

Chapter 43

PENSIONS

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[HISTORY: Adopted by the Borough Council of the Borough of Dallastown as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Defense and indemnification — See Ch. 17.
Personnel policies — See Ch. 46.

Salaries and compensation — See Ch. 59.

ARTICLE I Police Pension Plan [Adopted 6-14-1982 by Ord. No. 347]

§ 43-1. Establishment of plan.

A Police Pension Plan is hereby established pursuant to and in compliance with the Act of May 29, 1956, P.L. 1804, as amended.¹ Such fund shall be under the direction of the Council of the Borough of Dallastown and shall be applied under such regulations as the Council may prescribe.

§ 43-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

1. Editor's Note: See 53 P.S. § 767 et seq.

ACTUARIAL EQUIVALENT — A benefit determined by an actuary to be equivalent in value to the participant's normal retirement benefit, as defined herein, provided that such actuarial equivalent is within the limitations provided herein.

BOROUGH COUNCIL — The governing body of Dallastown Borough, hereinafter referred to as "Council."

COMMITTEE — The persons appointed to serve in an advisory capacity to the Council in the administration of the pension fund.

CONTRIBUTION — The payroll deductions made monthly from the compensation of the participants and paid to the pension fund, except that contributions in § 43-6 shall mean the total contributions accumulated during the period of employment and participation in this fund.

EMPLOYER — The Borough of Dallastown.

FUND — The Police Pension Fund established pursuant to this article.

FUTURE SERVICE LIABILITY — The value of any participant's benefits which shall accrue by virtue of service in the aggregate rendered subsequent to the enactment of this article.

MONTHLY COMPENSATION — The amount of salary received by a participant in each and every month, including overtime, longevity pay and service increments, if any.

PARTICIPANT — Every person duly appointed from time to time by the municipality as a full-time paid policeman working at least 40 hours a week at a definite salary, subject to reasonable vacation and sick leave.

SERVICE IN THE AGGREGATE — Total service, not necessarily continuous.

TERMINATION — The cessation of services by the participant for any reason including disability, death, resignation and employer termination. Voluntary leaves of absence without pay shall not be a termination for purposes of this article; but no period of such leave shall be computed in the total service in the aggregate for pension benefit purposes. Leaves of absence with pay shall not be considered a termination within the meaning of this article, and such leaves may be computed in the total service in the aggregate for pension benefit purposes, provided that the municipality is able to certify to the Department of the Auditor General that such participant on a leave of absence with pay is within the definition of participant herein.

UNFUNDED LIABILITY — The present value of any participant's benefits accrued prior to the enactment of this article by virtue of his/her prior service in the aggregate.

§ 43-3. Administration.

- A. The Council shall administer the Police Pension Fund established by this article by such regulations as shall from time to time be necessary for the effective maintenance of the fund, provided that no regulation shall be contrary to the statutes of the commonwealth pursuant to which this fund is established.

- B. The Council may appoint a committee which shall act as an advisory body to the Council in the administration of the pension fund established by this article according to the regulations established pursuant to this article.
- C. The committee shall consist of five members, which number shall be chosen by the Council. All persons so designated shall serve at the pleasure of the Council. Any member may resign upon written notice to the Council and the committee. Any vacancies in the committee arising from resignation, death or removal shall be filled by the Council by the procedure set out herein for the member of the committee whose resignation, death or removal has created the vacancy. The committee shall meet no less than annually and shall serve without compensation for its services.
- D. The Council shall act by such procedure as the Council shall establish, provided that all decisions shall be by majority vote. The Council may authorize one of its members to execute any document or documents on behalf of the Council. The Council may adopt bylaws and regulations as it deems necessary for the conduct of its affairs and may appoint such accountants, counsel, specialists or such other persons as it may deem desirable for the proper administration of the pension fund.
- E. The Council shall keep a record of all its proceedings and acts and shall keep all such books of accounts, records and other data as shall be necessary for the proper administration of the pension fund.
- F. All such reasonable expenses incurred in the administration of the fund, including but not limited to fees for the services of specialists including actuaries, accountants and legal counsel, shall be approved by the Council.
- G. No member of the Council shall incur any liability for any action or failure to act, accepting only liability for his/her own gross negligence or willful misconduct. The employer shall indemnify each member of the Council against any and all claims, loss, damages, expense and liability arising from any action or failure to act, except for such that is the result of gross negligence or willful misconduct of such member.

§ 43-4. Retirement requirements and benefits.

- A. Eligibility for normal retirement.
 - (1) Every participant in the pension fund may retire from active duty, provided that:
 - (a) He/she has completed 25 years of service in the aggregate with the employer; and
 - (b) He/she has attained the age of 55 years. **[Amended 9-13-1982 by Ord. No. 351]**
 - (2) Every participant shall retire at the age of 70. **[Amended 8-13-1984 by Ord. No. 365]**
- B. Normal retirement benefits. Each participant who shall complete the age and service eligibility requirements as set out in Subsection A above shall receive a pension for life,

payable in equal monthly installments in an amount equal to 1/2 the participant's average monthly compensation, based on his/her last 60 months of compensation, or that percentage and based on that number of months as shall be prescribed by statute of the commonwealth subsequent to the adoption of this article. Such pension shall be payable from the assets of the fund established pursuant to this article, provided that the amount of the pension shall be reduced by 75% of the amount of primary social security benefits the participant may be entitled to because of age.

- C. Death prior to retirement or retirement eligibility. The beneficiaries designated by the participant pursuant to § 43-4E herein shall be entitled to the death benefit incidental to a policy of insurance purchased primarily to fund the pension of the participant, provided that the participant, at the time of his/her death, is not retired according to the terms in § 43-4B.
- D. Designation of beneficiaries. Each participant shall have the right to name the beneficiary or beneficiaries for preretirement death benefits incidental to policies of insurance purchased primarily to fund the participant's pension, provided that the ownership of such policies shall remain in the municipality's governing body and shall be endorsed to prevent the assignment of ownership to the insured. If the participant shall fail to name a beneficiary, such benefits that would have accrued to his beneficiaries shall be paid to the participant's estate. Each participant may from time to time change the beneficiaries in such form and manner as shall be prescribed by the Council.
- E. Actuarially equivalent benefits. In lieu of the retirement benefits contained herein, the participant may elect in writing an actuarial equivalent as may be provided for by regulation, provided that no such equivalent benefits may work the effect of providing a lump sum amount of money or provide for a pension for a period less than life or provide for a pension less than the amount established by law, unless such amount is reduced to pay the cost of an additional benefit such as one-hundred-twenty-month certain benefits.
- F. Non-alienation of benefits and vesting. No benefit under the plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, nor shall any such benefits be in any manner liable for or subject to garnishment, attachment, execution, levy or other legal process. Further, all benefits granted herein shall vest in the participant upon completion of the requirements for eligibility and his/her benefits shall continue in the amount and in the form in which he/she first became entitled to them.
- G. Vested benefits. A vested benefit shall be provided to any participant before completing superannuation retirement age and service requirement, but after having completed 12 years of total service and who, for any reason, ceases to be employed as a full-time police officer, shall be entitled to vest his retirement benefit. Such vested benefit to be paid upon the participant attaining his normal retirement age. **[Added 12-28-1983 by Ord. No. 361]**

§ 43-5. Contributions.

- A. Contributions of participants. Where positions covered by the fund are included in an agreement under the Federal Social Security Act, participants shall pay into the fund monthly an amount calculated by subtracting from 5% the product of 3% and the amount of the social security offset established by the Council pursuant to Article 4.2 Contribution Rate 2.75%. Such contribution shall be on that portion of monthly compensation on which social security benefits are payable. A contribution of 5% shall be made on that portion of monthly compensation that exceeds the amount on which social security benefits are payable.
- B. Reduction or elimination of participant's contributions. The monthly contributions of the participant may be reduced or eliminated if an actuarial study annually indicates that such reduction or elimination for that year will not adversely affect the actuarial soundness of the fund. If the actuarial study so indicates, the reduction or elimination shall be effected by resolution, and it shall be effective for one year. No reduction or elimination shall result in increasing the liability of the municipality to the fund.
- C. Contributions of the municipality.
- (1) Past service liability. It shall be the obligation of the municipality to fund the past service liability as determined by the actuary, provided that such liability may be funded over a period not to exceed 25 years. The 25 years commences with the passage of this article.
 - (2) Future service cost. The municipality shall have no liability for the future service cost of the pension fund unless such costs are not met by the allocation of commonwealth funds and participants' contributions. The maintenance of the actuarial soundness shall be the responsibility of the municipality.
 - (3) Administrative expenses. It shall be the liability of the municipality to pay the administrative expenses incurred in the management of the fund. No funds paid for the purpose of funding pensions shall be used to pay administrative costs.
- D. Allocation of commonwealth funds. The payments made by the State Treasurer to the municipality from the moneys received from the taxes paid on the premiums of foreign casualty insurance companies for purposes of pension retirement or disability benefits for policemen shall be used as follows:
- (1) To reduce the unfunded liability;
 - (2) After such liability is funded, to apply against the annual obligation of the municipality for future service cost; or
 - (3) To the extent that the payments may be in excess of such obligation, to reduce participants' contributions.
- E. Gifts, bequests and grants. All other moneys and property received by the committee, including gifts, bequests, devises and grants, shall, unless otherwise specifically provided, be applied equally against the participant and the municipality portions of the future service cost.

- F. Allocation of assets of existing pension funds. Any assets of any existing pension fund for the members of the municipality's Police Department are hereby transferred to the fund established by this article and shall be applied against the unfunded liability.

§ 43-6. Termination of employment.

- A. If for any reason a member of the police force of the municipality shall terminate service with the municipality, that member shall be entitled to a refund of contributions, plus interest at a rate of 6% per annum. Such interest shall be uniform for all participants.
- B. If a member shall subsequently return to service and return the contributions plus interest to the fund which were refunded to him/her upon termination, he/she shall be entitled to credit for the prior years of service to the extent of the return of contributions. Nothing in this article shall be construed to allow credit for service not actually given to the municipality, except as specifically provided in § 43-7.

§ 43-7. Credit for military service.

Any member of the police force of the municipality for at least six months who thereafter shall enter the military service of the United States shall have credited to his/her employment record for pension benefits all of the time spent by him/her in such military service, if such person returns to his/her employment with the municipality within six months after his/her separation from the service.

§ 43-8. Termination of the fund.

Upon termination of the fund, the assets shall be distributed as follows:

- A. Sufficient funds shall be maintained to provide the pension benefits prescribed in § 43-4B for all participants who have retired prior to termination or who are eligible for retirement at the time of the termination of this fund.
- B. Contributions with interest at the rate of 6% as provided in § 43-6 shall be refunded to any and all participants who terminate service at the time of the termination of the fund.
- C. Of the remaining funds, those which can be identified as municipality contributions or contributions other than from participants or from the commonwealth allocation shall be distributed as the Council sees fit, provided that such distribution is made on a uniform basis.
- D. All funds in excess of the funds described in Subsections A, B and C above shall be returned to the commonwealth as unused funds pursuant to the Act of May 12, 1943, P.L. 259, as amended, 72 P.S. § 2263.1 et. seq.

§ 43-9. Participant's rights and municipality's right to terminate.

- A. Neither the establishment of the plan hereby created, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits shall be construed as

giving to any participant or other person any legal or equitable right against the municipality or any officer or employee thereof or the Council except as herein provided. Under no circumstances shall the fund created hereby constitute a contract for continuing employment for any participant or in any manner obligate the municipality to continue or discontinue the services of an employee.

- B. This plan has been established and shall be maintained by municipality in accordance with the law of the Commonwealth of Pennsylvania. The plan shall continue for such period as may be required by such laws, and should such laws provide that the municipality may, by its own action, discontinue this plan, the municipality reserves the right to take such action in its sole and absolute discretion. Upon termination, the municipality shall have no liability hereunder other than that imposed by law.

§ 43-10. Investments.

- A. All investments by the Council of the assets of this fund shall comply with the recent amendment to the Borough Code 1979-94² and such regulations as the Council shall establish for the purpose of investing such fund.
- B. The Council may also purchase annuities or other contracts of insurance which provide a cash value with which to fund pensions, provided that the Council shall determine the value of any policies purchased, the company with which the contracts shall be made and the time to purchase such policies. The Council shall also have the obligation to ensure that the policies purchased provide benefits on a uniform scale and that such policies are endorsed to the ownership of the municipality's pension fund.

§ 43-11. Amendments.

The Council reserves the right to amend at any time, in whole or in part, any or all of the provisions of this fund. However, no such amendment shall authorize or permit any part of the fund to be used or diverted to purposes other than for the exclusive benefit of the participants, their beneficiaries or their estates, nor shall any amendment divest a participant of benefits vested by § 43-4F. All such amendments shall comply with the applicable statutes of the commonwealth, including but not limited to the Act of May 29, 1956, P.L. (1955) 1804, as amended, 53 P.S. § 767 et seq.

§ 43-12. Construal of plan.

- A. This plan shall be constructed according to the laws of the Commonwealth of Pennsylvania, and all provisions hereof shall be administered according to the laws of such commonwealth.
- B. Whenever any words are used herein in the masculine gender, they shall be construed as though they were also used in the feminine gender in all cases where they would so apply; and wherever any words are used herein in the singular form, they shall be

2. Editor's Note: See 53 P.S. § 45101 et seq.

construed as though they were also used in the plural form in all cases where they would so apply.

- C. Headings of articles and paragraphs of this instrument are inserted for convenience of references. They constitute no part of this plan and are not to be considered in the construction hereof.

ARTICLE II
Nonuniformed Employees Pension Plan
[Adopted 8-25-2003 by Ord. No. 500³]

§ 43-13. Adoption of plan.

The Borough of Dallastown hereby adopts the Borough of Dallastown Defined Benefit Plan with and through the Pennsylvania State Association of Boroughs Pension Plan and Trust, a copy of which is attached hereto and made a part hereof,⁴ and as may be amended from time to time in the future, as and for the pension plan for the full-time, nonuniformed employees of the Borough of Dallastown, effective on September 3, 2003, subject to the reservation in § 43-14 hereof.

§ 43-14. Termination of prior plan; exception.

The current pension plan contract for the full-time, nonuniformed employees of the Borough of Dallastown with and through the Principal Financial Group is hereby terminated, in part, effective upon the effective date of the new pension plan contract identified in § 43-13 hereof, subject to the following reservation: the portion of the Borough of Dallastown Defined Benefit Plan with and through the Principal Financial Group which is allocated to and being paid as the pension plan or account of or for the benefit of Mark Lanius is not terminated, and shall continue to be administered for the benefit of Mark Lanius, or his beneficiaries as the same may be applicable, by, with and through the Principal Financial Group.

§ 43-15. Execution of documents.

The proper officers of the Borough of Dallastown are hereby authorized and directed to execute and deliver said Defined Benefit Plan attached hereto and any and all other documentation necessary to put this article into effect.

3. Editor's Note: This ordinance superseded former Ch. 43, Art. II, Nonuniformed Employees Pension Plan, adopted 11-13-1995 by Ord. No. 417.

4. Editor's Note: Said copy is on file in the Borough offices.