporating municipality, together with the names and addresses of the Municipal Authorities is as follows: . . .<sup>2</sup>
- E. The names and addresses and terms of office of the first members of the Board of Beaver Borough Municipal Authority, all of whom live in the Borough of Beaver and none of whom are members of the Borough of Beaver Municipal Authorities, are: . . .<sup>2</sup>

(Res. 12/11/1956, §4; as amended by Ord. 478, 4/14/1964, §1; and by Ord. 508, 2/14/1967, §1)

### **§1-305. Acquisition of Projects.**

1. The Borough expresses its intention to acquire now all of the projects previously undertaken by the Beaver Borough Municipal Authority, and requests the immediate conveyance to the Borough by said Authority of all of its property.
2. As used herein, the term “property” is comprehensive and includes: real property and any legal or equitable interest therein; tangible personal property; bank accounts and funds on deposit; cash on hand; government or corporate securities; books of account and other financial records; documents such as contracts, certificates, permits, licenses, plans, drawings, charts, photographs, logs, studies and correspondence; and tapes or computer disks containing electronically created or stored data.
3. The conveyance by said Authority of its property shall be made by the physical delivery of tangible objects, and by the execution of such instruments of transfer as the Borough Solicitor may deem necessary or proper.
4. Upon such conveyance, the Borough shall assume all of the obligations incurred by said Authority with respect to each project.

(Res. 12/11/1956; as added by Ord. 728, 2/11/2003, §1)

### **B. Planning Commission.**

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<sup>2</sup> Here followed a listing of the then current members of Council, and the first persons appointed to the Board of the Authority.

**§1-311. Planning Commission.**

1. Creation. A Planning Commission is hereby established.
2. Membership. The Commission shall have seven members.
3. Functions. The powers, duties and operations of the Commission shall be as set forth in the Pennsylvania Municipalities Planning Code or other applicable State law.

(Ord. 687, 9/9/1997, §1)

**C. Educational Service Agency.**

**§1-321. Educational Service Agency Established.**

By authority vested in the boroughs of the Commonwealth of Pennsylvania by the Act of 1979 P.L. 503 No. 108, the Borough of Beaver establishes an Educational Service Agency.

(Ord. 610, 5/30/1980, §1)

**§1-322. Membership, Appointment and Tenure.**

The Educational Service Agency shall be composed of three individuals; each of whom shall be a resident of the Borough at least 18 years of age, who shall be appointed by Council for three-year overlapping terms, coinciding with the calendar year; provided, in the case of the three individuals appointed at the time of establishment of the Educational Service Agency, the term of one shall expire on the first day of January 1981, the term of one shall expire on the first day of January 1982, and the term of the third member shall expire on the first day of January 1983.

(Ord. 610, 5/30/1980, §2)

**§1-323. Certain Officials Disqualified for Membership; Vacancies.**

No elected Borough or school district official shall be eligible to appoint to or membership on the Educational Service Agency. A vacancy shall occur in the Educational Service Agency in the case of any member who ceases to be a resident of the Borough or who is otherwise disqualified for appointment or membership.

(Ord. 610, 5/30/1980, §3)

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### **§1-324. Filling of Vacancies.**

Vacancies in the Educational Service Agency occurring for any reason shall be filled by appointment by Council of a successor to serve for the remainder of the term of the individual being replaced.

(Ord. 610, 5/30/1980, §4)

### **§1-325. Compensation.**

Members of the Educational Service Agency shall receive such compensation as shall be fixed from time to time by Council.

(Ord. 610, 5/30/1980, §5)

### **§1-326. Bond.**

Each member of the Educational Service Agency may, at the discretion of Council, be required to furnish a bond, in the amount and with a surety specified by the Borough for the faithful performance of his duties as a member of the Educational Service Agency.

(Ord. 610, 5/30/1980, §6)

### **§1-327. Employment and Supervision of School Crossing Guards.**

The function of the Educational Service Agency shall be to employ and supervise school crossing guards, also referred to as special school police, to direct traffic at or near schools. In order to enable the Educational Service Agency to perform that function, the Borough delegates to that agency the authority to appoint and supervise crossing guards or special school police as set out in the Borough Code.

(Ord. 610, 5/30/1980, §7)

### **§1-328. Authority and Duties.**

The Educational Service Agency shall have the following authority, and it shall be its duty to:

- A. Prepare annually on or before the first day of November of each year and submit to Council for approval a budget showing its contemplated income and its proposed expenditures for the succeeding year.
- B. Annually adopt the budget as submitted under Subsection A of this section, as modified by the Borough.

- C. From time to time employ, and/or discharge, and fix the compensation of crossing guards or special school police to serve in the Borough.
- D. Exercise supervision and control over the crossing guards or special school police by:
  - (1) Establishing, administering and enforcing rules and regulations for the work and conduct of the crossing guards or special school police.
  - (2) Establishing work schedules and designating the locations where and the time when the various individuals are to be on duty.
  - (3) Establishing position classification, if deemed necessary, and designating the individuals to serve in each classification.
  - (4) Providing for supervision as necessary.
  - (5) Exercising any and all other prerogatives normally associated with personnel management.
- E. From monies budgeted and available, make all payments for the services of crossing guards or special school police and make all other expenditures as prescribed by law or superior body or agency, or as otherwise deemed necessary or appropriate.
- F. Receive, in addition to payments by the Borough, any payments by the school district or any other gift, grant, devise or bequest.
- G. Establish a system of accounts for all monies under its control, and establish one or more separate bank accounts into which all income shall be deposited and from which all expenditures shall be made.

(Ord. 610, 5/30/1980, §8)

**§1-329. Certain Monies Transferred to Educational Service Agency.**

The Borough shall transfer and pay over to the Educational Service Agency the monies that the Borough is required to pay as compensation to special school police under the Borough Code, or other agreement executed with the school district, as provided in the Borough Code, as well as other monies as necessary to cover expenditures budgeted, for the Educational Service Agency as provided in §1-328.

(Ord. 610, 5/30/1980, §9)

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### **§1-330. Term of Existence.**

The Educational Service Agency recognized and formally established by this Part 3 shall continue until changed or abolished by action of the Borough or until the suspension of the Act of 1979, P.L. No. 503, as adopted by the Legislature of the Commonwealth, in accord with the terms of that act.

(Ord. 610, 5/30/1980, §10)

### **D. Beaver Business District Authority.**

#### **§1-341. Creation of Authority.**

1. Beaver Borough Council declares that it is desirable for the entire Borough of Beaver to improve the business or commercial district thereof and areas contiguous thereto and intends to organize a Municipal Authority for that purpose under the Municipal Authority Act 1945, as amended.
2. Said Authority shall be organized for the purpose of making "business improvements (as defined in §2(1) of the Municipal Authority Act of 1945, as amended) in, and/or administrative services related thereto, to any district of the Borough which is used for or zoned as a Business or Commercial District under the Zoning Ordinance of the Borough of Beaver), said districts being those located upon the official Zoning Map of the Borough of Beaver and identified or classified thereon as District C-1, C-2 or C-3.
3. Borough Council of said Borough certifies that notice, by publication, in Beaver County Legal Journal and Beaver County Times, of a public meeting as a hearing on the proposed Authority was given on April 2 and 4, 1987, and in pursuance thereof a public meeting was held in Council Chambers of the Borough of Beaver on Tuesday, April 14, 1987, at 7:00 p.m. prior to consideration of and adoption of this Part.
4. The name of the Authority shall be "Beaver Business District Authority."
5. Pursuant to said desire and intention of the Borough of Beaver and in conformance with said Municipal Authority Act of 1945, as amended, Articles of Incorporation are hereby set forth as follows in §1-342.
6. The Borough of Beaver retains the right, given by said Municipal Authority Act of 1945, as amended, to approve any plan or action of this Authority formed to make business improvements or provide administrative services if appropriate.
7. The proper officer of the Borough shall sign the ordinance and Articles of Incorporation, advertise both as required by law and file said Articles of Incorporation with the Secretary of the Commonwealth.

(Ord. 638, 6/9/1987)

**§1-342. Articles of Incorporation.**

In compliance with the Municipal Authority Act of 1945, as amended, the Borough of Beaver, situate in the County of Beaver and Commonwealth of Pennsylvania hereby adopts and certifies the following Articles of Incorporation of a Municipal Authority:

A. The Authority is formed under the Municipal Authority Act of 1945, as amended (1945, P.L. 382, 53 P.S. §301 et seq.).

B. The name of the Authority shall be:

BEAVER BUSINESS DISTRICT AUTHORITY

C. The location of the initial registered office of the Authority in this Commonwealth is 469 Third Street, Beaver, PA 15009.

D. A Municipal Authority was organized by the Borough of Beaver for the purpose of furnishing water and sewage service to said Borough, which said Authority was incorporated by the Commonwealth January 18, 1957 (3/1/1956, 03-638), under the name of "Beaver Borough Municipal Authority," which said Authority continues in existence.

E. No Authority has been organized under this or any Act of Assembly by this Municipality for a purpose similar to the proposed Authority.

F. The name of the incorporating Municipality is the Borough of Beaver and its present Council (being its "municipal authorities," as defined in said Act) is constituted as follows:

[Hereby followed names and addresses of original Council members.]

G. The names, addresses and terms of office of the first members of the Board of Beaver Business District Authority are:

[Hereby followed names, addresses and terms of original Board members.]

H. The Borough of Beaver, the incorporating Municipality, retains the right, given by the Municipal Authority Act of 1945, as amended, to approve any plan or action of the Authority which Authority is created for the purpose of making business improvements or providing administrative services, if appropriate.

(Exhibit A of Ord. 638, 6/9/1987)



**Part 4**

**Police Protection**

**§1-401. Police Department Established; Classifications; Number of Members.**

A Police Department is established in and for the Borough. The Police Department shall be composed of a Chief of Police and other officers of such ranks and as many patrolmen as Council shall from time to time determine.

(Ord. 621, 12/14/1983)

**§1-402. Chief of Police.**

The Chief of Police, under the direction of the Mayor, shall be in charge of the Police Department and shall have supervision over the members of the Police Department, in the exercise of their powers, duties and authority.

(Ord. 621, 12/14/1983)

**§1-403. Status of Existing Police Force.**

The existing police force of the Borough is established and recognized as the Police Department established by §1-401.

(Ord. 621, 12/14/1983)

**§1-404. Appointment of Special Policemen by Mayor.**

Nothing in this Part shall affect the authority of the Mayor to appoint special policemen during emergencies.

(Ord. 621, 12/14/1983)

**§1-405. Prohibited Types of Outside Employment of Policemen.**

Police officers of the Borough of Beaver shall not enter into any contract with any other municipality, or municipal corporation, for any casual or regularly scheduled employment as a policeman at any time during his/her term of employment with the Borough. The above restriction shall not apply to employment of Beaver police officers by Beaver Area School District within the Borough.

(Ord. 614, 1/13/1981, §1)

**§1-406. Restrictions Applicable to Permitted Types of Outside Employment of Policemen.**

In any other outside employment other than that allowed above, Beaver police officers shall not wear or use any police uniform intended for use by an officer of the Borough of Beaver or marked for such use, nor shall he/she, in such outside employment, use any firearm, or other equipment supplied to, or used by, him/her as an employee of the Borough of Beaver, except that in their employment by the Beaver Area School District within the Borough of Beaver, police officers may use Beaver uniforms and equipment.

(Ord. 614, 1/13/1981, §2)

**§1-407. Time and Hours of Permitted Outside Employment of Policemen.**

In any such permitted outside employment, police officers of the Borough of Beaver shall be under duty of ordering the time and hours of employment so as to be free to answer all calls by the Borough for emergency service or required overtime work.

(Ord. 614, 1/13/1981, §3)

**Part 5**

**Pensions/Retirement Systems**

**A. Firemen's Relief.**

**§1-501. Firemen's Relief Association Recognized.**

The Firemen's Relief Association of the Borough of Beaver, pursuant to the authority contained in the Act of Assembly of the Commonwealth of Pennsylvania, approved the 25th day of April, 1929, P.L. 700, is hereby recognized, accepted and approved as the duly incorporated existing and only Firemen's Relief Association of the Borough of Beaver.<sup>3</sup>

(Ord. 321, 12/9/1930, §1)

**§1-502. Foreign Fire Insurance Tax Moneys Payable to Firemen's Relief Association.**

The proper officers of the Borough are authorized and directed pursuant to the Acts of Assembly in such case made and provided, to pay, to the proper officers of the Beaver Firemen's Relief Association of Beaver, Pennsylvania, all monies payable to Beaver from the Commonwealth of Pennsylvania from taxes on premiums on foreign fire insurance companies based upon premiums of fire insurance written on property in the Borough.

(Ord. 321, 12/9/1930, §2; as amended by Ord. 621, 12/14/1983)

**§1-503. When Foreign Fire Insurance Tax Moneys Payable to Firemen's Relief Association.**

The tax on premiums from foreign fire insurance companies paid to the Commonwealth of Pennsylvania, and paid by the Commonwealth of Pennsylvania to the Borough of Beaver as the Borough's legally apportioned share of that tax, shall be paid to the proper officers of the Firemen's Relief Association promptly, upon receipt of the money by the Borough.

(Ord. 321, 12/9/1930, §3)

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<sup>3</sup> Editor's Note: The Beaver Firemen's Relief Association was duly incorporated by letters patent issued out of the Court of Common Pleas of July, 1929, which proceedings of incorporation were had at No. 150, September Term, 1929, and after decree of incorporation duly the chapter was duly recorded in the Recorder's Office of Beaver County in Chapter Book No. 13, page 120.

**B. Borough of Beaver Municipal Employees' Pension Plan.**

**§1-511. Definitions.**

The following words and phrases as used herein shall have the meanings set forth in this section, unless a different meaning is plainly required by the context:

**ACCRUED BENEFIT** — as of any given computation date, a participant's projected monthly normal retirement benefit determined in accordance with §1-514, Subsection 2, multiplied by a fraction, the numerator of which shall be an amount equal to the participant's years of service as of the computation date and the denominator of which shall be an amount equal to the total possible number of the participant's years of service beginning on the first date of employment and ending on the normal retirement date (including periods of time when no employee contributions are paid); however, in no event shall the fraction exceed one. In no event, however, shall the accrued benefit exceed the maximum limitation, determined as of the date of computation, provided under §1-514, Subsection 10. All accrued benefits are subject to all applicable limitations, reductions, offsets and actuarial adjustments provided by the plan prior to the actual payment thereof.

**ACCUMULATED CONTRIBUTIONS** — the total amount of employee contributions contributed by a participant to this plan or its predecessor by way of payroll deduction or otherwise, plus interest credited at the rate of 5% per annum. Interest shall be credited annually in the form of a compound interest rate from the first day of the plan year coincident with or next following the date of deposit into the Pension Fund until the first day of the month in which a distribution of accumulated contributions under §1-517, Subsection 2, or §1-518, Subsection 2, shall be paid, or the payment of benefits shall commence. Notwithstanding anything contained herein to the contrary, no interest shall be credited for any period of time prior to February 1, 1976.

**ACT** — the Municipal Pension Plan Funding Standard and Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. §895.101 et seq.

**ACTUARIAL EQUIVALENT** — two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the UP-1984 Mortality Table and 7% interest, unless otherwise expressly provided herein.

**ACTUARY** — the person, partnership, association or corporation which at any given time is serving as actuary, provided that such actuary must be an approved actuary as defined in the Act.

**ALTERNATE ACCRUED BENEFIT** — as of any given computation date, a participant's monthly benefit determined in accordance with §1-514, Subsection 3, which amount shall be based upon the participant's credited service determined as of such computation date and which shall represent the monthly benefit which would be payable in the normal form as of the participant's attainment of alter-

nate retirement age, provided that the participant shall satisfy all requirements pursuant to the terms of the plan for entitlement to receive such benefit. In no event, however, shall the alternate accrued benefit exceed the maximum limitation, determined as of the date of computation, provided under §1-514, Subsection 10. All accrued benefits are subject to all applicable limitations, reductions, offsets and actuarial adjustments provided by the plan prior to the actual payment thereof.

**ALTERNATE RETIREMENT AGE** — the date a participant who first became a participant on or after January 1, 1995, attains 62 years of age and completes at least 10 years of credited service.

**ANNIVERSARY DATE** — January 1 of a given plan year.

**AUTHORIZED LEAVE OF ABSENCE** — any leave of absence, not to exceed two years, granted, in writing, by the employer for reasons including but not limited to accident, sickness, pregnancy or temporary disability, education, training, jury duty or such other reasons as may necessitate authorized leave from active employment. Authorized leave of absence shall also include a period of time for active service with the armed forces of the United States of America, provided that such service shall commence after the participant has completed at least six months of credited service and the participant shall return to employment within the applicable time prescribed by law following separation from such military service.

**AVERAGE MONTHLY COMPENSATION** — the compensation earned by a participant for services rendered as an employee in employment during the 36 consecutive months immediately preceding retirement or other termination of employment, divided by 36; provided, however, that any month during which a participant has been on an authorized leave of absence shall be excluded from such 36 consecutive months and another month shall be substituted therefor, such that the averaging period shall include the last 36 months of active rendering of services.

**BENEFICIARY** — the person or persons validly designated in writing by a participant to receive such benefits as may be due hereunder upon the death of the participant. A designation shall become effective only upon the participant's death and shall be valid only if delivered prior to such participant's death to the plan administrator in such form as the plan administrator shall specify. In the event that there is no validly designated beneficiary that survives the participant or that is legally able to take the benefits provided as beneficiary, then the beneficiary shall be the surviving spouse, or if there is no surviving spouse, the issue, per stirpes, or if there is no surviving issue, the estate of the participant; but if no personal representative has been appointed, to those persons who would be entitled to the estate under the intestacy laws of the Commonwealth of Pennsylvania if the participant had died intestate and a resident of Pennsylvania.

## ADMINISTRATION AND GOVERNMENT

**CHIEF ADMINISTRATIVE OFFICER** — the person, designated by the Council, who has the primary responsibility for the execution of the administrative affairs for the plan.

**CODE** — the Internal Revenue Code of 1986, as amended.

**COMMONWEALTH** — the Commonwealth of Pennsylvania.

**COMPENSATION** — the total remuneration paid to an employee by the employer, whether salary or hourly wages, paid by the employer for services rendered in employment and reported on the employee's Form W-2, wage and tax statement. Compensation shall be limited on an annual basis for the purposes of this plan to the amount specified for government plans in accordance with Code Section 401(a)(17), as adjusted under Code Section 415(d).

**COUNCIL** — the Borough Council of the Borough of Beaver, Beaver County, Pennsylvania.

**CREDITED SERVICE** — a participant's total years and fractions thereof, calculated to the nearest completed month of service accumulated as an employee in employment. Credited service shall include each period of active employment and each period of time during which an employee is on an authorized leave of absence. Credited service shall not include any period of time during which an employee failed or refused to make required contributions pursuant to §1-513, Subsection 1. Notwithstanding the foregoing, in the case of service prior to February 1, 1976, the participant shall be granted credited service pursuant to the terms of the plan in existence prior to such date and excluding any service in excess of 15 years prior to April 1, 1971.

**DEFERRED VESTED PARTICIPANT** — any participant who has completed at least 10 years of service, who has separated from employment prior to attainment of alternate, early or normal retirement age for reasons other than death or total and permanent disability and who is eligible to receive a vested retirement benefit pursuant to §1-517, Subsection 3, to commence at a later date.

**DISABILITY DATE** — the date when a participant is determined by the plan administrator to be incapacitated due to total and permanent disability, or the date when the participant's employment terminates due to such total and permanent disability, if later.

**EARLY RETIREMENT AGE** — the date a participant attains 50 years of age and completes at least 10 years of credited service.

**EMPLOYEE** — any individual employed by the employer as a regular full-time employee who is entitled to receive a regular stated salary or wage, excluding any pension, retainer or fee under contract. Any police officer, fireman or individual covered under another retirement plan or program sponsored by the employer shall be excluded as an employee under this plan.

**EMPLOYER** — the Borough of Beaver, Beaver County, Pennsylvania.

**EMPLOYMENT** — any period of time during which an employee renders services for the employer for which the employee is directly or indirectly compensated or entitled to receive compensation for the performance of duties as an employee. Employment shall exclude any period of time during which services are performed as an independent contractor paid on a contractual or fee basis. Employment shall also include any period of qualified military service as determined under the requirements of Chapter 43 of Title 38, United States Code, provided that the participant returns to employment following such period of qualified military service, and the participant makes payment to the plan in an amount equal to the participant contributions that would otherwise have been paid to the plan during such period of qualified military service. The amount of participant contributions shall be based upon an estimate of the compensation that would have been paid to the participant during such period of qualified military service as determined by the average compensation paid to the participant during the 12 months immediately preceding the period of qualified military service. The amount of participant contributions so calculated must be paid into the plan before the end of the period that begins on the date of reemployment and ends on the earlier of the date that ends the period that has a duration of three times the period of qualified military service, or the date that is five years after the date of reemployment.

**INCENTIVE RETIREMENT AGE** — the date on which a participant attains 60 years of age.

**MINIMUM MUNICIPAL OBLIGATION** — the minimum obligation of the municipality as determined by the actuary pursuant to the provisions of the Act.

**NORMAL FORM** — the usual and customary form of payment of a normal retirement benefit as further described in §1-515, Subsection 1, hereof.

**NORMAL RETIREMENT AGE** — the date a participant, who first became a participant herein prior to January 1, 1995, attains 60 years of age or the date a participant, who first becomes a participant herein on or after January 1, 1995, attains 60 years of age and completes at least 20 years of credited service.

**NORMAL RETIREMENT DATE** — the first day of the month coincident with or next following the attainment of normal retirement age.

**NOTICE or ELECTION** — a written document prepared in the form specified by the plan administrator. If such notice or election is to be provided by the employer or the plan administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified notice or election period. If such notice or election is to be provided to the employer or the plan administrator, it must be received by the recipient on or before the last day of the specified notice or election period.

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**PARTICIPANT** — any employee who has commenced participation in this plan in accordance with §1-512, and has not for any reason ceased to participate hereunder.

**PENSION FUND** — the assets of the plan, which shall be accounted for separately from the assets of any other plans maintained by the employer, whether actually held separately or commingled with the assets of another plan, and which shall be administered under the supervision of the employer in accordance with the terms of the plan and applicable law.

**PENSION PLAN COMMITTEE or COMMITTEE** — the committee appointed by Council pursuant to the provisions of §1-519, Subsection 2, who shall be responsible for the administration of the plan.

**PLAN** — the Borough of Beaver Municipal Employees' Pension Plan, as herein set forth and as it may be amended from time to time hereafter.

**PLAN ADMINISTRATOR** — the person or persons appointed by the Council for the purpose of supervising and administering the plan. In the event no person is so appointed, the plan administrator shall be the Council.

**PLAN YEAR** — the consecutive twelve-month period beginning on January 1 and ending on December 31 of each year.

**RESTATEMENT DATE** — January 1, 2001, the effective date of this plan, as hereby amended and restated.

**TOTAL AND PERMANENT DISABILITY** — a condition of physical or mental impairment which renders a participant unable to perform a duty of gainful employment for which the participant is suited by training, education or experience, which continues for at least six months and which is expected to last until the death of the participant, and as a result of which qualifies the participant for receipt of federal Social Security disability benefits. Total and permanent disability shall be determined by the plan administrator based upon such evidence as the plan administrator shall deem appropriate in its sole discretion.

**YEAR OF SERVICE** — for determining the amount of benefits, each completed twelve-month period of credited service. "Years of service," for determining vesting percentage and eligibility to receive a benefit hereunder, is the total period of employment including any period of time during employment that is not included in the determination of credited service.

(Ord. 711, 11/13/2001, Art. I; as amended by Ord. 730, 4/8/2003, §1)

**§1-512. Eligibility.**

1. Eligibility for participation. Each employee who was a participant in the plan on the day prior to the restatement date shall continue to be a participant on and after the restatement date, subject to the terms and conditions of the plan as set forth herein. Each other person shall become a participant as of the date on which such employee's employment commences or recommences provided all prerequisites to participation in this plan have been fulfilled, including but not limited to completion of all necessary forms authorizing payroll deduction of employee contributions and any other forms required by the plan administrator.
2. Participation requirements. Each participant hereunder shall be required to make contributions to the plan, as provided in §1-513, Subsection 1, hereof, and shall execute and complete any enrollment or application forms as required by the plan administrator authorizing payroll deduction of such contributions. No employee shall be eligible to participate hereunder until any and all such forms are completed and delivered to the plan administrator.
3. Designation of beneficiary. Each employee who becomes a participant hereunder shall provide a written notice which designates the beneficiary or beneficiaries to the plan administrator at the time participation commences. The participant's election of any such beneficiary or beneficiaries may be rescinded or changed, without the consent of the beneficiary or beneficiaries, at any time provided the participant provides the plan administrator with written notice of the changed designation and such election is not contrary to applicable law.
4. Reemployment. Each person who shall have previously been an active participant in the plan and who shall have ceased being an active participant for any reason shall be eligible to participate pursuant to §1-512, Subsection 1, hereof as of the date such eligibility requirements are met.
5. Change in Status. In the event a participant who remains in the service of the employer ceases to be an employee eligible for participation hereunder, or who ceases or fails to make any contributions which are required as a condition of participation hereunder, no further benefit accruals shall occur until the participant again qualifies under such participation requirements. Such a requalified participant shall immediately commence the accrual of additional benefits hereunder upon becoming eligible to participate unless such person received a distribution of accumulated contributions, in which case the person shall be treated as a new employee in accord with §1-512, Subsection 1, hereof and shall not receive any credit for prior credited service unless such person shall repay to the fund the amount of such distribution with interest credited at the same rate and in the same manner as described in §1-511, Subsection 2, from the date of distribution to the date of repayment.
6. Leave of absence. During any leave of absence that is not an authorized leave of absence, a participant shall be deemed an inactive participant and shall not be given credit for years of credited service, nor shall any benefits accrue hereunder.

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If the employee is not reemployed by the expiration of the leave of absence, participation in the plan shall cease on the date on which the leave of absence commenced.

7. Recordkeeping. The employer shall furnish the plan administrator with such information as will aid the plan administrator in the administration of the plan. Such information shall include all pertinent data on employees for purposes of determining their eligibility to participate in this plan initially and subsequently.

(Ord. 711, 11/13/2001, Art. II)

### **§1-513. Contributions.**

1. Employee contributions. As a condition of participation in the plan, each participant shall contribute to the plan by payroll deduction an amount equal to 3% of such participant's compensation. Each employee must have executed the appropriate documents authorizing the employer to deduct the contributions from the pay of the employee. Such contributions shall be required until such time as the employer, consistent with any provisions of applicable law, shall increase, reduce or eliminate the requirement. A participant who is on an authorized leave of absence shall have the obligation to contribute hereunder waived during the period of such authorized leave of absence and a participant who shall continue in employment after attainment of normal retirement age shall no longer be required to contribute hereunder as of the date the participant attains such normal retirement age.
2. Employer contributions. The Actuary, in accordance with the Act, shall determine the minimum municipal obligation of the employer. The employer shall pay into the pension fund, by annual appropriation or otherwise, the contributions necessary to satisfy the minimum municipal obligation.
3. State aid. General municipal pension system state aid, or any other amount of state aid received by the employer from the Commonwealth in accordance with the Act, may be deposited into the pension fund governed by this plan and shall be used to reduce the amount of the minimum municipal obligation of the employer.
4. Gifts. To the extent permitted by law, the plan administrator may accept gifts, outright or in trust, for deposit into the pension fund. The application of such gifts shall be governed by the rules of the plan and such directions prescribed by the donor as are not inconsistent with the rules of the plan and applicable law.
5. No reversion to the employer. At no time shall it be possible for the plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the participants and their beneficiaries, except that contributions made by the employer may be returned to the employer if the contribution was made due to a mistake of fact and the contribution is returned within one-year of the mistaken payment of the contribution, or the plan is terminated, as provided in §1-521.

(Ord. 711, 11/13/2001, Art. III)

**§1-514. Retirement Benefits.**

1. Normal retirement. Each participant shall be entitled to a normal retirement benefit after retirement on or after attainment of normal retirement age.
2. Normal retirement benefit. A participant who retires upon attainment of normal retirement age shall be entitled to receive a monthly retirement benefit in an amount equal to 50% of the participant's average monthly compensation paid in the normal form commencing on the first day of the month coincident with or next following the date of retirement.
3. Alternate retirement benefit. A participant who first became a participant on or after January 1, 1995, who retires upon attainment of alternate retirement age shall be entitled to receive a monthly retirement benefit in an amount equal to 2.5% of the participant's average monthly compensation multiplied by the participant's years of service not to exceed 20 years, paid in the normal form commencing on the first day of the month coincident with or next following the date of retirement.
4. Early retirement. Each participant shall be entitled to an early retirement benefit after retirement on or after attainment of early retirement age.
5. Early retirement benefit. Each participant who shall become entitled to a benefit pursuant to §1-514, Subsection 4, but prior to attainment of alternate or normal retirement age, may retire from employment and receive either a benefit in an amount equal to the amount determined under §1-514, Subsection 2, based upon final monthly average compensation and years of service as of the date of retirement to commence as of the participant's normal retirement date, or a benefit in an amount equal to the amount determined under §1-514, Subsection 2, based upon final monthly average compensation and years of service as of the date of retirement and actuarially reduced for early commencement to commence as of the participant's early retirement date or any payment commencement date after retirement and prior to the participant's normal retirement date. Such reduction for early commencement shall be in an amount equal to a factor calculated herein for each month that the payment commencement date precedes the date the participant would attain normal retirement age. The applicable factors are as follows and will be prorated to the nearest month for a partial year (a partial month shall be treated as a completed month):

**Number of Years Early Retirement Benefits Commence  
Prior to Normal Retirement Age**

Years	Factor
1	.9333

**Number of Years Early Retirement Benefits Commence  
Prior to Normal Retirement Age**

Years	Factor
2	.8667
3	.8000
4	.7333
5	.6667
6	.6333
7	.6000
8	.5667
9	.5333
10	.5000

6. Incentive retirement. A participant who retires upon attainment of incentive retirement age shall be entitled to receive a monthly benefit in an amount equal to 2.5% of the participant's average monthly compensation multiplied by the participant's years of service, not to exceed 25 years, paid in the normal form commencing on the first day of the month coincident with or next following the date of retirement. Such benefit shall be paid until such time as the participant becomes eligible for a Social Security early retirement benefit equal to 80% of a Social Security full age retirement benefit. (Such eligibility usually occurs 36 months before full retirement age) 33. At that time the participant's monthly benefit will automatically reduce to a normal retirement benefit as prescribed in §1-514, Subsection 2. In order to elect this incentive retirement benefit, a participant must apply therefor within 30 days of attaining incentive retirement age.
  
7. Application for benefit. A participant must complete and execute an application for benefit on a form and in the manner prescribed by the plan administrator and deliver the said application to the plan administrator at least 30 days prior to the date on which benefit payments are to commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments or any other benefit payments shall be due or payable on or before the first day of the month coincident with or next following the date that is 30 days after the date the plan administrator receives the application for benefit.
  
8. Nonduplication of benefit. A participant who shall receive a monthly retirement benefit under this plan and who shall resume employment as an employee, shall have benefit payments suspended until the first day of the month coincident with or next following the date such employment shall cease. Such benefit payments shall not, upon resumption, be adjusted to reflect any change in average monthly compensation caused by such additional period of employment, even if rendered as an employee, unless taking into account such additional period of employment will not result in a decrease in such participant's average monthly compensation,

when determined as of such subsequent retirement, to an amount which is less than the amount determined as of the previous severance from service date, but shall be adjusted to reflect any additional years of credited service which may have accrued. Such future benefits shall be actuarially adjusted upon resumption of the pension payments.

9. Small amounts. If the plan administrator determines that the value of a participant's accrued benefit is so small as to make monthly pension payments administratively impractical, the plan administrator may cause such payments to be made at such other periodic intervals as are administratively practical, but no less frequently than annually, or may make a single lumpsum payment equal to the commuted value of such accrued benefit to the extent permitted under applicable law.
10. Cessation of benefit payments. Any pension benefit payment hereunder shall be payable through and including the later of the month in which such participant's death occurs or the month in which any period certain payments due on or after the participant's death have been paid. Any survivor annuity payable on or after the participant's death in accordance with the form of pension benefit elected shall be paid through the month in which such surviving annuitant's death occurs.
11. Retired participants. The benefit amount of any participant who may have retired prior to the restatement date shall not be in any way altered by the provisions of this plan, except where otherwise expressly indicated herein, and shall continue to be determined on the basis of the terms of the plan in effect on the day preceding the restatement date. For ease of administration, the following are restated herein and specifically incorporated into this plan:
  - A. On January 1, 1984, an additional amount of monthly retirement benefit became payable to each participant who retired prior to January 1, 1984, in an amount equal to 60% of the monthly retirement benefit.
  - B. On January 1, 1987, an additional amount of monthly retirement benefit became payable to each participant who retired prior to January 1, 1987. For participants who retired prior to January 1, 1984, the additional amount is equal to 50% of the monthly retirement benefit. For participants who retired after December 31, 1983, and prior to January 1, 1987, the additional amount is equal to 35% of the participant's monthly compensation as of the date of retirement.
  - C. On January 1, 2003 an additional amount of monthly retirement benefit became payable to each participant who retired prior to January 1, 1993 in an amount equal to \$10 for each year of retirement.
12. Maximum benefit limitations. Notwithstanding any provision of this plan to the contrary, no benefit provided under this plan attributable to contributions of the employer shall exceed, as an annual amount, the amount specified in Code Section 415(b)(1)(A) as adjusted pursuant to Code Section 415(d), assuming the form of

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benefit shall be a straight life annuity (with no ancillary benefits). The limitations described in this §1-514, Subsection 12, shall be governed by the following conditions and definitions:

- A. Benefits paid or payable in a form other than a straight life annuity (with no ancillary benefits) or where the employee contributes to the plan or makes rollover contributions shall be adjusted on an actuarially equivalent basis to determine the limitation contained herein.
- B. In the case of a benefit which commences prior to the attainment of age 62 by the participant, the limitation herein shall be adjusted on an actuarially equivalent basis to the amount determined pursuant to this Section commencing at age 62; however, the reduction shall not reduce the limitation below \$75,000 for a benefit commencing at or after age 55, or if the benefit commences prior to attainment of age 55 the amount which is actuarially equivalent to a benefit of \$75,000 commencing at age 55; however, in the case of a qualified participant (a participant with respect to whom a period of at least 15 years of service, including applicable military service, as a full-time employee of a police or fire department is taken into account in determining the amount of benefit), the limitation contained herein shall not reduce the limitation to an amount less than the amount specified pursuant to Code Section 415(b)(2)(G) as of the restatement date of this plan and such amount shall be adjusted pursuant to Code Section 415(d).
- C. In the case of a benefit which commences after attainment of age 65 by the participant, the limitation herein shall be adjusted on an actuarially equivalent basis to the amount determined herein commencing at age 65.
- D. Benefits paid to a participant which total less than \$10,000 from all defined benefit plans maintained by the employer expressed as an annual benefit shall be deemed not to exceed the limitation of this Section provided that the employer has not at any time maintained a defined contribution plan in which the participant has participated; however, in the case of a participant who is not receiving a disability retirement benefit pursuant to §1-516, Subsection 2, with fewer than 10 years of participation the limitation expressed in this Subsection 12D shall be reduced by one-tenth for each year of participation less than 10 but in no event shall this limitation be less than \$1,000.
- E. The limitations expressed herein shall be based upon plan years for calculation purposes, shall be applied to all defined benefit plans maintained by the employer as one defined benefit plan and to all defined contribution plans maintained by the employer as one defined contribution plan, and shall be applied and interpreted consistent with Code Section 415 and regulations thereunder as applicable to government plans in general and this plan in particular.

- F. In the case of any survivor benefit or any disability retirement benefit under §1-516, Subsection 2, the adjustment under Subsection 12B hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age of the benefit recipient.
- 13. Incorporation of Code Section 415 by reference. Notwithstanding anything contained in §1-514, Subsection 12, to the contrary, the limitations, adjustments and other requirements prescribed in §1-514, Subsection 12, shall at all times comply with the provisions of Code Section 415 and the regulations thereunder (as such apply to governmental plans), the terms of which are specifically incorporated herein by reference.

(Ord. 711, 11/13/2001. Art. IV; as amended by Ord. 725, 12/10/2002, §1; and by Ord. 730, 4/8/2003, §1)

**§1-515. Payment of Benefits.**

- 1. Normal form of benefit payment. The normal form for payment of retirement benefits shall be a monthly annuity for the life of the participant; provided, however, that if the death of the retired participant occurs after the payments commence but before the total amount of monthly retirement benefit payments and any single sum or other prior distributions, if applicable, exceed the accumulated contributions as of the date of employment termination, the remainder of such amount shall be paid in a single sum to the beneficiary designated by the participant.
- 2. Optional form of benefit payment. The automatic form of payment of retirement benefits shall be the normal form specified in §1-515, Subsection 1, unless a participant elects to receive benefits in some other form as provided herein. A participant who retires under §1-514, Subsection 1, 3, 4 or 6 may elect, by giving written notice to the employer at least 30 days prior to the date retirement benefit payments shall commence, to receive payment in one of the optional forms of payment, which shall be the actuarial equivalent of the normal form, set forth hereafter:
  - A. Contingent annuitant option: In lieu of receiving a retirement benefit under the normal form, a participant may elect the contingent annuitant option which provides for payment of the monthly retirement benefit to the participant until death and thereafter the continuation of monthly benefit payments in an amount equal to 50%, 66 2/3%, or 100% of the participant's reduced benefit, whichever the participant shall have chosen, to the previously designated contingent annuitant, if living, until the death of the contingent annuitant. If the contingent annuitant is the spouse of the retired participant, the benefit payable under this option is payable without restriction, otherwise the benefit payable hereunder shall be limited to the extent that the present value of payments to be made to the participant until death shall be more than 50% of the present value of the total payments to be

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made to the participant and the contingent annuitant. If the death of the contingent annuitant occurs before the participant's actual retirement date, any election of this option shall be deemed null and void and the retirement benefit shall be payable in the normal form, the same as if this option had not been elected. If the contingent annuitant predeceases the retired participant after actual retirement, retirement benefit payments shall terminate after the monthly payment due immediately preceding the retired participant's death.

- B. Life annuity with payments guaranteed option: In lieu of receiving a retirement benefit under the normal form, a participant may elect the life annuity with payments guaranteed option which provides for payment of a monthly retirement benefit to the participant until death with a guarantee that at least 60, 120 or 180 monthly retirement benefit payment payments shall be paid, whichever the participant shall have chosen. If the death of the participant occurs after the date that retirement benefit payments shall commence but before the guaranteed number of monthly payments has been made, the remainder of such guaranteed monthly payments shall be paid as they become due to the beneficiary. If the death of the participant occurs after the participant has received at least the guaranteed number of payments there shall be no additional payments due or payable hereunder.
  - C. Life annuity option: In lieu of receiving a retirement benefit under the normal form, a participant may elect the life annuity option which provides for payment of a monthly retirement benefit to the participant until death only, and upon the death of the participant there shall be no additional payments due or payable hereunder.
- 3. Employer-provided retirement benefit. Notwithstanding anything contained herein to the contrary, a participant, in lieu of receiving a retirement benefit pursuant to §1-515, Subsections 1 and 2, hereof based upon the total value of employee and employer contributions to the plan, may choose to receive a single sum payment in an amount equal to the participant's accumulated contributions as of the date of termination of employment and a reduced retirement benefit pursuant to §1-515, Subsections 1 and 2. The value of the retirement benefit shall be reduced by the portion of the value attributable to that which could have been provided by the value of the participant's accumulated contributions as of the date of termination of employment.
  - 4. Commencement of benefits. A participant may elect to commence receiving distribution of retirement benefits as of the first day of the month coincident with or next following the date on which retirement occurs with an eligibility to receive benefits, or may defer such payments to a date not later than the required date for commencement of benefits determined under §1-515, Subsection 4. Unless the participant otherwise elects, payment of benefits under the plan shall commence not later than 60 days following the close of the plan year in which occurs the latest of the following dates:

- A. The date when the participant attains normal retirement age.
  - B. The tenth anniversary of the year in which the participant commenced participation in the plan.
  - C. The date when the participant terminates service with the employer.
5. Required distributions.
- A. Notwithstanding any other provision of this plan, the entire benefit of any participant who becomes entitled to benefits prior to death shall be distributed either:
    - (1) Not later than the required beginning date; or
    - (2) Over a period beginning not later than the required beginning date and extending over the life of such participant or over the lives of such participant and a designated beneficiary (or over a period not extending beyond the life expectancy of such participant, or the joint life expectancies of such participant and a designated beneficiary).
  - B. If a participant who is entitled to benefits under this plan dies prior to the date when the entire interest has been distributed after distribution of benefits has begun in accordance with Subsection 5A(2) above, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under Subsection 5A(2) as of the date of death.
  - C. If a participant who is entitled to benefits under this plan dies before distribution of the benefit has begun, the entire interest of such employee shall be distributed within five years of the death of such employee, unless the following sentence is applicable. If any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary, such portion shall be distributed over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and such distributions begin not later than one-year after the date of the employee's death or such later date as provided by regulations issued by the Secretary of the Treasury, then for purposes of the five-year rule set forth in the preceding sentence, the benefit payable to the beneficiary shall be treated as distributed on the date on which such distributions begin. Provided, however, that notwithstanding the preceding sentence, if the designated beneficiary is the surviving spouse of the participant, then the date on which distributions are required to begin shall not be earlier than the date upon which the employee would have attained age 70 1/2 and, further provided, if the surviving spouse dies before the distributions to such spouse begin, this subsection shall be applied as if the surviving spouse were the employee.

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- D. For purposes of this section, the following definitions and procedures shall apply:
- (1) Required beginning date — April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 1/2, or the calendar year in which the employee retires.
  - (2) Designated Beneficiary — any individual designated by the employee under this plan according to its rules.
  - (3) Any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child's reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
  - (4) The life expectancy of an employee and/or the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.
6. Change of benefit election. Any election permitted hereunder may be revoked or a new election may be made within the applicable election period on a form and in a manner prescribed by the plan administrator and without the knowledge or consent of any applicable beneficiary.
7. Personal right of participant. Each participant's right to receive any benefits hereunder is personal and expires on such participant's death. No heir, legatee, devisee, beneficiary, assignee or other person claiming by or through a participant shall have any interest in any benefits hereunder unless clearly and expressly so provided by the terms of this plan. A participant's election, failure to file an election hereunder or revocation of an election shall be final and binding on all persons.
8. Direct rollovers. This subsection applies to distributions made on or after December 31, 2001. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution that is equal to at least \$500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this subsection, the following definitions shall apply:

**DIRECT ROLLOVER** — a payment by the plan to the eligible retirement plan specified by the distributee.

**DISTRIBUTE** — 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 or former spouse who is the alternate payee under a

qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

**ELIGIBLE RETIREMENT PLAN** — a qualified trust described in Code Section 401(a), an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an eligible plan under §457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan.

**ELIGIBLE ROLLOVER DISTRIBUTION** — any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). For purposes of the direct rollover provisions in this subsection of the plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in §408(a) or (b) of the Code, or to a qualified defined contribution plan described in §401(a) or §403(a) of the Code that agrees to separately account for amounts so transferred, 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.

(Ord. 711, 11/13/2001, Art. V; as amended by Ord. 725, 12/10/2002, §1)

**§1-516. Disability Retirement.**

1. Disability retirement. A participant who has completed at least 10 years of credited service and who shall incur a total and permanent disability prior to attainment of alternate, early or normal retirement age shall be entitled to a disability retirement benefit.
2. Disability retirement benefit. A participant who shall be entitled to a disability retirement benefit under §1-516, Subsection 1, shall receive a benefit in an amount equal to the participant's accrued benefit determined as of the disability date.

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3. Payment of disability benefit. Disability payments shall be made monthly, commencing as of the first day of the month coincident with or immediately following the participant's disability date and continuing until the earliest of the death of the participant, cessation of total and permanent disability, or attainment of normal retirement age. Such a participant who attains normal retirement age shall have the benefit considered a normal retirement benefit thereafter paid in the same amount and for the life of the participant only. A participant who shall fail to return within three months to employment as an employee of the employer upon cessation of total and permanent disability prior to attainment of normal retirement age shall be deemed to have terminated employment as of the disability date, shall not be entitled to any distribution of accumulated contributions pursuant to §1-517, Subsection 2, to the extent that the total amount of disability payments exceeds the value of the participant's accumulated contributions as of the disability date, and shall not be entitled to any other benefits under the plan on account of any credited service as of the disability date.
4. Verification of disability. The plan administrator shall, in its sole discretion, determine whether a participant shall have incurred a total and permanent disability. The plan administrator shall rely on the report of a physician acceptable to the plan administrator and such other evidence as the plan administrator shall deem appropriate. If the plan administrator shall determine that a participant who is totally and permanently disabled and who has not attained normal retirement age has recovered sufficiently to resume active employment or if a participant refuses to undergo a medical examination as directed by the plan administrator (such a medical examination may not be required more frequently than once in any given twelve-month period), the payment of disability retirement benefits shall cease.
5. Cessation of disability. A participant who is receiving payment of disability retirement benefits under this plan must notify the plan administrator of any change which may cause a cessation of entitlement to receipt of such benefits hereunder. If a participant fails to provide immediate notice to the plan administrator of any such change in status and continues to receive payment of benefits hereunder to which the participant is not entitled, then the plan may take whatever action is necessary to recover any amount of improperly paid amounts, including legal action or offsetting such amounts against any future payments of retirement or other benefits under the plan, including the costs of such actions.

(Ord. 711, 11/13/2001, Art. VI)

### **§1-517. Termination of Employment.**

1. Rights of terminated employees. A participant who shall cease to be an employee except as otherwise hereinbefore provided, shall be limited to those rights under the plan contained in the following subsections of this section.

2. Distribution of accumulated contributions. A participant whose employment with the employer ceased for any reason other than death or total and permanent disability prior to completion of at least 10 years of service shall only be entitled to receive a distribution of accumulated contributions. Upon receipt of such accumulated contributions, said participant and beneficiary shall not be entitled to any further payments from the plan.
3. Vested benefits. A participant who ceases to be an employee in employment for any reason other than death, disability or retirement, and who has completed at least 10 years of service shall be entitled to a 100% vested retirement benefit based upon the accrued benefit at the date employment ceases. Such a participant may choose to receive the benefit earned pursuant to the provisions of §1-515, Subsection 3, and elect to receive the single sum payment of the participant's accumulated contributions determined as of the date of employment termination and paid at any time after such termination and prior to the commencement of any other payment option. The remaining benefit attributable to employer contributions or the full value of accrued benefit if no distribution of accumulated contributions occurs may commence as of the date of eligibility for a benefit under §1-514, Subsection 5, including applicable reductions for early commencement, or under §1-514, Subsection 2 or 3.
4. Forfeiture. A participant who terminates employment with the employer at a time when not vested in any portion of the accrued benefit derived from employer contributions shall cease to be a participant hereunder and shall not be entitled to any benefits under the plan derived from employer contributions. A terminated participant who shall have made employee contributions to the plan shall have the current value of such contributions refunded to the beneficiary of the participant, if the participant dies prior to receipt of the accumulated contributions.

(Ord. 711, 11/13/2001, Art. VII)

**§1-518. Death Benefits.**

1. Death benefit. Except as hereinafter set forth, no benefit shall be payable hereunder upon or by reason of the death of any participant.
2. Death prior to eligibility for retirement. A benefit shall be payable to the beneficiary of a participant who shall die prior to becoming eligible to commence a retirement benefit in a single payment in an amount equal to the accumulated contributions as of the date of death of the participant. The beneficiary, with the approval of the plan administrator, may choose to convert the value of the single sum payment into an available monthly annuity consistent with the annuity options under the plan.

Notwithstanding the foregoing, a surviving spouse annuity will be paid to the spouse of a participant who shall die while an active employee in employment after attainment of early retirement age and prior to attainment of normal retire-

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ment age. The surviving spouse annuity shall be an amount equal to the value payable to the survivor for a joint and 50% survivor annuity pursuant to §1-515, Subsection 2A, hereof as if the participant retired on the date of death and elected immediate commencement of the early retirement benefit as of such date, reduced by the value of the benefit which would have been payable under the preceding paragraph as a monthly annuity to the spouse as if the spouse were the unmarried beneficiary as of the date of death of the participant.

3. Death after retirement. A benefit shall be payable to the beneficiary of a participant who shall die after the payment of monthly retirement benefits has commenced or in the case of a participant who shall die after attainment of normal retirement age but prior to the commencement of benefits only to the extent and in the manner consistent with the provisions of the form of payment of benefits selected by the participant pursuant to the provisions of §1-515.

(Ord. 711, 11/13/2001, Art. VIII)

### **§1-519. Administration.**

1. Plan administrator. The Council of the employer may appoint a plan administrator, who shall be either an individual or a committee. The plan administrator shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this plan. The plan administrator may delegate authority to act on its behalf to any persons it deems appropriate. If the Council does not appoint a plan administrator, the employer shall be the plan administrator.
2. Pension Plan Committee. If the Council shall appoint a pension plan committee, it shall consist of from one to five members who shall serve in that capacity until the earliest of resignation, death, removal or otherwise. Each member may be removed at any time, with or without cause, by the Council. Each member may resign by delivering written notice to the Council and other members of the pension plan committee. Vacancies on the pension plan committee shall be filled by the Council; provided, however, that the remaining members of the pension plan committee shall have full power to act pending the filling of such vacancies.
3. Authority and duties of the plan Administrator.
  - A. The plan administrator shall have the full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the plan. The interpretation or construction placed upon any term or provision of the plan by the plan administrator or any action of the plan administrator taken in good faith shall, upon the Council's approval thereof, be final and conclusive upon all parties hereto, whether employees, participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the plan administrator is authorized:

- (1) To construe this plan.
  - (2) To determine all questions affecting the eligibility of any employee to participate herein.
  - (3) To compute the amount and source of any benefit payable hereunder to any participant or beneficiary.
  - (4) To authorize any and all disbursements.
  - (5) To prescribe any procedure to be followed by any participant and/or other person in filing any application or election.
  - (6) To prepare and distribute, in such manner as may be required by law or as the administrator deems appropriate, information explaining the plan.
  - (7) To require from the employer or any participant such information as shall be necessary for the proper administration of the plan.
  - (8) To appoint and retain any individual to assist in the administration of the plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws.
- B. The plan administrator shall have no power to add to, subtract from or modify the terms of the plan or change or add to any benefits provided by the plan, or to waive or fail to apply any requirements of eligibility for benefits under the plan. Further, the plan administrator shall have no power to adopt, amend or terminate the plan, to select or appoint any trustee or to determine or require any contributions to the plan, said powers being exclusively reserved to the Council.
4. Pension Plan Committee organization. The committee, if one is appointed, may organize itself in any manner deemed appropriate to effectuate its purposes hereunder, subject to the following:
- A. The committee shall act by a majority of its members at the time in office and such action may be taken either by vote at a meeting or in writing without a meeting.
  - B. The committee shall, from time to time, appoint a Chairman, a Secretary who may, but need not, be a committee member and such other agents as it may deem advisable.
  - C. The committee may, from time to time, authorize any one or more of its members to execute any document or documents including any application, request, certificate, notice, consent, waiver or direction and shall notify the

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Council, in writing, of the name or names of the member or members so authorized. In the absence of a designation, the Chairman shall be deemed to be so authorized. Any trustee or other fiduciary appointed hereunder shall accept and be fully protected in relying upon any document executed by the designated member or members (or the Chairman in the absence of a designation) as representing a valid action by the committee until the committee shall file with such fiduciary a written revocation of such designation.

- D. The committee or its delegate, shall maintain and keep such records as are necessary for the efficient operation of the plan or as may be required by any applicable law, regulation or ruling and shall provide for the preparation and filing of such forms or reports as may be required to be filed with any governmental agency or department and with the participants and/or other persons entitled to benefits under the plan.
5. Pension Plan Committee costs. The committee members shall each serve without compensation for services unless otherwise agreed by the Council in writing. All reasonable expenses incident to the functioning of the committee including, but not limited to, fees of accountants, counsel, actuaries and other specialists and other costs of administering the plan, may be paid from the pension fund upon approval by the Council to the extent permitted under applicable law and not otherwise paid by the employer.
6. Hold harmless. No member of the Council, the plan administrator, the enrolled actuary nor any other person involved in the administration of the plan shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this plan. To the extent permitted by law, the employer shall, and hereby does agree to, indemnify and hold harmless each present member of the committee and each successor and each of any such member's heirs, executors and administrators, and the committee's delegates and appointees (other than any person, bank, firm or corporation which is independent of the employer and which renders services to the plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit or proceeding to which he is or may be made a party by reason of being or having been a member, delegate or appointee of the committee, except in matters involving criminal liability, intentional or willful misconduct. If the employer purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.
7. Approval of benefits. The plan administrator shall review and approve or deny any application for retirement benefits within 30 days following receipt thereof or within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.

8. Appeal procedure. Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the plan (“claimant”), shall first seek a resolution of such claim under the procedure hereinafter set forth.
  - A. Any claimant shall file a notice of the claim with the plan administrator which shall fully describe the nature of the claim. The plan administrator shall review the claim and make an initial determination approving or denying the claim.
  - B. If the claim is denied in whole or in part, the plan administrator shall, within 90 days (or such other period as may be established by applicable law) from the time the application is received, mail notice of such denial to the claimant. Such ninety-day period may be extended by the plan administrator if special circumstances so require for up to 90 additional days by the plan administrator’s delivering notice of such extension to the claimant within the first ninety-day period. Any notice hereunder shall be written in a manner calculated to be understood by the claimant and, if a notice of denial, shall set forth the specific plan provisions on which the denial is based, an explanation of additional material or information, if any, necessary to perfect such claim and a statement of why such material or information is necessary, and an explanation of the review procedure.
  - C. Upon receipt of notice denying the claim, the claimant shall have the right to request a full and fair review by the Council of the initial determination. Such request for review must be made by notice to the Council within 60 days of receipt of such notice of denial. During such review, the claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. The Council shall, within 60 days after the receipt of the notice requesting such review, (or in special circumstances, such as where the Council in its sole discretion holds a hearing, within 120 days of receipt of such notice), submit its decision in writing to the person or persons whose claim has been denied. The decision shall be final, conclusive and binding on all parties, shall be written in a manner calculated to be understood by the claimant and shall contain specific references to the pertinent plan provisions on which the decision is based.
  - D. Any notice of a claim questioning the amount of a benefit in pay status shall be filed within 90 days following the date of the first payment which would be adjusted if the claim is granted unless the plan administrator allows a later filing for good cause shown.
  - E. A claimant who does not submit a notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.

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- F. Nothing contained herein is intended to abridge any right of a claimant to appeal any final decision hereunder to a court of competent jurisdiction under 2 Pa. C.S.A. §752. No decision hereunder is a final decision from which such an appeal may be taken until the entire appeal procedure of this §1-519, Subsection 8, of this Part has been exhausted.

(Ord. 711, 11/13/2001, Art. IX)

### **§1-520. The Pension Fund.**

1. Operation of the Pension Fund. The Council is hereby authorized to hold and supervise the investment of the assets of the pension fund, subject to the provisions of the laws of the Commonwealth of Pennsylvania and of this plan and any amendment thereto. The pension fund shall be used to pay benefits as provided in the plan and, to the extent not paid directly by the employer, to pay the expenses of administering the plan pursuant to authorization by the employer. The employer intends the plan to be permanent and for the exclusive benefit of its employees. It expects to make the contributions to the pension fund required under the plan. The employer shall not be liable in any manner for any insufficiency in the pension fund; benefits are payable only from the pension fund, and only to the extent that there are monies available therein. The pension fund will consist of all funds held by the employer under the plan, including contributions made pursuant to the provisions hereof and the investments, reinvestments and proceeds thereof. The pension fund shall be held, managed and administered pursuant to the terms of the plan. Except as otherwise expressly provided in the plan, the employer has exclusive authority and discretion to manage and control the pension fund assets. The employer may, however, appoint a trustee, custodian and/or investment manager, at its sole discretion.
2. Powers and duties of employer. With respect to the pension fund, the employer shall have the following powers, rights and duties, in addition to those vested in it elsewhere in the plan or by law, unless such duties are delegated.
  - A. To retain in cash so much of the pension fund as it deems advisable and to deposit any cash so retained in any bank or similar financial institution (including any such institution which may be appointed to serve as trustee hereunder), without liability for interest thereon.
  - B. To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which are at the time legal investments for fiduciaries under the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended.
  - C. To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate; to exchange such property; to grant options for the purchase or exchange thereof.

- D. To consent to and participate in any plan of reorganization, consolidation, merger, extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
- E. To exercise all conversion and subscription rights pertaining to property held in the fund.
- F. To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
- G. To place money at any time in a deposit bank deemed to be appropriate for the purposes of this plan no matter where situated, including in those cases where a bank has been appointed to serve as trustee hereunder, the savings department of its own commercial bank.
- H. In addition to the foregoing powers, the employer shall also have all of the powers, rights and privileges conferred upon trustees by the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the employer may deem necessary to administer the pension fund.
- I. To maintain and invest the assets of this plan on a collective and commingled basis with the assets of other pension plans maintained by the employer, provided that the assets of each respective plan shall be accounted for and administered separately.
- J. To invest the assets of the pension fund in any collective commingled trust fund maintained by a bank or trust company, including any bank or trust company which may act as a trustee hereunder. In this connection, the commingling of the assets of this plan with assets of other eligible, participating plans through such a medium is hereby specifically authorized. Any assets of the plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the plan, to the extent of the participation in such collective or commingled trust fund by the plan.
- K. To make any payment or distribution required or advisable to carry out the provisions of the plan, provided that if a trustee is appointed by the employer, such trustee shall make such distribution only at the direction of the employer.
- L. To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the plan.

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- M. To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
  - N. To pay, and to deduct from and charge against the pension fund, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the fund is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the pension fund, the income, the property or transfer thereof, or in any matter or thing connected therewith.
  - O. To appoint any persons or firms (including, but not limited to, accountants, investment advisors, counsel, actuaries, physicians, appraisers, consultants, professional plan administrators and other specialists), or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the management of the fund; to the extent not prohibited by applicable law, the employer shall be entitled to rely conclusively upon and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such persons or firms, provided such persons or firms were prudently chosen by the employer, taking into account the interests of the participants and beneficiaries and with due regard to the ability of the persons or firms to perform their assigned functions.
  - P. To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the fund assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the laws of more than one state; in such event, the employer shall follow the directions of such investment manager or managers with respect to the acquisition and disposition of fund assets, but shall not be liable for the acts or omissions of such investment manager or managers, nor shall it be under any obligation to review or otherwise manage any fund assets which are subject to the management of such investment manager or managers. If the employer appoints a trustee, the trustee shall not be permitted to retain such an investment manager except with the express written consent of the employer.
- 3. Common investments. The employer shall not be required to make separate investments for individual participants or to maintain separate investments for each participant's account, but may invest contributions and any profits or gains therefrom in common investments.
  - 4. Compensation and expenses of appointed trustee. If a trustee is appointed, the trustee shall be entitled to such reasonable compensation as shall from time to time be agreed upon by the employer and the trustee, unless such compensation is prohibited by law. Such compensation, and all expenses reasonably incurred by

the trustee in carrying out his functions, shall constitute a charge upon the employer or the pension fund, which may be executed at any time after 30 days' written notice to the employer. The employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to reimburse themselves for the payment thereof, from the pension fund.

5. Periodic accounting. If a trustee is appointed, the pension fund shall be evaluated annually, or at more frequent intervals, by the trustee and a written accounting rendered as of each fiscal year end of the fund, and as of the effective date of any removal or resignation of the trustee, and such additional dates as requested by the employer, showing the condition of the fund and all receipts, disbursements and other transactions effected by the trustee during the period covered by the accounting, based on fair market values prevailing as of such date.
6. Value of the Pension Fund. All determinations as to the value of the assets of the pension fund, and as to the amount of the liabilities thereof, shall be made by the employer or its appointed trustee, whose decisions shall be final and conclusive and binding on all parties hereto, the participants and beneficiaries and their estates. In making any such determination, the employer or trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts, and shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

(Ord. 711, 11/13/2001, Art. X)

**§1-521. Amendment.**

1. Amendment of the plan. The employer may amend this plan, at any time, or from time to time by an instrument in writing executed in the name of the employer under its municipal seal by officers duly authorized to execute such instrument and delivered to the Council, provided however:
  - A. That no amendment shall deprive any participant or any beneficiary of a deceased participant of any of the benefits to which such person is entitled under this plan with respect to contributions previously made.
  - B. That no amendment shall provide for the use of funds or assets held under this plan other than for the benefit of employees and no funds contributed to this plan or assets of this plan shall, except as provided in §§1-513, Subsection 5, and 1-521, Subsection 5, ever revert to or be used or enjoyed by the employer.
  - C. That no amendment to the plan which provides for a benefit modification shall be made unless the cost estimate described in §1-522, Subsection 3, has been prepared and presented to the Council in accordance with the Act.

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2. Termination of the plan. The employer shall have the power to terminate this plan in its entirety at any time by an instrument in writing executed in the name of the employer consistent with the provisions of applicable law.
3. Automatic termination of contributions. Subject to the provisions of the Act governing financially distressed municipalities, the liability of the employer to make contributions to the pension fund shall automatically terminate upon liquidation or dissolution of the employer, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of its creditors.
4. Distribution upon termination. In the event of the termination or partial termination of the plan, all amounts of vested benefits accrued by the affected participants to the date of such termination, to the extent funded on such date, shall be nonforfeitable hereunder. In the event of termination of the plan, the employer shall direct either that the plan administrator continue to hold the vested accrued benefits of participants in the pension fund in accordance with the provisions of the plan (other than those provisions related to forfeitures) without regard to such termination until all funds have been distributed in accordance with the provisions; or that the plan administrator immediately distribute to each participant an amount equal to the vested accrued benefit to the date. If there are insufficient assets in the pension fund to provide for all vested accrued benefits as of the date of plan termination, priority shall first be given to the distribution of any amounts attributable to mandatory or voluntary participant contributions before assets are applied to the distribution of vested benefits attributable to other sources hereunder. All other assets attributable to the terminated plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the employer which effects such termination.
5. Residual assets. If all liabilities to vested participants and any others entitled to receive a benefit under the terms of the plan have been satisfied and there remain any residual assets in the pension fund, the residual assets shall be returned to the employer insofar as such return does not contravene any provision of the law, and any remaining balance in excess of employer contributions shall be returned to the Commonwealth.
6. Exclusive benefit rule. In the event of the discontinuance and termination of the plan as provided herein, the employer shall dispose of the pension fund in accordance with the terms of the plan and applicable law. At no time prior to the satisfaction of all liabilities under the plan shall any part of the corpus or income of the pension fund, after deducting any administrative or other expenses properly chargeable to the pension fund, be used for or diverted to purposes other than for the exclusive benefit of the participants in the plan, their beneficiaries or their estates.

(Ord. 711, 11/13/2001, Art. XI)

**§1-522. Provisions to Comply With the Municipal Pension Plan Funding Standard and Recovery Act of 1984.**

1. Actuarial valuations. The plan's actuary shall perform an actuarial valuation at least biennially unless the employer is applying or has applied for supplemental state assistance pursuant to §603 of the Act, whereupon actuarial valuation reports shall be made annually. Such biennial actuarial valuation report shall be made as of the beginning of each plan year occurring in an odd-numbered calendar year, beginning with the year 1985. Such actuarial valuation shall be prepared and certified by an approved actuary, as such term is defined in the Act. The expenses attributable to the preparation of any actuarial valuation report or experience investigation required by the Act or any other expense which is permissible under the terms of the Act and which are directly associated with administering the plan shall be an allowable administrative expense payable from the assets of the pension fund. Such allowable expenses shall include but not be limited to the following:
  - A. Investment costs associated with obtaining authorized investments and investment management fees.
  - B. Accounting expenses.
  - C. Premiums for insurance coverage on fund assets.
  - D. Reasonable and necessary counsel fees incurred for advice or to defend the fund.
  - E. Legitimate travel and education expense for pension plan officials; provided, however, that the municipal officials of the employer, in their fiduciary role, shall monitor the services provided to the plan to ensure that the expenses are necessary, reasonable and benefit the pension plan and, further provided, that the plan administrator shall document all such expenses item by item, and where necessary, hour by hour.
2. Reporting requirements. Such actuarial reports shall be prepared and filed under the supervision of the Chief Administrative Officer of the municipality. The Chief Administrative Officer of the pension plan shall determine the financial requirements of the pension plan on the basis of the most recent actuarial report and shall determine the minimum municipal obligation of the employer with respect to funding the plan for any given plan year. The Chief Administrative Officer shall submit the financial requirements of the plan and the minimum municipal obligation of the employer to the Council annually and shall certify the accuracy of such calculations and their conformance with the Act.
3. Benefit modifications. Prior to the adoption of any benefit plan modification by the employer, the Chief Administrative Officer of the plan shall provide to the Council a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an approved actuary, which estimate shall disclose to the Council the

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impact of the proposed benefit plan modification on the future financial requirements of the plan and the future minimum municipal obligation of the employer with respect to the plan.

(Ord. 711, 11/13/2001, Art. XII)

### **§1-523. Miscellaneous Provisions.**

1. Plan not a contract of employment. No employee of the employer nor anyone else shall have any rights whatsoever against the employer or the plan administrator as a result of this plan except those expressly granted to them hereunder. Nothing herein shall be construed to give any employee the right to remain in the employ of the employer.
2. Masculine/feminine; singular/plural. For purposes of this plan, the masculine shall be read for the feminine and the singular shall be read for the plural, wherever the person or context shall plainly so require.
3. Construction of document. This plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be construed and enforced according to the laws of the Commonwealth, excepting such Commonwealth's choice of law rules.
4. Headings. The headings of Sections are included solely for convenience of reference, and if there be any conflict between such headings and the text of the plan, the text shall control.
5. Severability of provisions. In case any provisions of this plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this plan, and the plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted therein.
6. Incapacity of participant. If any participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder, the plan administrator, upon the receipt of satisfactory evidence that such participant is so incapacitated and that another person or institution is maintaining him, may provide for such payment of pension benefits hereunder to such person or institution so maintaining him, and any such payments so made shall be deemed for every purpose to have been made to such participant.
7. Liability of officers of the Plan Administrator and/or employer. Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer of the employer shall be personally liable to any participant, beneficiary or other person under any provision of the plan.
8. Assets of the Fund. Nothing contained herein shall be deemed to give any participant or beneficiary any interest in any specific property of the pension fund or any

right except to receive such distributions as are expressly provided for under the plan.

9. Pension Fund for sole benefit of participants. The income and principal of the pension fund are for the sole use and benefit of the participants covered hereunder, and to the extent permitted by law, shall be free, clear and discharged from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any participant or beneficiary.

(Ord. 711, 11/13/2001, Art. XIII)

### **C. Borough of Beaver Police Pension Plan.**

#### **§1-531. Definitions.**

The following words and phrases as used in this plan shall have the meaning set forth in this section, unless a different meaning is otherwise clearly required by the context:

**ACCRUED BENEFIT** — as of any given date, the benefit determined under §1-534, Subsection 2, calculated on the basis of final monthly average salary as of the date of determination and multiplied by a fraction, the numerator of which shall be the participant's aggregate service determined as of such date and the denominator of which shall be the projected aggregate service of the participant as if the participant continues in employment until attainment of normal retirement age. Notwithstanding anything contained herein to the contrary, in no event shall the fraction exceed one. The accrued benefit shall not exceed the maximum limitation, determined as of the date of computation, provided under §1-534, Subsection 5. All accrued benefits are subject to all applicable limitations, reductions, offsets and actuarial adjustments provided pursuant to the terms of the plan prior to the actual payment thereof.

**ACCUMULATED CONTRIBUTIONS** — the total amount contributed by any participant to this fund or its predecessor by way of payroll deduction or otherwise, plus any interest actually earned thereon and/or any other increases in the value of the participant's investment in the fund.

**ACT** — the Municipal Pension Plan Funding Standard and Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. §895.101 et. seq.

**ACTUARIAL EQUIVALENT** — two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the UP-1984 Mortality Table and seven-percent interest unless otherwise specifically provided herein.

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**ACTUARY** — the person, partnership, association or corporation which at any given time is serving as actuary; provided that such actuary must be an approved actuary as defined in the Act.

**AGGREGATE SERVICE** — the total period or periods of the participant's employment with the employer whether or not interrupted. Notwithstanding the preceding sentence, should any participant receive a distribution of accumulated contributions with respect to a period of employment for which employee contributions are required, such period of employment shall not be included in aggregate service thereafter unless, at the commencement of the next period of employment, the participant repays to the fund the amount of such distribution with interest. For purposes of this subsection, interest shall accrue as of the date the employee receives a distribution of accumulated contributions and shall be computed at the same rate and in the same manner as described in the definition of accumulated contributions above. Aggregate service shall be calculated in completed years, and shall not include any period of voluntary leave of absence without pay.

**ATTENDING COLLEGE** — for purposes of §1-536, Subsection 5, being registered at an accredited institution of higher learning and carrying a minimum course load of seven credit hours per semester.

**BENEFICIARY** — the person or entity designated by the participant to receive a distribution of the participant's accumulated contributions should the participant die prior to becoming entitled to a retirement benefit. In the event that a participant does not designate a beneficiary or the beneficiary does not survive the participant, the beneficiary shall be the surviving spouse, or if there is no surviving spouse, the issue, per stirpes, or if there is no surviving issue, the estate; but if no personal representative has been appointed, to those persons who would be entitled to the estate under the intestacy laws of the Commonwealth of Pennsylvania if the participant had died intestate and a resident of Pennsylvania.

**BOARD** — the Council of the Borough of Beaver.

**CHIEF ADMINISTRATIVE OFFICER** — the person designated by the Borough who has the primary responsibility for the execution of the administrative affairs for the plan.

**CODE** — the Internal Revenue Code of 1986, as amended.

**COMMITTEE** — the Police Pension Committee as determined pursuant to §1-538, Subsection 2.

**COMMONWEALTH** — the Commonwealth of Pennsylvania.

**COMPENSATION** — the total remuneration of the employee, whether salary or hourly wages including overtime pay, holiday pay, longevity pay and any other form of compensation paid by the employer for police services rendered. Compensation shall also include fixed, periodic amounts paid for periods during which the

participant is not actively employed as a member of the employer's regular full-time police force, which amounts are paid directly by the employer or through a program to which the employer has made contributions on behalf of the employee, other than under this plan (including, without limitation, a workers' compensation program or payments made under the Pennsylvania Heart and Lung Act). Compensation shall be limited on an annual basis to the amount specified for government plans pursuant to Code §401(a)(17), as adjusted under Code §415(d).

**DISABILITY DATE** — the date when a participant is determined by the plan administrator to be incapacitated due to total and permanent disability, or the date when the participant's employment terminates due to such total and permanent disability, if later.

**EMPLOYEE** — any individual employed by the employer on a regular, full-time basis as a police officer of the employer's police force.

**EMPLOYER** — Borough of Beaver, Beaver County, Pennsylvania.

**EMPLOYMENT** — for the purpose of determining aggregate service:

- A. The period of time for which an employee is directly or indirectly compensated or entitled to compensation by the employer for the performance of duties as a police officer.
- B. Any period of time for which an employee is paid, either directly by the employer or through a program to which the employer has made contributions on behalf of the employee, a fixed, periodic amount in the nature of salary continuation payments for reasons other than the performance of duties (such as vacation, holidays, sickness, entitlement to benefits under workers' compensation or similar laws).
- C. Any period during which an employee is entitled to disability benefits under this plan, provided that the employee returns to employment within three months of the date on which it is determined that the employee is no longer totally and permanently disabled if such determination occurs prior to the date a participant attains normal retirement age.
- D. Any period of voluntary or involuntary military service with the armed forces of the United States of America, provided that the participant has been employed as a regular full-time member of the employer's police force for a period of at least six months immediately prior to the period of military service; and the participant returns to employment within six months following discharge from military service or within such longer period during which employment rights are guaranteed by applicable law or under the terms of a collective bargaining agreement with the employer.
- E. Any period of qualified military service as determined under the requirements of Chapter 43 of Title 38, United States Code, provided that the par-

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participant returns to employment following such period of qualified military service, and the participant makes payment to the plan in an amount equal to the participant contributions that would otherwise have been paid to the plan during such period of qualified military service. The amount of participant contributions shall be based upon an estimate of the compensation that would have been paid to the participant during such period of qualified military service as determined by the average compensation paid to the participant during the 12 months immediately preceding the period of qualified military service. The amount of participant contributions calculated must be paid into the plan before the end of the period that begins on the date of re-employment and ends on the earlier of the date that ends the period that has a duration of three times the period of qualified military service or the date that is five years after the date of reemployment.

**FINAL MONTHLY AVERAGE SALARY** — the average monthly salary earned by the participant and paid by the employer during the full 36 months immediately preceding termination of active employment. Salary shall include the employee's regular gross pay, whether salary or hourly wages, including overtime pay, holiday pay, longevity pay and other forms of compensation to which the employee is entitled for police services rendered. However, salary shall exclude any single sum or end-of-career one-time lump-sum payments, which are not directly attributable to active employment during the averaging period including but not limited to payment for accumulated sick leave, payment of a longevity bonus or payment of a back pay damage award.

Final monthly average salary shall be calculated by taking into account only those periods during which an employee receives salary, as that term is defined in this §1-531. Therefore, for example, the final monthly average salary for a participant who receives disability benefits from this plan or who is voluntarily or involuntarily serving in the United States armed forces during the final 36 months of aggregate service shall be based on the period during which the employee last received salary (as defined in the preceding paragraph) from the employer. Salary used to determine final monthly average salary shall be limited on an annual basis to the amount specified for government plans in accordance with Code §401(a)(17), as adjusted under Code §415(d).

**INSURER or INSURANCE COMPANY** — a legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.

**KILLED IN SERVICE** — dying as a direct result of serious bodily injury which is inflicted by external physical force produced by the intentional, reckless or negligent conduct of another person, and sustained while actually engaged in the performance of job duty. The term does not include death which may occur while an employee is traveling to or from work, or which occurs while on duty but due to some natural cause, or by a self-inflicted injury, or otherwise outside the conditions prescribed above.

**LATE RETIREMENT DATE** — the first day of the month coincident with or next following the date on which a participant shall retire from employment, which occurs after the participant's normal retirement date.

**MINIMUM MUNICIPAL OBLIGATION** — the minimum obligation of the municipality as determined by the actuary pursuant to the provisions of the Act.

**NORMAL RETIREMENT AGE** — the date on which the participant has completed 25 years of aggregate service with the employer and has attained age 55.

**NORMAL RETIREMENT DATE** — the first day of the month coincident with or next following the attainment of normal retirement age.

**NOTICE or ELECTION** — a written document prepared in the form specified by the plan administrator. If such notice or election is to be provided by the employer or the plan administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified notice or election period. If such notice or election is to be provided to the employer or plan administrator, it must be received by the intended recipient on or before the last day of the specified notice or election period.

**PARTICIPANT** — an employee who has met the eligibility requirements to participate in the plan as provided in §1-532, Subsection 1, and who has not for any reason ceased to be a participant hereunder.

**PENSION FUND** — the police pension fund administered under the terms of this plan and which shall include all money, property, investments, policies and contracts standing in the name of the plan.

**PLAN** — the plan set forth herein, as amended from time to time and designated as the Borough of Beaver Police Pension Plan.

**PLAN ADMINISTRATOR** — the committee or the individual appointed for the purpose of supervising and administering the provisions of the plan. In the event that no such appointment is made, the plan administrator shall be the Board.

**PLAN YEAR** — the twelve-month period beginning on January 1 and ending on December 31 of each year.

**POLICY or CONTRACT** — a retirement annuity or retirement income endowment policy (or a combination of both) or any other form of insurance contract or policy which shall be deemed appropriate in accordance with the provisions of applicable law.

**RESTATEMENT DATE** — January 1, 2001, the date upon which this amendment and restatement of the plan becomes effective.

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**SALARY** — for purposes of §§1-535, Subsection 2, and 1-536, Subsection 3, the average monthly base wages earned by the participant and paid by the employer during the final 12 months preceding the termination of active employment. Base wages shall consist of the regular hourly wage multiplied by the number of hours actually worked, up to a maximum of 2,080, during the aforesaid period.

**TOTAL AND PERMANENT DISABILITY** — a condition of physical or mental impairment due to which a participant is unable to perform the usual and customary duties of employment and which is reasonably expected to continue to be permanent for the remainder of the participant's lifetime. For purposes of this subsection and §1-535, a condition shall not be treated as a total and permanent disability unless such condition is a direct result of and occurs in the line of duty of employment. Therefore, an employee whose physical or mental impairment does not occur in the line of duty or which is the result of alcoholism, addiction to narcotics, perpetration of a felonious criminal activity is willfully self-inflicted, is not entitled to receive disability benefits under the plan.

(Ord. 712, 11/13/2001, Art. I; as amended by Ord. 726, 12/10/2002, §2; and by Ord. 731, 5/13/2003, §1)

### **§1-532. Participation in the Plan.**

1. Eligibility requirements. Each employee who is employed as a regular, full-time permanent member of the police department of the employer shall participate herein as of the date on which such employee's employment first commences or recommences provided all prerequisites to participation under this plan shall have been fulfilled, including but not limited to completion of all forms required by the plan administrator. Each employee who was a participant in the plan on the day prior to the restatement date shall continue to be a participant on and after the restatement date subject to the terms and conditions of the plan as set forth herein.
2. Participation requirements. The Board shall furnish the plan administrator with written notification of the appointment of any new full-time permanent employee who is eligible for participation hereunder. Each participant hereunder shall be required to make contributions to the plan, as provided in §1-533, Subsection 1, hereof, and shall execute and complete any enrollment or application forms as required by the plan administrator.
3. Designation of beneficiary. Any new, full-time employee who becomes a participant hereunder shall provide a written notice in the manner prescribed by the plan administrator which designates a beneficiary at the time participation commences. The participant's election of any such beneficiary may be rescinded or changed, without the consent of the beneficiary, at any time provided the participant provides the written notice of the changed designated to the plan administrator in the manner prescribed by the plan administrator. Any designation of a

beneficiary made in any manner other than one acceptable to the plan administrator shall be null and void and have no effect under the terms of this plan.

4. Change in status. A participant who remains in the service of the employer but ceases to be an employee eligible for participation hereunder, or ceases or fails to make any contributions which are required as a condition of participation hereunder, shall have no further benefit accruals occur until the individual again qualifies as a participant hereunder eligible to resume such accrual of benefits.
5. Recordkeeping. The employer shall furnish the plan administrator with such information as will aid the plan administrator in the administration of the plan. Such information shall include all pertinent data on employees for purposes of determining their eligibility to participate in this plan.

(Ord. 712, 11/13/2001, Art. II)

### **§1-533. Contributions.**

1. Participant contributions. Each participant shall as a requirement of participation pay regular contributions to the pension fund in an amount equal to 5% of the participant's compensation. Each participant shall complete the necessary forms to authorize the payment of participant contributions by way of payroll deduction. The participant contributions required under this subsection shall be picked up by the employer and shall be treated as employer contributions pursuant to Code §414(h)(2).
2. Reduction of participant contributions. Notwithstanding the preceding Subsection 1, the employer may, in its sole discretion and on an annual basis, by ordinance or resolution, reduce or eliminate payments into the pension fund by participants.
3. Employer contributions. The actuary, in accordance with the Act, shall determine the minimum municipal obligation of the employer. The employer shall pay into the pension fund, by annual appropriations or otherwise, the contributions necessary to satisfy the minimum municipal obligation. Notwithstanding the foregoing, nothing contained herein shall preclude the employer from contributing an amount in excess of the minimum municipal obligation.
4. State aid. General municipal pension system state aid, or any other amount of state aid received by the employer in accordance with the Act from the Commonwealth may be deposited into the pension fund governed by this plan in amounts determined by the Board, and shall be used to reduce the amount of the minimum municipal obligation of the employer.
5. Gifts. The Board is authorized to take by gift, grant, devise or otherwise any money or property, real or personal, for the benefit of the plan and cause the same to be held as a part of the pension fund. The care, management, investment and disposal of such amounts shall be vested in the Board or its delegate, the plan

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administrator, subject to the direction of the donor and not inconsistent with applicable laws and the terms of the plan.

6. Employer reversion. At no time shall it be possible for the plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the participants and their beneficiaries, including payment of any reasonable plan expenses. Notwithstanding the foregoing, any contributions made by the employer may be returned to the employer if the contribution was made due to a mistake and the contribution is returned within one year of the date on which the discovery of the mistaken payment of the contribution was made or reasonably should have been made or the plan is terminated, as provided in §1-540.

(Ord. 712, 11/13/2001, Art. III; as amended by Ord. 726, 12/10/2002, §2)

### **§1-534. Retirement Benefits.**

1. Normal retirement. Each participant shall be entitled to a normal retirement benefit after retirement on or after the participant has attained normal retirement age.
2. Normal retirement benefit. Each participant who shall become entitled to a benefit pursuant to §1-534, Subsection 1, shall receive a benefit paid monthly in an amount equal to 50% of the participant's final monthly average salary as determined herein.
3. Late retirement. A participant may continue in employment beyond the attainment of normal retirement age subject to the employer's rules and regulations regarding retirement age. If a participant who has met the requirements of §1-534, Subsection 1, continues in employment beyond normal retirement age, there shall be no retirement benefits paid until employment ceases and the participant's retirement actually begins. The retirement benefit of a participant who continues employment after attainment of normal retirement age shall be calculated in accordance with §1-534, Subsection 2, on the basis of the final monthly average salary as of such participant's actual retirement and shall commence on the participant's late retirement date.
4. Payment of benefits. Retirement benefit payments shall be payable as of the participant's retirement date and the first day of each month thereafter during the participant's lifetime. A participant must complete an application for benefit in the manner prescribed by the plan administrator and deliver such application to the plan administrator at least 30 days prior to the date on which benefit payments shall commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments nor any other payments shall be due or payable on or before the date that is 30 days after the date the plan administrator receives the application for benefits. Payment of benefits hereunder shall cease as of the date of death of the participant.

5. Maximum benefit limitations. Notwithstanding any provision of this plan to the contrary, no benefit provided under this plan attributable to contributions of the employer shall exceed, as an annual amount, the amount specified in Code Section 415(b)(1)(A), as adjusted pursuant to Code Section 415(d), assuming the form of benefit shall be a straight life annuity (with no ancillary benefits). The limitations described in this §1-534, Subsection 5, shall be governed by the following conditions and definitions:
  - A. Benefits paid or payable in a form other than a straight life annuity (with no ancillary benefits) or where the employee contributes to the plan or makes rollover contributions shall be adjusted on an actuarially equivalent basis to determine the limitation contained herein.
  - B. In the case of a benefit which commences prior to the attainment of age 62 by the participant, the limitation herein shall be adjusted on an actuarially equivalent basis to the amount determined pursuant to this section commencing at age 62; however, the reduction shall not reduce the limitation below \$75,000 for a benefit commencing at or after age 55, or if the benefit commences prior to attainment of age 55 the amount which is actuarially equivalent to a benefit of \$75,000 commencing at age 55; however, in the case of a qualified participant (a participant with respect to whom a period of at least 15 years of service, including applicable military service, as a full-time employee of a police or fire department is taken into account in determining the amount of benefit), the limitation contained herein shall not reduce the limitation to an amount less than the amount specified pursuant to Code Section 415(b)(2)(G) such amount shall be adjusted pursuant to Code Section 415(d).
  - C. In the case of a benefit which commences after attainment of age 65 by the participant, the limitation herein shall be adjusted on an actuarially equivalent basis to the amount determined herein commencing at age 65.
  - D. Benefits paid to a participant which total less than \$10,000 from all defined benefit plans maintained by the employer expressed as an annual benefit shall be deemed not to exceed the limitation of this Section provided that the employer has not at any time maintained a defined contribution plan in which the participant has participated; however, in the case of a participant who is not receiving a disability retirement benefit pursuant to §1-535, Subsection 2, with fewer than 10 years of participation the limitation expressed in this Subsection 5D, shall be reduced by one-tenth for each year of participation less than 10 but in no event shall this limitation be less than \$1,000.
  - E. The limitations expressed herein shall be based upon plan years for calculation purposes, shall be applied to all defined benefit plans maintained by the employer as one defined benefit plan and to all defined contribution plans maintained by the employer as one defined contribution plan, and shall be applied and interpreted consistent with Code Section 415 and regulations

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thereunder as applicable to government plans in general and this plan in particular.

- F. In the case of a survivor benefit under §1-536, Subsection 2, or a disability retirement benefit under §1-535, Subsection 2, the adjustment under Subsection 5B hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age of the benefit recipient.
6. Required distributions.
- A. Notwithstanding any other provision of this plan, the entire benefit of any participant who becomes entitled to benefits prior to death shall be distributed either:
    - (1) Not later than the required beginning date; or
    - (2) Over a period beginning not later than the required beginning date and extending over the life of such participant or over the lives of such participant and a designated beneficiary (or over a period not extending beyond the life expectancy of such participant, or the joint life expectancies of such participant and a designated beneficiary).
  - B. If a participant who is entitled to benefits under this plan dies prior to the date when the entire interest has been distributed after distribution of benefits has begun in accordance with Subsection 6A(2) above, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under Subsection 6A(2) as of the date of death.
  - C. If a participant who is entitled to benefits under this plan dies before distribution of the benefit has begun, the entire interest of such employee shall be distributed within five years of the death of such employee, unless the following sentence is applicable. If any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary, such portion shall be distributed over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and such distributions begin not later than one-year after the date of the employee's death or such later date as provided by regulations issued by the Secretary of the Treasury, then for purposes of the five-year rule, set forth in the preceding sentence, the benefit payable to the beneficiary shall be treated as distributed on the date on which such distributions begin. Provided, however, that notwithstanding the preceding sentence, if the designated beneficiary is the surviving spouse of the participant, then the date on which distributions are required to begin shall not be earlier than the date upon which the employee would have attained age 70 1/2 and, further provided, if the surviving spouse dies before the distributions to such spouse begin, this subsection shall be applied as if the surviving spouse were the employee.

- D. For purposes of this section, the following definitions and procedures shall apply:
- (1) Required Beginning Date – April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 1/2, or the calendar year in which the employee retires.
  - (2) Designated Beneficiary – any individual designated by the employee under this plan according to its rules.
  - (3) Any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child's reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
  - (4) The life expectancy of an employee and/or the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.
7. Assignment. The pension benefit payments prescribed herein shall not be subject to attachment, execution, levy, garnishment or other legal process and shall be payable only to the participant or designated beneficiary and shall not be subject to assignment or transfer.
8. Retired participants. Any participant who shall have retired prior to the restatement date shall not have the benefit altered in any way by the provisions of this amended and restated plan, except where otherwise provided herein. Such retired participants shall continue to have their benefits governed by the terms of the plan in effect on the day preceding the restatement date. Any participant who shall have terminated employment and elected to receive a deferred retirement benefit under §1-537, Subsection 3, shall have such benefit determined based upon the provisions of the plan in effect as of the date of such termination of employment and shall not have the benefit altered by the provisions of this amended and restated plan.
9. Limitation of liability. Nothing contained herein shall obligate the employer, the plan administrator, any fiduciary or any agent or representative of any of the foregoing, to provide any retirement or other benefit to any participant or beneficiary which cannot be provided from the assets available in the pension fund, whether such benefits are in pay status or otherwise payable under the terms of the plan. The Board retains the right to amend or terminate this plan consistent with applicable law at any time, with or without cause and whether or not such action directly or indirectly results in the suspension, reduction or termination of any benefit payable under the plan or in pay status, and without liability to any person for any such action.

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10. Personal right of participant. The right to receive any benefits under this plan is a personal right of the participant and shall expire upon the death of the participant. No heir, legatee, devisee, beneficiary, assignee or other person claiming by or through a participant shall have any interest in any benefits hereunder unless clearly and expressly so provided by the terms of this plan or the provisions of applicable law. A participant's election, failure to make an election or revocation of an election hereunder shall be final and binding on all persons.
11. Nonduplication of benefit. To avoid any duplication of benefits, a participant who is receiving a retirement benefit under the plan and who shall resume employment shall have benefit payments suspended until the first day of the month coincident with or next following the date such employment shall cease. Upon resumption of benefit payments, such participant shall receive the greater of the amount of the suspended benefit or the amount of benefit based upon final monthly average salary and aggregate service as of the date that such period of resumed employment shall cease.
12. Incorporation of Code Section 415 by reference. Notwithstanding anything contained in §1-534, Subsection 5, to the contrary, the limitations, adjustments and other requirements prescribed in §1-534, Subsection 5, shall at all times comply with the provisions of Code Section 415 and the regulations thereunder (as such apply to governmental plans), the terms of which are specifically incorporated herein by reference.
13. Direct rollovers. This subsection applies to distributions made on or after December 31, 2001. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution that is equal to at least \$500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this subsection, the following definitions shall apply:

**DIRECT ROLLOVER** — a payment by the plan to the eligible retirement plan specified by the distributee.

**DISTRIBUTEES** — 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 or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p), are distributees with regard to the interest of the spouse or former spouse.

**ELIGIBLE RETIREMENT PLAN** — a qualified trust described in Code Section 401(a), an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), an annuity contract described in Code Section 403(b), an eligible plan under §457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or po-

litical subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan.

**ELIGIBLE ROLLOVER DISTRIBUTION** — any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). For purposes of the direct rollover provisions in this subsection of the plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in §408(a) or (b) of the Code, or to a qualified defined contribution plan described in §401(a) or §403(a) of the Code that agrees to separately account for amounts so transferred, 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.

(Ord. 712, 11/13/2001, Art. IV; as amended by Ord. 726, 12/10/2002, §2)

### **§1-535. Disability Retirement.**

1. Disability retirement. A participant who shall incur a total and permanent disability before attaining normal retirement age shall be entitled to a disability retirement benefit as of the disability date.
2. Disability retirement benefit. A participant who shall be entitled to a disability retirement benefit under §1-535, Subsection 1, shall receive a monthly benefit in an amount equal to 50% of the participant's salary as defined in §1-531 as of the disability date, offset or reduced by the full amount of any benefits received under the Federal Social Security Act (49, Stat. 620, 42 U.S.C. §§301 et seq.) for the same injury or injuries which create the total and permanent disability.
3. Payment of disability benefits. Disability payments shall be made monthly as of the first day of each month, commencing as of the first day of the month immediately following the participant's disability date and continuing until the earliest of the death of the participant, cessation of total and permanent disability, or attainment of normal retirement age (such a participant who attains normal retirement age shall thereafter receive a normal retirement benefit pursuant to §1-534, Subsection 2. A participant who shall fail to return within three months to employment as an employee of the employer upon cessation of total and permanent disability prior to the attainment of normal retirement age shall be deemed

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to have terminated employment as of the disability date, shall not be entitled to any distribution of accumulated contributions pursuant to §1-537, Subsection 2, to the extent that the total amount of disability payments exceeds the value of the participant's accumulated contributions as of the disability date, and shall not be entitled to any other benefits under the plan on account of any aggregate service as of the disability date.

4. **Verification of disability.** The plan administrator shall, in its sole discretion, determine whether a participant shall have incurred a total and permanent disability. The plan administrator shall rely on the report of a physician acceptable to the plan administrator. If the plan administrator shall determine that a participant who is totally and permanently disabled has recovered sufficiently to resume active employment as a police officer or if a participant refuses to undergo a medical examination as directed by the plan administrator (such a medical examination may not be required more frequently than once in any given twelve-month period), the payment of disability retirement benefits shall cease.
5. **Cessation of disability.** A participant who is receiving payment of disability retirement benefits under this plan must notify the plan administrator of any change which may cause a cessation of entitlement to receipt of such benefits hereunder. If a participant fails to provide immediate notice to the plan administrator of any such change in status and continues to receive payment of benefits hereunder to which the participant is not entitled, then the plan may take whatever action is necessary to recover any amount of improperly paid amounts, including legal action or offsetting such amounts against any future payments of retirement or other benefits under the plan, including the costs of such actions.

(Ord. 712, 11/13/2001, Art. V; as amended by Ord. 726, 12/10/2002, §2)

### **§1-536. Death Benefits.**

1. **Death of participant.** Upon the occurrence of the death of the participant, there shall be benefits payable in accord with the following subsections of this Section.
2. **Survivor benefit at retirement.** If a participant shall die either after the commencement of retirement benefit-payments under §1-534 above, or after the participant becomes eligible to retire under §1-534, Subsection 1, but before retirement benefit payments commence, a survivor benefit shall be paid to the surviving spouse or children, if any, in accordance with §1-536, Subsection 5, in an amount equal to 50% of the accrued benefit which the participant was receiving or was entitled to receive.
3. **Killed in service benefit.** If a participant is killed in service, a survivor benefit shall be paid to the surviving spouse or children, if any, in accordance with §1-536, Subsection 5, in an amount equal to 100% of the participant's salary as defined in §1-531.

4. Death of participant prior to retirement. Except as provided in §1-536, Subsection 3, if a participant shall die before payment of a benefit has commenced and without eligibility for payment of a survivor benefit under §1-536, Subsection 2, the beneficiary shall be eligible to receive a distribution in an amount equal to the accumulated contributions of the participant as of the date of his or her death. If the participant has received disability retirement benefits hereunder, the amount of distribution of accumulated contributions shall be reduced by the amount of disability retirement benefits which have been paid hereunder.
5. Payment of survivor benefit. The survivor benefit commences as of the first day of the month immediately following the date of death of the participant. The survivor benefit shall be paid monthly to the surviving spouse, if any, until the date of his or her death. Upon the death of the surviving spouse, or if there is none, the survivor benefit shall be paid monthly in equal shares to the surviving children of the deceased participant until the death or attainment of age 18 of each child or attainment of age 23 for a child then attending college. The shares payable to the surviving children shall be adjusted as each child ceases to be eligible to receive a share of the benefit hereunder.

(Ord. 712, 11/13/2001, Art. VI; as amended by Ord. 726, 12/10/2002, §2)

#### **§1-537. Termination of Employment.**

1. Rights of terminated employees. A participant who shall cease to be an employee except as otherwise hereinbefore provided shall have all interest and rights under this plan limited to those contained in the following subsections of this section.
2. Distribution of accumulated contributions. A participant whose employment with the employer shall terminate for any reason other than death or total and permanent disability prior to attainment of normal retirement age shall be entitled to receive a distribution of accumulated contributions. Upon receipt of such accumulated contributions, said participant and beneficiary shall not be entitled to any further payments from the plan.
3. Deferred retirement benefit. A participant who shall have completed at least 12 years of aggregate service and whose employment shall terminate for any reason other than due to death or total and permanent disability prior to attainment of normal retirement age shall be entitled to elect by filing a written notice of the intention to vest with the plan administrator within 90 days of the date employment ceases to receive a deferred retirement benefit in lieu of a distribution of accumulated contributions under §1-537, Subsection 2. Such a deferred retirement benefit shall be equal to 100% of the participant's accrued benefit as of the date employment terminates and shall commence after application pursuant to §1-534, Subsection 4, and not earlier than the date which would be the participant's normal retirement date under the plan if the participant remained in employment until such date.

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(Ord. 712, 11/13/2001, Art. VII)

### **§1-538. Administration.**

1. Plan Administrator. The plan administrator shall be the committee or the individual appointed by the Board who shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this plan. The plan administrator may delegate authority to act on its behalf to any persons it deems appropriate. If a plan administrator is not appointed, the Board shall be the plan administrator.
2. Police Pension Committee. The Board may appoint a Police Pension Committee to administer the affairs of the plan. The Board shall delegate such authority as it shall deem appropriate to the committee. The committee, if one is appointed, shall consist of not more than five members. Each member of the committee shall serve in that capacity until death, resignation, removal or otherwise. Each member may resign by delivering written notice to the Board and other members of the committee. Vacancies on the committee shall be filled in the same manner as the position was originally filled by the Board; provided, however, that the remaining members of the committee shall have full power to act pending the filling of such vacancies.
3. Authority and Duties of the Plan Administrator.
  - A. The plan administrator shall have full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the plan. The interpretation or construction placed upon any term or provision of the plan by the plan administrator or any action of the plan administrator taken in good faith shall, upon the Board's review and approval thereof, be final and conclusive upon all parties hereto, whether employees, participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the plan administrator is authorized:
    - (1) To construe this plan.
    - (2) To determine all questions affecting the eligibility of any employee to participate herein.
    - (3) To compute the amount and source of any benefit payable hereunder to any participant or beneficiary.
    - (4) To authorize any and all disbursements.
    - (5) To prescribe any procedure to be followed by any participant or other person in filing any application or election.

- (6) To prepare and distribute, in such manner as may be required by law or as the administrator deems appropriate, information explaining the plan.
  - (7) To require from the employer or any participant such information as shall be necessary for the proper administration of the plan.
  - (8) To appoint and retain any individual to assist in the administration of the plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws.
- B. The plan administrator shall have no power to add to, subtract from or modify the terms of the plan or change or add to any benefits provided by the plan, or to waive or fail to apply any requirements of eligibility for benefits under the plan. Further, the plan administrator shall have no power to adopt, amend or terminate the plan, to select or appoint any trustee or to determine or require any contributions to the plan, said powers being exclusively reserved to the Board.
4. Police Pension Committee organization. The committee may organize itself in any manner deemed appropriate to effectuate its purposes hereunder provided that it shall operate and act by a majority of its members as the time in office either by vote at a meeting or in writing without a meeting. The committee shall appoint a chairman, a secretary who may, but need not be a committee member, and such other agents as it may deem advisable. The committee may authorize any one or more of its members to execute any document or documents including any application, request, certificate, notice, consent, waiver or direction and shall notify the Board, in writing, of each such member so authorized; however, if no such member is so authorized, the chairman shall be deemed to be so authorized. Any trustee or other fiduciary appointed hereunder shall accept and be fully protected in relying upon any document executed by the designated members (or the chairman in the absence of a designation) as representing a valid action by the committee until the committee shall file with such fiduciary a written revocation of such designation. The committee shall meet at least one time in each plan year, and it shall maintain and keep such records as are necessary for the efficient operation of the plan or as may be required by any applicable law, regulation or ruling, and shall provide for the preparation and filing of such forms, reports or documents as may be required to be filed with any governmental agency or department and with the participants or other persons entitled to benefits under the plan.
5. Plan Administrator costs. The plan administrator shall serve without compensation for services unless otherwise agreed by the Board in writing. All reasonable expenses incident to the functioning of the plan administrator, including but not limited to fees of accountants, counsel, actuaries and other specialists and other costs of administering the plan, may be paid from the pension fund upon approval by the Board to the extent permitted under applicable law and not otherwise paid by the employer.

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6. Hold harmless. No member of the Board, the plan administrator, the enrolled actuary nor any other person involved in the administration of the plan shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this plan. To the extent permitted by law, the employer shall, and hereby does agree to, indemnify and hold harmless the plan administrator and each successor and each of any such individual's heirs, executors and administrators, and the delegates and appointees (other than any person, bank, firm or corporation which is independent of the employer and which renders services to the plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit or proceeding to which he is or may be made a party by reason of being or having been a member, delegate or appointee of the plan administrator, except in matters involving criminal liability, intentional or willful misconduct. If the employer purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.
7. Approval of benefits. The plan administrator shall review and approve or deny any application for retirement benefits within 30 days following receipt thereof or within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.
8. Appeal procedure. Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the plan ("claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth.
  - A. Any claimant shall file a notice of the claim with the plan administrator which shall fully describe the nature of the claim. The plan administrator shall review the claim and make an initial determination approving or denying the claim.
  - B. If the claim is denied in whole or in part, the plan administrator shall, within 90 days (or such other period as may be established by applicable law) from the time the application is received, mail notice of such denial to the claimant. Such ninety-day period may be extended by the plan administrator if special circumstances so require for up to 90 additional days by the plan administrator's delivering notice of such extension to the claimant within the first ninety-day period. Any notice hereunder shall be written in a manner calculated to be understood by the claimant and, if a notice of denial, shall set forth the specific plan provisions on which the denial is based, an explanation of additional material or information, if any, necessary to perfect such claim and a statement of why such material or information is necessary, and an explanation of the review procedure.

- C. Upon receipt of notice denying the claim, the claimant shall have the right to request a full and fair review by the Board of the initial determination. Such request for review must be made by notice to the Board within 60 days of receipt of such notice of denial. During such review, the claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. The Board shall, within 60 days after the receipt of the notice requesting such review, (or in special circumstances, such as where the Board in its sole discretion holds a hearing, within 120 days of receipt of such notice), submit its decision in writing to the person or persons whose claim has been denied. The decision shall be final, conclusive and binding on all parties, shall be written in a manner calculated to be understood by the claimant and shall contain specific references to the pertinent plan provisions on which the decision is based.
- D. Any notice of a claim questioning the amount of a benefit in pay status shall be filed within 90 days following the date of the first payment which would be adjusted if the claim is granted unless the plan administrator allows a later filing for good cause shown.
- E. A claimant who does not submit a notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.
- F. Nothing contained herein is intended to abridge any right of a claimant to appeal any final decision hereunder to a court of competent jurisdiction under 2 Pa. C.S.A. §752. No decision hereunder is a final decision from which such an appeal may be taken until the entire appeal procedure of this §1-538, Subsection 8, of this Part has been exhausted.

(Ord. 712, 11/13/2001, Art. VIII)

#### **§1-539. The Pension Fund.**

1. Operation of the Pension Fund. The Board is hereby authorized to hold and supervise the investment of the assets of the pension fund, subject to the provisions of the laws of the Commonwealth of Pennsylvania and of this plan and any amendment thereto. The pension fund shall be used to pay benefits as provided in the plan and, to the extent not paid directly by the employer, to pay the expenses of administering the plan pursuant to authorization by the employer. The employer intends the plan to be permanent and for the exclusive benefit of its employees. It expects to make the contributions to the pension fund required under the plan. The employer shall not be liable in any manner for any insufficiency in the pension fund; benefits are payable only from the pension fund, and only to the extent that there are monies available therein. The pension fund will consist of all funds held by the employer under the plan, including contributions made pursuant to the provisions hereof and the investments, reinvestments and proceeds

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thereof. The pension fund shall be held, managed and administered pursuant to the terms of the plan. Except as otherwise expressly provided in the plan, the employer has exclusive authority and discretion to manage and control the pension fund assets. The employer may, however, appoint a trustee, custodian or investment manager, at its sole discretion.

2. Powers and duties of employer. With respect to the pension fund, the employer shall have the following powers, rights and duties, in addition to those vested in it elsewhere in the plan or by law, unless such duties are delegated:
  - A. To retain in cash so much of the pension fund as it deems advisable and to deposit any cash so retained in any bank or similar financial institution (including any such institution which may be appointed to serve as trustee hereunder), without liability for interest thereon.
  - B. To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which are at the time legal investments for fiduciaries under the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended.
  - C. To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate; to exchange such property; to grant options for the purchase or exchange thereof.
  - D. To consent to and participate in any plan of reorganization, consolidation, merger, extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
  - E. To exercise all conversion and subscription rights pertaining to property held in the fund.
  - F. To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
  - G. To place money at any time in a deposit bank deemed to be appropriate for the purposes of this plan no matter where situated, including in those cases where a bank has been appointed to serve as trustee hereunder, the savings department of its own commercial bank.
  - H. In addition to the foregoing powers, the employer shall also have all of the powers, rights and privileges conferred upon trustees by the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the employer may deem necessary to administer the pension fund.

- I. To maintain and invest the assets of this plan on a collective and commingled basis with the assets of other pension plans maintained by the employer, provided that the assets of each respective plan shall be accounted for and administered separately.
- J. To invest the assets of the pension fund in any collective commingled trust fund maintained by a bank or trust company, including any bank or trust company which may act as a trustee hereunder. In this connection, the commingling of the assets of this plan with assets of other eligible, participating plans through such a medium is hereby specifically authorized. Any assets of the plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the plan, to the extent of the participation in such collective or commingled trust fund by the plan.
- K. To make any payment or distribution required or advisable to carry out the provisions of the plan, provided that if a trustee is appointed by the employer, such trustee shall make such distribution only at the direction of the employer.
- L. To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the plan.
- M. To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
- N. To pay, and to deduct from and charge against the pension fund, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the fund is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the pension fund, the income, the property or transfer thereof, or in any matter or thing connected therewith.
- O. To appoint any persons or firms (including, but not limited to, accountants, investment advisors, counsel, actuaries, physicians, appraisers, consultants, professional plan administrators and other specialists), or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the management of the fund; to the extent not prohibited by applicable law, the employer shall be entitled to rely conclusively upon and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such persons or firms, provided such persons or firms were prudently chosen by the employer, taking into account the interests of the participants and beneficiaries and with due regard to the ability of the persons or firms to perform their assigned functions.

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- P. To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the fund assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the laws of more than one state; in such event, the employer shall follow the directions of such investment manager or managers with respect to the acquisition and disposition of fund assets, but shall not be liable for the acts or omissions of such investment manager or managers, nor shall it be under any obligation to review or otherwise manage any fund assets which are subject to the management of such investment manager or managers. If the employer appoints a trustee, the trustee shall not be permitted to retain such an investment manager except with the express written consent of the employer.
3. Common investments. The employer shall not be required to make separate investments for individual participants or to maintain separate investments for each participant's account, but may invest contributions and any profits or gains therefrom in common investments.
  4. Compensation and expenses of appointed trustee. If a trustee is appointed, the trustee shall be entitled to such reasonable compensation as shall from time to time be agreed upon by the employer and the trustee, unless such compensation is prohibited by law. Such compensation, and all expenses reasonably incurred by the trustee in carrying out its functions, shall constitute a charge upon the employer or the pension fund, which may be executed at any time after 30 days' written notice to the employer. The employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to reimburse themselves for the payment thereof, from the pension fund.
  5. Periodic accounting. If a trustee is appointed, the pension fund shall be evaluated annually, or at more frequent intervals, by the trustee and a written accounting rendered as of each fiscal year end of the fund, and as of the effective date of any removal or resignation of the trustee, and such additional dates as requested by the employer, showing the condition of the fund and all receipts, disbursements and other transactions effected by the trustee during the period covered by the accounting, based on fair market values prevailing as of such date.
  6. Value of the Pension Fund. All determinations as to the value of the assets of the pension fund, and as to the amount of the liabilities thereof, shall be made by the employer or its appointed trustee, whose decisions shall be final and conclusive and binding on all parties hereto, the participants and beneficiaries and their estates. In making any such determination, the employer or trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts, and shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

(Ord. 712, 11/13/2001, Art. IX)

**§1-540. Amendment and Termination.**

1. Amendment of the plan. The employer may amend this plan, at any time, or from time to time by an instrument in writing executed in the name of the employer under its municipal seal by officers duly authorized to execute such instrument and delivered to the Board; provided, however:
  - A. That no amendment shall deprive any participant or any beneficiary of a deceased participant of any of the benefits to which such person is entitled under this plan with respect to contributions previously made.
  - B. That no amendment shall provide for the use of funds or assets held under this plan other than for the benefit of employees and no funds contributed to this plan or assets of this plan shall, except as provided in §1-540, Subsection 5, ever revert to or be used or enjoyed by the employer.
  - C. That no amendment to the plan which provides for a benefit modification shall be made unless the cost estimate described in §1-541, Subsection 3, has been prepared and presented to the Council in accordance with the Act.
2. Termination of the plan. The employer shall have the power to terminate this plan in its entirety at any time by an instrument in writing executed in the name of the employer.
3. Automatic termination of contributions. Subject to the provisions of the Act governing financially distressed municipalities, the liability of the employer to make contributions to the pension fund shall automatically terminate upon liquidation or dissolution of the employer, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of its creditors.
4. Distribution upon termination. In the event of the termination or partial termination of the plan, all amounts of vested benefits accrued by the affected participants as of the date of such termination, to the extent funded on such date, shall be nonforfeitable hereunder. In the event of termination of the plan, the employer shall direct either that the plan administrator continue to hold the vested accrued benefits of participants in the pension fund in accordance with the provisions of the plan (other than those provisions related to forfeitures) without regard to such termination until all funds have been distributed in accordance with the provisions; or that the plan administrator immediately distribute to each participant an amount equal to the vested accrued benefit to the date. If there are insufficient assets in the pension fund to provide for all vested accrued benefits as of the date of plan termination, priority shall first be given to the distribution of any amounts attributable to mandatory or voluntary employee contributions before assets are applied to the distribution of any vested benefits attributable to other sources

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hereunder. All other assets attributable to the terminated plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the employer which effects such termination.

5. Residual assets. If all liabilities to vested participants and any others entitled to receive a benefit under the terms of the plan have been satisfied and there remain any residual assets in the pension fund, such residual assets remaining shall be returned to the employer insofar as such return does not contravene any provision of the law, and any remaining balance, in excess of employer contributions, shall be returned to the Commonwealth.
6. Exclusive benefit rule. In the event of the discontinuance and termination of the plan as provided herein, the employer shall dispose of the pension fund in accordance with the terms of the plan and applicable law. At no time prior to the satisfaction of all liabilities under the plan shall any part of the corpus or income of the pension fund, after deducting any administrative or other expenses properly chargeable to the pension fund, be used for or diverted to purposes other than for the exclusive benefit of the participants in the plan, their beneficiaries or their estates.

(Ord. 712, 11/13/2001, Art. X)

### **§1-541. Funding Standard Requirements.**

1. Actuarial valuations. The plan's actuary shall perform an actuarial valuation at least biennially unless the employer is applying or has applied for supplemental state assistance pursuant to §603 of the Act, whereupon actuarial valuation reports shall be made annually. Such biennial actuarial valuation report shall be made as of the beginning of each plan year occurring in an odd-numbered calendar year, beginning with the year 1985. Such actuarial valuation shall be prepared and certified by an approved actuary, as such term is defined in the Act. The expenses attributable to the preparation of any actuarial valuation report or investigation required by the Act or any other expense which is permissible under the terms of the Act and which are directly associated with administering the plan shall be an allowable administrative expense payable from the assets of the pension fund. Such allowable expenses shall include but not be limited to the following:
  - A. Investment costs associated with obtaining authorized investments and investment management fees.
  - B. Accounting expenses.
  - C. Premiums for insurance coverage on fund assets.
  - D. Reasonable and necessary counsel fees incurred for advice or to defend the fund.

- E. Legitimate travel and education expense for plan officials; provided, however, that the municipal officials of the employer, in their fiduciary role, shall monitor the services provided to the plan to ensure that the expenses are necessary, reasonable and benefit the plan; and, further provided, that the plan administrator shall document all such expenses item by item, and where necessary, hour by hour.
2. Duties of Chief Administrative Officer. Such actuarial reports shall be prepared and filed under the supervision of the Chief Administrative Officer. The Chief Administrative Officer of the plan shall determine the financial requirements of the plan on the basis of the most recent actuarial report and shall determine the minimum municipal obligation of the employer with respect to funding the plan for any given plan year. The Chief Administrative Officer shall submit the financial requirements of the plan and the minimum municipal obligation of the employer to the Board annually and shall certify the accuracy of such calculations and their conformance with the Act.
3. Benefit modifications. Prior to the adoption of any benefit plan modification by the employer, the Chief Administrative Officer of the plan shall provide to the Board a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an approved actuary, which estimate shall disclose to the Council the impact of the proposed benefit plan modification on the future financial requirements of the plan and the future minimum municipal obligation of the employer with respect to the plan.

(Ord. 712, 11/13/2001, Art. XI)

#### **§1-542. Miscellaneous Provisions.**

1. Employment rights. No employee of the employer nor anyone else shall have any rights whatsoever against the employer or the plan administrator as a result of this plan except those expressly granted hereunder. Participation in this plan shall not give any right to any employee to be retained in the employ of the employer, nor shall interfere with the right of the employer to discharge any employee and to deal with such employee without regard to the effect such treatment might have upon participation in this plan.
2. Meaning of certain words. For purposes of this plan, the masculine gender shall include the feminine gender and the singular shall include the plural, and vice versa, in all cases wherever the person or context shall plainly so require. Headings of Parts and Sections are inserted only for convenience of reference and are not to be considered in the construction of the plan.
3. Information to be furnished by the employer. The employer shall furnish to the plan administrator (and where applicable, the trustee) information in the em-

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ployer's possession as the plan administrator and the trustee shall require from time to time to perform their duties under the plan.

4. Severability of provisions. Should any provisions of this plan be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this plan, and the plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted herein.
5. Incapacity of participant. If any participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder, the plan administrator, upon the receipt of satisfactory evidence that such participant is so incapacitated and that another person or institution is maintaining the participant and that no guardian or committee has been appointed for the participant, may provide for such payment of pension benefits hereunder to such person or institution so maintaining the participant, and any such payments so made shall be deemed for every purpose to have been made to such participant.
6. Pension Fund for sole benefit of participants. The income and principal of the pension fund are for the sole use and benefit of the participants covered hereunder, and to the extent permitted by law, shall be free, clear and discharged from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any participant or beneficiary.
7. Benefits for a deceased participant. If any benefit shall be payable under the plan to or on behalf of a participant who has died, if the plan provides that the payment of such benefits shall be made to the participant's estate, and if no administration of such participant's estate is pending in the court of proper jurisdiction, then the plan administrator, at its sole option, may pay such benefits to the surviving spouse of such deceased participant, or, if there is no surviving spouse, to such participant's then living issue, per stirpes; provided, however, that nothing contained herein shall prevent the plan administrator from insisting upon the commencement of estate administration proceedings and the delivery of any such benefits to a duly appointed executor or administrator.
8. Assets of the fund. Nothing contained herein shall be deemed to give any participant or beneficiary any interest in any specific property of the pension fund or any right except to receive such distributions as are expressly provided for under the plan.
9. Personal liability. Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer or agent of the employer or plan administrator shall be personally liable to any participant, beneficiary or other person under any provision of the plan.
10. Construction of document. This plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be

construed and enforced according to the laws of the Commonwealth, excepting such Commonwealth's choice of law rules.

(Ord. 712, 11/13/2001, Art. XII)



**Part 6**

**Historic Review Commission**

**§1-601. Declaration of Policy.**

It is hereby determined and declared as a matter of public policy that:

- A. Section 26 of Article I of the Constitution of Pennsylvania makes the Commonwealth trustee for the preservation of the scenic, historic and esthetic values of the environment.
- B. As a municipal corporation and local government unit of the Commonwealth, this Borough likewise has a right and responsibility to conserve such values for the benefit of its residents and visitors.
- C. The State Legislature has enacted a History Code which states that it is in the public interest for political subdivision of the Commonwealth to engage in comprehensive programs of historic preservation for the enjoyment, education and inspiration of all the people, including future generations.
- D. The irreplaceable historical, architectural, archaeological and cultural heritage of this Borough should be preserved and protected for the benefit of all the people, including future generations.
- E. The protection and preservation of historic resources in this Borough promote public prosperity and general welfare.

(Ord. 661, 3/9/1993, §601)

**§1-602. Historic Review Commission.**

- 1. Creation. A Historic Review Commission is hereby established.
- 2. Membership. The Commission shall have 16 members and shall consist of the President, Vice President and Chairman of the General Government Committee of the Borough Council; the Mayor; the Borough Manager; the Borough Solicitor; the Borough Zoning Officer; the Chairman of the Borough Planning Commission; the President and the Vice President of the Beaver Area Heritage Foundation; and six additional persons (who need not be Borough residents) chosen by the President of Council on the basis of knowledge of archaeology, architecture or local history and culture.
- 3. Compensation. A member of the Commission shall serve without compensation.

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4. Meetings. The Commission shall meet upon the call of its Chairman, who shall be the President of the Borough Council. At all meetings of the Commission, a majority of its members shall constitute a quorum for the transaction of business. The act of a majority of the members at a meeting at which a quorum is present shall be the act of the Commission. The order of business at any meeting shall be:
  - A. Call to order.
  - B. Determination of quorum.
  - C. Proof of proper notice or waiver thereof.
  - D. Reading and approval of correction of minutes of previous meeting.
  - E. Disposition of unfinished business.
  - F. Presentation and disposition of new business.
  - G. Adjournment.

(Ord. 661, 3/9/1993, §602; as amended by Ord. 665, 6/8/1993, §1; and by Ord. 675, 3/15/1995, §1)

### **§1-603. Functions.**

The Historic Review Commission shall have the power and duty to:

- A. Serve as the official agency of the Borough for the conservation of its cultural heritage.
- B. Compile, maintain and revise an inventory of historic resources in the Borough, to be known as the "Beaver Register of Historic Places." As used here, the term "historic resource" means a building, structure, architecture, heritage, archaeology or culture of the Commonwealth or the Borough of Beaver.
- C. Notify the owner(s) of any building, structure, object, place, site or area put on the Beaver Register of Historic Places of such status and the effect thereof.
- D. Commence and prosecute an action in equity to restrain any violation §1-604.

(Ord. 661, 3/9/1993, §603)

**§1-604. Effect of Registration.**

A building, structure, object, site or area listed on the Beaver Register of Historic Places shall not be demolished, renovated, altered or built upon without the prior written permission of the Commission. In granting such permission, the Commission may attach reasonable conditions and safeguards deemed necessary to effectuate the purposes of this Part.

(Ord. 661, 3/9/1993, §604)

**§1-605. Enforcement.**

Any violation of §1-604 of this Part shall constitute a public nuisance and shall be subject to abatement by injunctive relief in an action in equity.

(Ord. 661, 3/9/1993, §605)



**Part 7**

**Municipal Claims and Tax Liens**

**§1-701. Purposes.**

The purposes of this Part are to:

- A. Make interest collectible on all municipal claims filed by the Borough.
- B. Enable the Borough to recover the reasonable attorney's fees incurred by it in the collection of delinquent accounts.

(Ord. 682, 7/9/1996, §701)

**§1-702. Interest.**

- 1. Interest shall be collectible on all municipal claims filed by this Borough at the rate of 10% per year from the date of completion of the underlying work.
- 2. On any municipal claims filed arising out of a municipal project which required this Borough to issue bonds to finance the project; interest shall be collectible at either the interest rate payable on such bond issue or 12% per year, whichever is less.

(Ord. 682, 7/9/1996, §702)

**§1-703. Schedule of Fees.**

The following schedule of attorney's fees shall apply to the collection of delinquent accounts on municipal claims of the Borough:

- A. One hundred fifty dollars for the preparation and filing of each claim.
- B. Twenty-five dollars for the preparation and mailing of written notice of claim filing to the property owner.
- C. Fifty dollars for the preparation and filing of a suggestion of nonpayment and averment of default to revive and continue in effect the lien of a previously filed claim.
- D. Twenty-five dollars for the preparation of a praecipe for satisfaction of a claim and lien and the mailing thereof to the property owner for filing.

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- E. One hundred fifty dollars for the preparation and filing of a praecipe for issuance of writ of scire facias.
- F. One hundred dollars per hour for professional services of the Borough's attorney in all proceedings (including but not limited to trial) and held upon a writ of scire facias.

(Ord. 682, 7/9/1996, §703)

### **§1-704. Authority.**

This Part is enacted pursuant of §§3 and 9 of the Municipal Claim and Tax Lien Law (Act No. 153 of 1923, as amended.)

(Ord. 682, 7/9/1996, §704)

**Part 8**

**Municipal Records**

**§1-801. Purpose.**

The purpose of this Part is to establish specific policies and procedures, in conformity with applicable State law, pertaining to the retention and disposition of public records of the Borough of Beaver.

(Ord. 759, 2/12/2008)

**§1-802. Definitions.**

As used in this Part, the following words and phrases shall have the meanings specified:

**BOROUGH** — the Borough of Beaver.

**ENTITY** — any officer, agency, department, board, commission or administrative unit of the Borough.

**MUNICIPAL RECORDS MANUAL** — the document so titled adopted by the Local Government Records Committee of the Commonwealth of Pennsylvania and published by the Pennsylvania Historical and Museum Commission.

**PUBLIC RECORDS** — any papers, books, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by an entity under law or in connection with the exercise of its powers and the discharge of its duties.

(Ord. 759, 2/12/2008)

**§1-803. Intent.**

The Borough hereby declares its intent to follow the schedules and procedures for the retention and disposition of records as set forth in the Municipal Records Manual.

(Ord. 759, 2/12/2008)

**§1-804. Police Records.**

Records of the Police Department of the Borough shall be retained, and may be disposed of, in accordance with the provisions of Chapter 8 of the Municipal Records Manual.

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(Ord. 759, 2/12/2008)

### **§ 1-805. Disposal.**

1. Any disposal of public records of the Borough must be approved in advance by a resolution adopted by the Council.
2. Any entity of the Borough desiring to dispose of any public record(s) shall submit a written proposal to the Borough Solicitor in which the records are identified. The Solicitor shall review the proposal for its conformity to the appropriate schedule in the Municipal Records Manual, and shall then prepare an appropriate resolution as to disposition for consideration by the Council at a public meeting.

(Ord. 759, 2/12/2008)