

ORDINANCE NO. 2004-4

**BE IT ORDAINED AND ENACTED** by the Council of the Borough of Coaldale, it is hereby ordained and enacted by the authority of the same as follows:

**Police Pension Ordinance**

**PURPOSE:** Pursuant to Act 600 of 1956, as amended, there is hereby established the Borough of Coaldale Police Pension Plan, (herein after referred to as the "Plan") to provide for the benefit of such police employees of the Borough as shall receive an honorable discharge therefrom by reason of age and service or service disability. The pension allowed to those who are retired by disability. The pension allowed to those who are retired by reason of service related disabilities shall be in conformity with a uniform scale.

**ARTICLE I. DEFINITIONS.** When used herein, the following terms shall have the following meanings:

1.1 ANNIVERSARY DATE - means January 1, of each Plan Year.

1.2 AVERAGE MONTHLY COMPENSATION - means the monthly average of the Compensation received during the last thirty six (36) months of employment.

1.3 CODE - means the Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.4 COMPENSATION - means compensation reportable as wages, tips and other compensation on Federal Form W-2 as required by sections 6041, 6051 and 6052 of the Code, excluding severance payments, accrued vacation payment, accrued sick days payment, or similar non-recurring compensation. Compensation shall include only that compensation which is actually paid to the Participant during the applicable period.

In addition, Compensation shall also mean employer contributions made pursuant to a salary reduction agreement which are not currently includible in the Participant's gross income by reason of the application of Code Sections 125, 402(a), 402(h) (1) (B) or 457(a).

The annual Compensation of each Participant taken into account for determining all benefits provided under the Plan for any Plan Year shall not exceed \$150,000, as adjusted for increases in the cost-of-living in accordance with section 401(a) (17) (B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year.

If a determination period consists of fewer than twelve (12) months, the annual

Compensation limit is an amount equal to the otherwise applicable annual Compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12.

1.5 EARLY RETIREMENT DATE - means the date provided in Section 4.3(a).

1.6 EFFECTIVE DATE OF THE PLAN - means January 1, 1972.

1.7 EMPLOYEE - means any individual employed by the Employer in a uniformed capacity of a police officer.

1.8 EMPLOYER - means Borough of Coaldale.

1.9 FULL-TIME EMPLOYEE - means an Employee whose customary employment is for forty (40) or more hours per week.

1.10 IRS - means the United States Internal Revenue Service.

1.11 LABOR DEPARTMENT - means the United States Department of Labor.

1.12 NORMAL RETIREMENT DATE - means the date defined in Section 4.1(a).

1.13 PARTICIPANT or MEMBER - means any Employee who is enrolled in the participation of the Plan as provided in Article IV.

1.14 PLAN - means Borough of Coaldale Police Pension Plan.

1.15 PLAN YEAR - means the 12 month consecutive period which begins on January 1 and ends on December 31.

1.16 REGULATIONS - means the applicable regulations issued under the Code or the Act by the IRS, the Labor Department or any other governmental authority and any temporary rules promulgated by such authorities pending the issuance of such regulations.

1.17 RETIREMENT DATE - means a Participant's Normal Retirement Date, Early Retirement Date, or Postponed Retirement Date, whichever has become effective pursuant to Article VIII.

1.18 SALARY - means Average Monthly Compensation.

1.19 TRUST - or "Trust Fund" means the Trust established by the Employer as a part of the Plan.

1.20 TRUSTEE - means the Trustee or Trustees of the Trust.

1.21 VALUATION DATE - means the first day of each Plan Year and any other date as the

Board in its discretion may from time to time determine.

1.22 VESTED BENEFIT - means the portion of a Participant's Account which has become non-forfeitable pursuant to Section 4.6(b).

## **ARTICLE II. ELIGIBILITY FOR PARTICIPATION IN THE PLAN**

2.1 Participation. Each police officer employee who is holding a full-time position in the Police Department and who works not less than an average of forty (40) hours per week for a stated salary or compensation, shall become a participant of the Plan.

## **ARTICLE III. CREDITED SERVICE FOR VESTING AND BENEFIT ACCRUAL**

3.1 In General. Except as provided in section 3.5, a person is credited with all periods of service in which he/she is employed by the Employer (or any Related Employer) as an Employee, including working days, vacation, sick days, holidays, bereavement days, jury duty time, and non-scheduled days (such as weekends or the equivalent).

3.2 Intervening Military Service.

(a) With Six Months or More of Prior Service. Any member of the police force of the Borough of Coaldale who has been a regularly appointed employee of the Department for a period of six (6) months and who thereafter shall have credited to his or her employment record for pension or disability benefits all of the time spend by him or her in such service of the United States military if such person returns or has heretofore returned to his employment within six (6) months after his or her separation from the service.

(b) With Less Than Six Months of Prior Service. Any member of the police force who was employed by the Department for less than six (6) months before leaving to enter the military service of the United States shall have such military service credited for the pension or disability benefits provided:

(1) the person returns to employment with the Employer (or any Related Employer) at a time when the Employer (or any Related Employer) is legally obligated to reemploy the person under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 et.seq., and any amendments, supplements, or successor legislation, and

(2) such person pays to the plan the amount of Employee contributions that such person would have had to make had he been employed by the Employer during the time he was in military service. Any payment to the Plan shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's service in the military, not to exceed five years.

3.3 Non-Intervening Military Service - A police officer may purchase military service time to

be applied to his or her pension pursuant to the terms and conditions of 53 P.S. 770. Every Participant of the Police Pension Plan and of the Borough of Coaldale who has not served in such employment prior to entering the military service of the United States of America, shall be entitled to full service credit for each year of military service or a fraction thereof, not to exceed five (5) years upon purchasing of credit for such non-intervening military service to be computed by applying the average normal cost rate for Borough and Township Police Pension Plans as certified by the Public Employee Retirement Commission, but not to exceed ten (10) percentum, to the Participants averaged annual rate of compensation over the first three (3) years of municipal service and multiplying the result by the number of years and fractional part of a year of creditable non-intervening military service being purchased together with interest at the rate of four and three-quarters (4-3/4) percentum compounded annually from the date of initial entry into municipal service to the date of payment.

Participants of the Police Pension Plan shall be eligible to receive military service credit as provided in this section provided that he or she is not entitled to receive, eligible to receive now or in the future or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency with the exception of a Participant eligible to receive or receiving military retirement pay earned by a combination of active duty and non-active duty with a reserve or national guard component of the armed forces which retirement pay is payable only upon the attainment of a specified age and period of service under 10 U.S.C. Ch: 67 (related to retired pay for non-regular service).

3.4 Back Pay. A person is also credited with service during any period for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Employer.

3.5 Exclusions. Notwithstanding anything to the contrary contained in this document, a person shall not receive credit for service -

(1) during any lay-off, including temporary lay-offs; or

(2) within any unpaid leave of absence, except for certain military service as provided in subsections 3.2 and 3.3.

#### **ARTICLE IV.**                      **BENEFITS**

4.1 Normal Retirement.

(a) Normal Retirement Date. The Normal Retirement Date for a participant shall be the first day of the month following the later of his or her fiftieth (50<sup>th</sup>) birthday, or the completion of twenty-five (25) years of credited service.

(b) Amount of Normal Retirement Benefit. The retirement benefit of a participant shall be equal to one-half (½) of his Average Monthly Compensation continuing for life in equal monthly payments and ceasing in the month of death.

(c) Service Increment Benefit. A participant who retires with service in excess of twenty-five

(25) years shall have his pension increased by ten (\$10.00) dollars a month for each full year of service in excess of twenty-five (25) years. The maximum service increment benefit for services over twenty-five (25) years shall be one hundred (\$100.00) dollars per month.

4.2 Postponed Retirement. A Participant may elect to postpone his retirement beyond his Normal Retirement Date. His Postponed Retirement Benefit will be computed in the same manner as the Normal Retirement Benefit, using Compensation to the Postponed Retirement Date.

4.3 Early Retirement. There are no Early Retirement provisions.

4.4 Permanent, Service-Related Disability Retirement.

(a) Eligibility. If a Participant shall qualify for a permanent and total service-related disability benefit under the provisions fo the Plan, such police officer shall be eligible to receive a disability benefit from the Plan.

(b) Disability Retirement Date. The disability retirement date for a participant shall be the first day of the month following the date of service-related disability.

(c) Amount of Disability Benefit.

(1) in the event of permanent, service-related disability, benefits shall become payable to an injured police officer in an amount equal to sixty five percent (65%) of the police officer's Average Monthly Compensation at the time the disability was incurred, provided that any police officer who receives benefits for the same injuries under the Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.) Shall have the disability benefit offset or reduced by the amount of such Social Security benefits.

(2) Total and permanent disability means a physical or mental condition of a member resulting from bodily injury or disease or mental disorder contracted, without fault or misconduct on such officer's part, from the performance of such officer's duties in the Police Department, which renders the member incapable of continuing in the employment as a police officer for the Borough. The determination that a police officer is totally and permanently disabled shall be made by the Borough or its designated agent. Before making such determination, the Borough or its designated agent shall secure the opinion of one or more practicing physicians licensed to practice medicine in the Commonwealth of Pennsylvania. The Borough shall have th right to require a physical examination and a re-determination at its option.

4.5 Death Benefits.

(a) Qualification for Death Benefit. The Beneficiaries (as defined in subparagraph (d)) of a police officer shall be entitled to receive a Death Benefit if the police officer dies -

(1) after he/she has begun receiving benefits under a Normal Retirement Benefit; or

(2) after he/she has begun receiving Disability Retirement Benefits, provided that such benefits did not terminate prior to his/her death because he/she ceased to be Disabled; or

(3) while still employed by the Borough and after having met the age and service requirements for normal retirement; or

(4) prior to commencement of any Retirement Benefit under this Section and was vested in his/her Accrued Benefit.

However, a Death Benefit under this section shall not be paid if the police officer's Beneficiaries are entitled to receive a Killed in Service Death Benefit under subsection (c).

(b) Death Benefit - Form and Amount of Payments. The Death Benefit shall be paid in a series of monthly payments -

(1) beginning on the first day of the month following the month of the police officer's death under the conditions described in subsection (a)(1), (a)(2) or (a)(3), or

(2) beginning on the first day of the month following the expected Normal Retirement Date of the deceased police officer and described in subsection (a)(4), and

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

(4) in a monthly amount equal to -

(A) fifty percent (50%) of the monthly amount being received by the police officer at the time of his/her death, or would have been receiving had the police officer been retired at the date of death, described in subsection (a)(1), (a)(2) or (a)(3), or

(B) fifty percent (50%) of the monthly vested accrued amount the police officer would have been entitled to receive described in subsection (a)(4).

(c) Killed in Service Death Benefit. The Beneficiaries of a police officer who dies due to injuries incurred while performing the duties of his/her employment shall be entitled to receive a Killed in Service Death Benefit, which shall consist of a series of monthly payments -

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

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

(3) in a monthly amount equal to one hundred percent (100%) of the police officer's

monthly Average Monthly Compensation as of the date of death.

(d) Beneficiaries. For purposes of the Death Benefit and Killed in Service Benefit, the "Beneficiary" of a police officer shall be his/her spouse. If there is no spouse or if the spouse survives and subsequently dies, then the Death Benefit shall be payable to the police officer's child or children who have not yet attained age 18 (or are attending college and have not yet attained age 23). For purposes of this subparagraph, a person is "attending college" if he/she is registered at an accredited institution of higher learning and is carrying a minimum course load of seven (7) credit hours per semester. The Death Benefit or Killed in Service Benefit shall be payable to eligible children in equal shares.

For purposes of the Death Benefit Return of Contributions in subparagraph (e), the Beneficiary(ies) shall be the spouse or eligible children as above. In the case where there is no spouse or eligible children, the participant may designate the Beneficiary to whom the Death Benefit Return of Contributions shall be paid.

(e) Death Benefit Return of Accumulated Contributions.

(1) In General. If a police officer -

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

(B) has not received any payments under a Normal Retirement Benefit, Disability Retirement Benefit, or Vested Benefit,

then the Plan shall distribute an amount equal to the amount of the police officer's Accumulated Contributions plus interest at the rate of five percent (5%) per annum to the police officer's named Beneficiary(ies). If the police officer failed to designate a Beneficiary or if no designated Beneficiary shall have survived the police officer, the distribution shall be made to the estate of the police officer.

(2) Time of Payment. A distribution under this subsection (e) shall be made as soon as practicable after the Beneficiary (or if none, the executor of the officer's estate) files an election to receive the distribution.

(f) No Other Death Benefits. Except as provided in this Section, no police officer or former police officer and no estate, heir, or beneficiary of any police officer or former police officer shall receive any payment or benefit under this Plan or from the Trust due to the death of a police officer or former police officer.

4.6 Accrued Benefit and Vested Benefit.

(a) Accrued Benefit. A member's Accrued Benefit as of any applicable date will be equal to the product obtained by multiplying the Normal Retirement Benefit determined in accordance with

Section 4.1 using Average Monthly Compensation as of the date employment terminated by a fraction, the numerator of which is the years of service to the date employment terminated and the denominator of which is the total years of service the member would have earned if the member continued to work to the Normal Retirement Date.

(b) Vested Benefit. A Participant who terminates employment with the Borough prior to his or her Normal Retirement Date shall have no vested benefit.

4.7 Cost-of-Living Adjustment - the Borough Council of Coaldale shall have the authority, upon the recommendation of the Police Pension Board, to provide by resolution for a cost-of-living increase for those participants in the Plan receiving retirement benefits and who qualify under applicable law. These cost-of-living increases may be granted provided, however, that such cost-of-living increase shall not exceed the following:

(a) The percentage increase in the Consumer Price Index from the year in which the police officer last worked.

(b) In no case shall the total police pension benefits exceed seventy five percent (75%) of the Salary used for computing basic retirement benefits.

c) The total cost-of-living increase shall not exceed thirty (30%) percent.

No cost-of-living increase shall be granted which would impair the actuarial soundness of the Borough of Coaldale Police Pension Plan. Prior to the recommendation of the cost-of-living increase, the Police Pension Board shall direct the Fund Actuary to submit a written cost estimate of the funding cost of such an adjustment.

4.8 Misstatements and Adjustments. If it is found that the benefits provided under the Plan with respect to a Participant are incorrect because of a misstatement as to his age, length of Credited Service, earnings, or any other relevant fact, the benefits shall be equitably adjusted on the basis of the correct facts with respect to such Participant. The amount of the benefits will be adjusted to the amount which could have been provided on the basis of the correct facts.

If it is ascertained that an overpayment has been made, the amount of such overpayment will be charged against any further payments to the Participant. If it is ascertained that an under-payment has been made by the Plan, the amount of such underpayment shall be paid by the Plan to the Participant or person entitled thereto, subject to the sufficiency of the Trust Fund of the Plan.

## ARTICLE V.

## FUNDING OF THE PLAN

5.1 Contributions by Police Officers.

(a) Police officers shall contribute an amount not less than five (5%) percent nor more than eight (8%) percent of their monthly Compensation to the Plan.

(b) The Borough Council may, on an annual basis by resolution reduce or eliminate payments

into the Fund by police officers.

(c) Any police officer who discontinues his employment in the Borough and who, for any reason whatsoever, shall be unable to receive a pension after having contributed any charge to the Plan shall be entitled to a refund of all such moneys paid by him into such Plan, with interest at the rate of five (5%) percent per annum. Such interest is to be credited for the period commencing on the January first following the year in which the contribution is made and ending on the first of the month in which distribution is made.

5.2 Other Sources of Funding. In addition to contributions made by police officers under section 5.1, funding of the Plan shall consist of payments made to the Borough by the Commonwealth of Pennsylvania for the purpose of retirement or disability pensions for police employees under any present or future law providing therefor; by such appropriations thereto as may be lawfully made by the Borough; by gifts, grants, and bequests received by the Plan; and by receipts from investment of the Plan.

## ARTICLE VI. ADMINISTRATION OF THE PLAN

6.1 Police Pension Board. The Borough of Coaldale Police Pension Plan shall be managed and administered by the Police Pension Board.

6.2 Police Pension Board Members. The Police Pension Board shall consist of four (4) members. The President of the Borough Council, the Borough Secretary and the Mayor shall be members of the Police Pension Board. One full-time police officer of the Borough who is a participant of the Plan shall be a member of the Police Pension Board. This officer shall be chosen by the police officers who are participants in the Plan and shall be elected each year prior to the Anniversary Date of the Plan (January 1). The Borough Secretary shall serve as Secretary of the Police Pension Board.

6.3 Police Pension Board Powers and Duties.

(a) The Board shall administer the Plan in accordance with its terms and shall have all powers necessary to carry out the provisions of the Plan. The Board shall interpret the Plan and shall determine all questions arising in the administration, interpretation, and application of the Plan. Any such determination by the Board shall be conclusive and binding on all persons.

(b) The Board shall act by a majority of its members at the time in office and such action may be taken either by a vote at a meeting, or in writing without a meeting. The Board, with Borough Council approval, may authorize any one or more of its members to execute any document or documents on behalf of the Board, in which event the Board shall notify the Trustee, if one be appointed, in writing of such action and the name or names of its member or members so designated. The Trustee thereafter shall accept and rely upon any document executed by such member or members as representing action by the Board until the Board shall file with the Trustee a written revocation of such designation. The Board may adopt such By-Laws and regulations as it deems desirable for the conduct of its affairs, and may appoint such accountants, actuaries, counsel, specialists, consultants and other persons as it may deem necessary or desirable in connection with

the administration of this Plan. The Board shall be entitled to rely exclusively upon, and shall be fully protected in any action taken by it in good faith in relying upon any opinions or reports which shall be furnished to it by any such accountant, actuary, counsel or other consultants.

(c) The Board shall adopt from time to time tables for use in all actuarial calculations required in connection with the Plan and shall establish from time to time the rate or rates of Regular Interest which shall be used in all actuarial calculations required in connection with the Plan.

(d) The Board shall keep a record of all its proceedings and acts, and shall keep all such books of account, records, and other data as may be necessary for the proper administration of the Plan. The Board shall notify the Trustee and the Borough Council of any action taken by the Board, and when required, shall notify any other interested person or persons.

6.4 Chief Administrative Officer. The Borough Secretary shall be the Chief Administrative Officer (CAO) of the Plan and shall have primary responsibility for the administration of the pension plan. The duties of the CAO shall be as follows:

(a) Supervise and direct the preparation of actuarial reports;

(b) Certify and file actuarial valuation reports with the Public Employee Retirement Commission;

(c) Make actuarial report information available to the plan members;

(d) Annually, determine and submit to the Borough Council the financial requirements of the pension plan and minimum municipal obligation; and

(e) Provide the Borough Council with a cost estimate of the effect of any proposed benefit plan modification.

## **ARTICLE VII.**

## **FIDUCIARY RESPONSIBILITIES**

7.1 Trustees of the Plan. The Borough Council, the Borough Secretary and the Mayor shall act as trustees of the Plan.

7.2 Receipt of Funds. The Borough Treasurer shall forthwith remit to the trustees all funds received for the purposes of the Plan or appropriated thereto by the Borough, with memorandum as to the source thereof, and shall secure its receipt thereof. The trustees shall receive the same and invest any funds not currently required for disbursements in the same manner and in the same kinds of securities as are authorized by law for banks chartered by the Commonwealth of Pennsylvania.

7.3 Benefit Payments. The trustees shall pay benefits out of the Plan only at such times, to such persons and in such amounts as may be certified to them by the Secretary of the Police Pension Board at the direction of the Police Pension Board. The trustees shall annually submit to the Borough Council a detailed report of their administration of the Plan, which

reports when so submitted shall be open to inspection by any interested party.

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

#### **ARTICLE VIII. NONALIENATION OF BENEFITS - PROTECTIVE PROVISIONS**

- 8.1 Benefits May Not Be Assigned or Attached. Except insofar as may otherwise be required by law, no benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to do so shall be voided, except as specifically provided in the Plan, nor shall any such benefits be in any manner liable for or subject to garnishment, attachment, execution, levy, or other legal process for the collection of debts or liable for or subject to the debts, contract, liabilities, engagements, or torts of the person entitled to such benefit.

#### **ARTICLE IX. GENERAL PROVISIONS**

- 9.1 Administrative Expenses - The expenses of administration of the Plan established by this document, including the compensation of the actuary and the bond for the trustees of the Plan, exclusive of the payment of retirement or disability benefits, may be paid from Plan assets.
- 9.2 Amendment of Resolution - Insofar as the provisions of this Ordinance are the same as statutory provisions, they shall be subject to change or repeal to comply with any future statutory provisions, and the provisions of this document may be amended or repealed if statutory authority be granted therefor or if statutory restrictions or mandates are eliminated and discretion vested in the Borough Council.
- 9.3 Severability - In the event that any provision, section, sentence, clause or part of this document shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this document, it being the intent of this Borough Council that such remainder shall be and shall remain in full force and effect.
- 9.4 Plan Does Not Confer Employment Rights. The establishment of the Plan shall not be construed as conferring any legal rights upon any police officer or other person to a continuation of employment nor shall it interfere with the rights of the Borough Council to discharge any police officer or to treat him or her without regard to the effect such treatment might have upon him or her as a member of the Plan.

- 9.5 Gender and Number. Any masculine pronoun includes the feminine and any singular reference means the plural wherever appropriate.
- 9.6 Decisions to be Uniformly Applied. In connection with the administration of the Plan, the practice of the Police Pension Board, whenever there is a choice or decision to be made with respect to Participants of the Plan, shall be uniformly applied to all similar circumstances, with the result that there shall be no discrimination in the operation of the Plan.
- 9.7 Plan Governed by Laws of Commonwealth. The Plan shall be construed, regulated, and administered under the laws of the Commonwealth of Pennsylvania.
- 9.8 Examination of Documents by Participants. Notwithstanding any information that is made available by the Borough Council, the Police Pension Board, or the trustees to Participants of the Plan through the distribution of descriptive booklets, bulletin board notices, payroll notices, or oral announcement, any Participant of the Plan may examine the Plan and all amendments thereto at the main office of the Borough of Coaldale at such mutually convenient time as is arranged by the members and a representative of the Borough Council, and/or the Board of the Trustees.
- 9.9 This ordinance replaces and supercedes all previously adopted ordinances governing the Police Pension.

IN WITNESS WHEREOF, the Employer has caused these presents to be executed this 14 day of April, 2004.

ATTEST

BOROUGH OF COALDALE

Louise Lill  
Louise Lill, Secretary/Treasurer

Susan Solt  
By: Susan Solt, President

Approved this 14 day of April, 2004.

Claire Remington  
By: Claire Remington, Mayor