

**DARBY BOROUGH
DELAWARE COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 786
AN ORDINANCE OF THE BOROUGH OF DARBY,
DELAWARE COUNTY, PENNSYLVANIA, AMENDING THE
BOROUGH CODE GOVERNING POLICE PENSIONS TO
INCLUDE
AN ACT 44 RETIREMENT PROGRAM.**

WHEREAS, the Borough of Darby did, by Ordinance create a Police Pension Plan (hereinafter, the "Police Pension Plan"); and

WHEREAS, on September 18, 2009, Act 44 was approved by the Pennsylvania Legislature amending Title 53 as it relates to Municipal Police Pension Plans; and

WHEREAS, the Borough, through collective bargaining negotiations with the Delaware County Fraternal Order of Police, Lodge #27, representing the full time members of the Darby Borough Police Department, determined it is desirable and beneficial to establish an Act 44 Retirement Program for its police officers who meet certain eligibility requirements, and entered into a Collective Bargaining Agreement providing for such Act 44 Retirement Program; and,

WHEREAS, to implement the terms of the collectively bargained Act 44 Retirement Program and the other terms, it is necessary for the Borough to adopt an Ordinance amending its Police Pension Plan;

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF DARBY THAT:

SECTION I. Implementation of Act 44 Retirement Program

The Police Pension Plan is amended to add a new section establishing and implementing an Act 44 Retirement Program:

1. **Title.** This Section shall be known as the "Darby Borough Police Act 44 Retirement Program."
2. **Definitions.** When used in this Section, the below words shall have

the meaning indicated.

- a. **"Borough"** – Borough of Darby, Delaware County, Pennsylvania.
- b. **"ACT 44 PROGRAM"** – The ACT 44 DEFERRED RETIREMENT OPTION PROGRAM referred to in the Collective Bargaining Agreement between the Darby Borough Police, represented by the Delaware County Fraternal Order of Police, Lodge #27 and the Borough of Darby.
- c. **"ACT 44 PROGRAM Account"** – Separate ledger account created to accept ACT 44 PROGRAM participants' monthly pension benefit while an ACT 44 PROGRAM participant, as well as any interest thereon.
- d. **"DROP"** – Deferred Retirement Option Program.
- e. **"Fund"** or **"Plan"** – the Police Pension Plan.
- f. **"Participant"** – a Police Officer who meets the eligibility for and has executed the proper documents for participation in ACT 44 PROGRAM and has had such application approved by the Borough.
- g. **"Police Officers"** - Police Officers of the Police Department.

3. **Eligibility.** Eligibility for the ACT 44 PROGRAM shall be determined as follows:

- a. Police Officers who have not retired prior to the implementation of the ACT 44 PROGRAM may enter into the ACT 44 PROGRAM on the first day of the month following completion of 25 years of credited service and attaining the age of 50, i.e. superannuation date.

4. **Written Election.** Eligible Officers who wish to be Participants in the ACT 44 PROGRAM must signify that intention in writing as follows:

- a. A Police Officer electing to participate in the ACT 44 PROGRAM must complete and execute an "ACT 44 PROGRAM Participation Election Form" prepared by the Borough, which shall evidence the member's election to participate in the ACT 44 PROGRAM. The form must be signed by the Police Officer and be notarized and submitted to the Borough Secretary. The ACT 44 PROGRAM Participation Election Form shall include an irrevocable notice to the Borough, by the Police Officer member, that the Police

Officer shall resign from employment with the Police Department effective on a specific date (the "resignation date") that is no later than 36 months from the effective date of ACT 44 PROGRAM Election Form. A Police Officer shall cease to work as and may no longer be employed as a Police Officer on the officer's resignation date, unless the Borough properly terminates or honorably discharges the officer prior to the resignation date. A participant may resign from employment while in ACT 44 PROGRAM status, which shall terminate his/her participation in the ACT 44 PROGRAM.

- b. In addition to the above information, the ACT 44 PROGRAM Participation Election Form shall also advise the employee of the following: (1) an explanation of the Participant's rights and obligations while in ACT 44 PROGRAM; (2) that, as a condition of ACT 44 PROGRAM participation, the Participant foregoes active participation in the Police Pension Plan and foregoes any recalculation of pension benefits to include salary increases occurring after ACT 44 PROGRAM participation commences; and (3) that the ACT 44 PROGRAM Participant's service while in ACT 44 PROGRAM will not count as pension service nor will it entitle a participant to any service increment benefits to which the Participant was not entitled prior to commencing ACT 44 PROGRAM participation. An ACT 44 PROGRAM Participant must also complete any and all retirement documents required by the Police Pension Plan Administrator, and such documents must be filed and presented to the Borough for approval of retirement and payment of pension. Once an ACT 44 PROGRAM Participation Election Form has been approved by the Borough, it is irrevocable. Likewise, once an ACT 44 PROGRAM Participant enters the ACT 44 PROGRAM, the Participant may not subsequently leave and then re-enter the ACT 44 PROGRAM, even if the employee separates from employment and subsequently begins employment with the Borough again.

5. **Benefit Calculation.** For all Pension Plan purposes, continuous service of a Police Officer participating in the ACT 44 PROGRAM shall remain as it existed on the effective date of commencement of participation in the ACT 44 PROGRAM. Service thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Borough Police Pension Plan. The average monthly compensation of the Police Officer for pension calculation purposes shall remain, as it existed on the effective date of commencement of participation in the ACT 44 PROGRAM. Earnings or increases in

earnings thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Pension Plan. The pension benefit payable to the members shall increase only as a result of Cost of Living Adjustments in effect on the effective date of the member's participation in the ACT 44 PROGRAM or by applicable cost of living adjustments granted thereafter.

6. **Accumulation of the ACT 44 PROGRAM Account.** The monthly retirement benefits that would have been payable had the Police Officer elected to cease employment and receive a normal retirement benefit, shall, upon the Police Officer commencing participation in ACT 44 PROGRAM, accumulate to the benefit of that Officer and be accounted for on that Police Officer's ACT 44 PROGRAM Account. Participants shall not have the option of self-directed investment of their individual ACT 44 PROGRAM Account while in the ACT 44 PROGRAM. Instead, the monies shall be invested in a fund to be identified and selected solely by the Borough in accordance with applicable law so as to generate a rate of return of no less than zero percent (0%) and no more than four and a half percent (4.5%).
7. **Accrual of Non-Pension Benefits.** After a Police Officer elects to participate in the ACT 44 PROGRAM, all other contractual benefits shall continue to accrue with the exception of those provisions relating to the Police Pension Plan.
8. **Payout.** Upon separation from employment, the ACT 44 PROGRAM payout options available to the ACT 44 PROGRAM Participant shall be as follows:
 - a. The balance of the ACT 44 PROGRAM Participant's account, less withholding taxes, if any, remitted to the Internal Revenue Service, shall be paid to the Participant or the Participant's surviving beneficiary.

- b. The balance of the ACT 44 PROGRAM Participant's account shall be paid directly to the custodian of an eligible retirement plan as defined by Internal Revenue Code Section 402(c)(8)(b), or in the case of an eligible rollover distribution to the surviving spouse of a deceased ACT 44 PROGRAM Participant, an eligible retirement plan that is an individual retirement account or an individual retirement annuity as defined by Internal Revenue Code Section 402(c)(9).
 - c. If the ACT 44 PROGRAM Participant or beneficiary fails to make an election within sixty days (60) following the date of termination of ACT 44 PROGRAM participation, then the Chief Administrative Officer of the pension plan shall implement section 8.A. above.
9. **Service Connected Disability During ACT 44 PROGRAM.** If an ACT 44 PROGRAM Participant becomes temporarily incapacitated due to a service-connected injury during his participation in ACT 44 PROGRAM, that Police Officer shall continue to participate in the ACT 44 PROGRAM as if fully employed. The Police Officer shall receive disability pay in the same amount as disabled Police Officers that are not participating in ACT 44 PROGRAM. In no event shall a Police Officer on temporary disability have the ability to draw from his ACT 44 PROGRAM account. However, notwithstanding any other provision in this paragraph, if a Police Officer is disabled and has not returned to work as of the date of his required resignation, then such resignation shall take precedence over all other provisions herein and said officer shall be required to resign. Nothing contained in this Plan shall be construed as conferring any legal rights upon any Police Officer or other person to a continuation of employment nor shall participation in the ACT 44 PROGRAM supersede or limit in any way the right of the Borough to honorably discharge a Police Officer based upon an inability to perform his or her full duties as a police officer. If an ACT 44 PROGRAM Participant becomes eligible for a service-connected disability pension and his employment is terminated due to an inability to continue in service on grounds that render him eligible for a service-connected disability pension, the monthly normal retirement benefit of the ACT 44 PROGRAM Participant shall be reclassified as being on account of a service-connected disability. In no event shall an ACT 44 Participant's monthly retirement benefit be recalculated. The ACT 44 Participant's monthly retirement benefit shall remain 50% as calculated at the time of entry into the ACT 44 PROGRAM subject to applicable cost-of-living adjustments.

10. **Death.** If an ACT 44 PROGRAM Participant dies, the Participant's eligibility for ACT 44 PROGRAM shall terminate upon the date of death. In such case, if the ACT 44 PROGRAM account balances have not yet been paid out, the Participant's legal beneficiary shall have the same rights and options as the Participant to withdraw/roll over the account balance.
11. **Forfeiture of Benefits.** Notwithstanding a Police Officer's status as an ACT 44 PROGRAM Participant, a current or former Participant who is convicted or pleads guilty to engaging in criminal misconduct which constitutes a "crime related to public office or public employment," as that phrase is defined in Pennsylvania's Pension Forfeiture Act, 43 P.S. §§ 1311-1314, shall forfeit his right to receive a pension, including any amounts currently deposited in the ACT 44 PROGRAM Account. In such a case, the Participant shall only be entitled to receive the contributions, if any, made by the Participant to the Police Pension Fund, without interest.
12. **Cost of Management for ACT 44 PROGRAM.** The Police Officers and the Borough agree that any costs or fees associated with the management of the ACT 44 PROGRAM accounts shall be paid directly by the Participants and each Participant's Act 44 retirement account is subject to an annual charge of \$40, plus .60% (six-tenths of one percent) annual asset charge, payable out of said account. Should the Borough assert the need to increase such charge, the parties shall negotiate.
13. **Amendment.** Any amendments to this ACT 44 PROGRAM Ordinance shall be consistent with the provisions covering Individual Retirement option plans set forth in any applicable collective bargaining agreement and shall be binding upon all future ACT 44 PROGRAM Participants and upon all ACT 44 PROGRAM Participants who have balances in their Individual Retirement option accounts. The ACT 44 PROGRAM may only be amended by a written instrument, not by any oral agreement or past practice.
14. **Construal of Provisions.** A Police Officer's election to participate in the ACT 44 PROGRAM shall in no way be construed as a limitation on the Borough's right to suspend or to terminate a Police Officer for just cause or to grant the Police Officer an honorable discharge based upon a physical or mental inability to perform his or her duties.

15. **Severability.** The provisions of the ACT 44 PROGRAM shall be severable; and if any of its provisions shall be held to be unconstitutional or illegal, the validity of any of the remaining provisions of the ACT 44 PROGRAM shall not be affected thereby. It is hereby expressly declared as the intent of the Borough that the ACT 44 PROGRAM would have been adopted had such unconstitutional or illegal provision or provisions not been included herein.

16. **Effective Date.** The Effective Date of the ACT 44 PROGRAM shall be the date this Ordinance is enacted.

SECTION II. All elected and appointed officials are authorized to take all action necessary to ensure the implementation and effect the purpose hereof.

SECTION III. Any and all Ordinances and/or Resolutions, or parts thereof, conflicting herewith are repealed insofar as the matters herein are affected.

SECTION IV. The provisions of this Ordinance are severable, and if any clause, sentence, subsection or section hereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder but shall be confined in its operation and application to the clause, sentence, subsection or section rendered. It is hereby declared the intent of the Darby Borough Council that this ordinance would have been adopted if such illegal, invalid, or unconstitutional clause, sentence, subsection, or section had not been included therein.

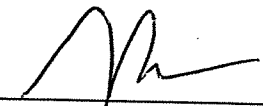
SECTION V. This is effective immediately upon enactment according to law, and shall remain in effect hereafter until revised, amended, or revoked by action of the Darby Borough Council.

ENACTED AND ORDAINED this 23rd day of August, 2017.


Borough Council President

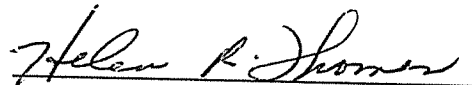
SEAL

ATTEST:



Secretary

APPROVED:



Mayor

ACT 44 PLAN PARTICIPATION ELECTION FORM

In accordance with the provisions of the ordinance governing the Darby Borough Police Pension Plan, the undersigned hereby makes voluntary application for participation in the ACT 44 Deferred Retirement Option Plan (DROP). I hereby provide my irrevocable notice to the Borough that I shall resign from employment with the Darby Borough Police Department effective on / / (the "resignation date"), allowing for thirty-sixty (36) months of Act 44 plan participation, the maximum term of participation permitted pursuant to the Collective Bargaining Agreement and the Darby Borough ACT 44 Retirement Plan Ordinance. I acknowledge that I shall cease to be employed as a Darby Borough Police Officer at the conclusion on my work day on the above resignation date, unless the Borough properly terminates or honorably discharges me prior to the above date.

In applying to participate in DROP, I acknowledge, understand, and agree to the following:

- That in order to participate in DROP, I must be eligible for age and service retirement (completing 25 years of services and attaining age 50) and elect to defer receipt of my retirement benefit into a DROP account. For the purposes of calculating my monthly retirement benefit, the effective date of my participation shall be concurrent with my DROP retirement date of / / .
- That my decision to enter the DROP and to terminate my employment as a Darby Borough Police Officer is irrevocable.
- That my participation in DROP will not extend beyond 36 months from the date of entry into the program.
- That the Borough shall credit my monthly DROP retirement benefit within the Police Pension Plan, which shall be credited with interest no less than zero (0%) and no more than four and one half percent (4.5%) based on the rate of return realized by the Police Pension Plan.
- That during my participation in DROP, I will not accrue pension creditable service in the Darby Borough Police Pension Plan, and my pensionable compensation will not be increased to reflect changes in my actual compensation which occur while I am a DROP participant.
- If a DROP participant becomes eligible for a service-connected disability pension and his employment is terminated due to an inability to continue in service on grounds that render him eligible for a service-connected disability pension, the monthly normal retirement benefit of the DROP program participant shall be reclassified as being on account of a service-connected disability. In no event shall a DROP participant's monthly retirement benefit be recalculated. The ACT 44 Participant's monthly retirement benefit shall remain 50% as calculated at the time of entry into the ACT 44 PROGRAM subject to applicable cost-of-living adjustments.

- Upon separation from employment, the ACT 44 program participant will make a written election regarding the distribution of the balance of their DROP account. If the ACT 44 program participant, or beneficiary, fails to make an election within sixty (60) days following the date of termination of the ACT 44 program participation, then the balance of the ACT 44 program participant's account, less withholding taxes, if any, remitted to the Internal Revenue Service, shall be paid to the Participant or the Participant's surviving beneficiary.
- I understand that payments from my DROP account may be subject to penalties, income tax withholding, or other withholdings or liabilities required by law.
- I understand that once I enter DROP, I may not subsequently leave and then re-enter ACT 44 DROP program, even if I separate from employment and subsequently begin employment with the Borough again.
- I understand that if I die before my DROP account balances are paid in full, my DROP account balances shall be paid to my designated beneficiary. I acknowledge that this contingency applies only to the balance of my DROP account and at no time should it be construed to give the recipients any rights to any payment of the monthly pension benefit.
- DROP participant must complete any and all retirement documents required by the Pension Plan Administrator, and such documents must be filed with the Borough for approval and processing.

ACT 44 DROP Participant Name (please print) _____

Signature _____ Date _____

<p>Sworn and subscribed to me this _____ day of _____, 20_____</p> <p>_____</p> <p>Notary Signature</p> <p>Commission Expiration Date _____</p>

Pension Plan Administrator Signature _____ Date _____