

BERWICK TOWNSHIP, ADAMS COUNTY, PENNSYLVANIA
ORDINANCE NO. 78

A JOINT ORDINANCE OF THE TOWNSHIP OF BERWICK, ADAMS COUNTY,
COMMONWEALTH OF PENNSYLVANIA, FOR POLICE PENSION FUND FOR THE
EASTERN ADAMS REGIONAL POLICE DEPARTMENT

WHEREAS, BERWICK TOWNSHIP, NEW OXFORD BOROUGH, AND OXFORD TOWNSHIP, ALL LOCATED IN ADAMS COUNTY, PENNSYLVANIA, are the Municipalities that make up the Eastern Adam's Regional Police Department by Agreement dated September 20, 2001, effective January 1, 2002;

WHEREAS THE JOINT POLICE COMMISSION was duly established and appointed and vested with the duty and authority to be the governing body of the Eastern Adam's Regional Police Department;

WHEREAS, PURSUANT TO THE RECOMMENDATION OF THE JOINT POLICE COMMISSION, it has been determined to be in the interest of the parties to said agreement, the Municipalities enact an ordinance governing the previously established police pension plan;

WHEREAS, Berwick Township had previously enacted **Ordinance No. 70** regarding the Police Pension Fund, and this Ordinance is intended to and shall revoke and replace said Ordinance;

NOW THEREFORE, the following is hereby enacted as an ordinance of Berwick Township:

SECTION 1. Title.

This Part shall be known as and may be cited as either the "Police Pension Ordinance of the Eastern Adams Regional Police Department" or the "Police Pension Ordinance of the EARP."

SECTION 2. Definitions.

The following words or phrases, when used in this Part, unless the context indicates otherwise, shall have the following meanings:

ACTUARIAL EQUIVALENCE - shall be based on the following assumptions with regard to interest and life expectancy:

A. Interest. 7% per annum compounded annually.

B. Life Expectancy. For males, in accordance with the mortality rates set forth in the 1983 Group Annuity Mortality Table (male rates); for females, in accordance with the mortality rates set forth in the 1983 Group Annuity Mortality Table (female rates).

BOARD - the Police Commission for the EARP as established and appointed pursuant to the agreement for joint law enforcement services between Berwick Township, Oxford Township and New Oxford Borough dated December 31, 2001. [Ord. 57]

DISABILITY - the inability to do any substantial gainful activity by reason of any medical determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

EARP - the Eastern Adams Regional Police Department.

FULL TIME POLICE OFFICER - a police officer employed by the EARP, on a regular salary or hourly basis, and employed for 40 hours or more per week and for at least 51 weeks per year or more, subject to such vacation and sick leave as may be established in any written employment policy of the EARP.

PARTICIPANT - a full time police officer who has met the eligibility requirements herein set forth and is participating in the plan created hereby.

SALARY - all regular periodic compensation plus overtime compensation received by the participant.

TIER I PARTICIPANT - a participant who began employment as a full-time police officer of either Berwick Township or Oxford Township before January 1, 1992, and who is as of the date of the enactment of this Part, still a full-time police officer as defined above.

TIER II PARTICIPANT - a participant who began employment as a full-time police officer of either Berwick Township, Oxford Township or EARP on or after January 1, 1992.

SECTION 3. Establishment of Police Pension Fund.

There is hereby established, effective January 1, 1993, and thereafter, as long as this Part shall continue in effect, a police pension plan for the benefit of eligible participant police officers employed by EARP.

SECTION 4. Trustees.

The Police Pension Plan hereby created shall be administered by the Police Commission as established by the agreement for joint police services between Berwick Township, Berwick Township and New Berwick Borough dated December 31, 2001, as trustees. Said trustees shall have the ability to elect or appoint a chief executive officer to act on behalf of trustees, subject to the approval and review of the actions of the chief executive officer by the trustees. Said chief executive officer may be either a natural person or a corporation. Any chief executive officer elected or appointed by the trustees shall serve for a term of 3 years. Said chief executive officer shall not be a participant of the police pension plan. Upon the death, resignation or disqualification of the chief executive officer, the trustees shall appoint a successor to fill the unexpired term.

SECTION 5. Duties of Trustees.

The duties of the trustees, or of the chief executive officer, if one is designated by the trustees, shall be as follows:

- A. To receive funds from the treasurers of any Township which may be a participant under the EARP, any allocations received by the participant Townships from the Commonwealth of Pennsylvania, from participants, from the Townships themselves which may be participants of the EARP and from any other source, and to invest and reinvest such sums in such manner and form as may be required to provide the benefits to participants established herein including, but not limited to, investments in life and disability annuity contracts, or such other appropriate contracts as may be determined by said trustees from time to time to be desirable or necessary to provide benefits established herein or otherwise required by law.
- B. To maintain accurate and appropriate records.
- C. To employ or retain the services of any actuary to conduct and file any actuary study which may be required or advisable pursuant to Act. No. 293 of 1972, or any subsequent or otherwise applicable law.
- D. The trustees shall hold and be the owners of, in their fiduciary capacity, of all contracts entered into pursuant to this Part and pension plan; provided, that nothing contained herein shall affect, in any way, vested rights of any participant as hereinafter set forth.
- E. To do all other acts necessary or advisable for the implementation and administration of this Part and pension created hereby.

SECTION 6, Police Officers; Eligibility and Benefits.

1. Any full-time police officer as defined above shall be eligible to participate in the pension plan created hereby.

2. A Tier I participant shall be eligible to retire and thereupon to receive retirement benefits under this plan upon his or her having completed 20 years of continuous service as a police officer of the EARP and having reached the age of 55 or older. Credit shall be given to the service requirement herein for prior continuous service as a police officer with either Berwick Township or Oxford Township if service as a police officer thereafter continued uninterrupted as a police officer of the EARP.

3. A Tier II participant shall be eligible to retire and thereupon to receive retirement benefits under this plan upon his or her having completed 25 years of continuous service as a police officer of the EARP and having reached the age of 55 or older.

4. A Tier I participant's rights in the pension plan herein will vest upon said Tier I participant having completed at least 10 years of continuous service as a police officer for the EARP. Credit shall be given to the service requirements herein for prior continuous service as a police officer with either Berwick Township or Oxford Township if service as a police officer thereafter continued uninterrupted as a police officer of the EARP. A terminated vested participant shall be entitled to a deferred pension commencing at the time he or she would have satisfied the age and service requirements for retirement as set forth in subsection (2) of this Section. The deferred pension shall be determined as a percentage of the participant's average monthly salary for the 36-month period preceding termination of employment where such percentage is equal to the lesser of (a) 2.5% multiplied by each full year of continuous service; or, (b) 50%.

5. Tier II participant's rights in the pension plan herein will vest upon said Tier II participant having completed at least 12 years per Act 600 of continuous service as a police officer for EARP. A terminated vested participant shall be entitled to a deferred pension commencing at the time he or she would have satisfied the age and service requirements for retirement as set forth in subsection (3) of this Section. The deferred pension shall be determined as a percentage of the participant's average monthly salary for the 36-month period preceding termination of employment where such percentage is equal to the lesser of (a) 2% multiplied by each full year of continuous service; or, (b) 50%.

6. The monthly retirement benefits to which each eligible participant shall be entitled under this plan shall be an amount equal to 50% of the average monthly salary which he or she shall have earned during the 36-month period last served by the participant immediately prior to retirement.

7. The monthly retirement benefits of which each eligible participant shall be entitled under this plan may be increased above that amount set forth in subsection (7) of this Section if said participant, upon having accrued enough years of full-time service as a police officer for the EARP as required under subsections (2) and (3), above, continues as a full-time police officer of

the EARP beyond 20 years in the case of Tier I participants and 25 years in the case of Tier II participants. The increase in the percentage of the average monthly salary defined benefits shall be equal to 1% per year following 20 years of full-time employment as a police officer for the EARP for Tier I participants and 25 years of full-time employment as a police officer of the EARP for Tier II participants. In no event, however, shall the percentage of the average monthly salary which he or she shall have earned during the 36-month period last served by the participant immediately prior to retirement and upon which benefits are therefore defined exceed 60%. Nor shall the maximum increase of subsection (8) exceed \$500.00 per month.

8. In the event a plan participant, while employed as a full-time police officer of the EARP, sustains a service-related disability, then in such event the participant shall be eligible to receive the monthly plan benefits which shall be defined as an amount equal to 50% of the participant's monthly salary at the time of disablement less 100% of any Social Security benefits received by the participant. The ability of a service-related disabled plan participant herein to begin receiving said monthly benefits shall accrue regardless of whether said participant has met the years of service and age requirements as set forth in subsections (2) and (3) of this Section.

9. In the event of a death of a member who was receiving a pension benefit or who had qualified for a retirement pension benefit but had not yet retired, his or her surviving spouse shall be entitled during his or her lifetime to receive a pension equal to 50% of the pension the member was receiving or would have been receiving had he or she been retired at the time of death. If no surviving spouse survives, or if the surviving spouse subsequently dies, then the child or children under the age of eighteen (18) years of the deceased eligible participant shall be entitled to receive a pension calculated at 50% of the pension to which the member was entitled. The pension payable to the child or children of the deceased surviving spouse in this section can continue longer, conditioned upon the child or children attending college defined as at least seven (7) credit hours per semester, until such child or children reaches the age of twenty-three (23) and continues in that college program.

10. The killed-in-service (KIS) survivor benefit for active full-time officers of The Eastern Adams Regional Police Department shall be provided for by the Commonwealth of Pennsylvania as provided for under Act 51 of 2009.

11. If, before a participant shall have vested as defined above, the employment of said participant with the EARP shall be terminated, either voluntarily or involuntarily, except by death or disability, he or she shall forfeit all rights in this plan and shall forfeit all rights to receive any benefits provided herein; provided, however, that such participant shall be entitled, notwithstanding said forfeiture, to receive or withdraw the amount of all-contributions made to this plan by him or her, together with any interest or earnings attributable to said participant's contributions.

12. With the consent of the trustees, any participant may defer his or her right to commence receipt of the retirement benefits established herein. Then, upon his or her commencing receipt of said benefits, he or she shall then be entitled to only those benefits which would have otherwise have been payable to said participant has the participant commenced receipt of the benefits at the time the participant would have been eligible to at the earlier date.

13. Participants of this pension plan shall be entitled to credits for each year of military service or fraction thereof, not to exceed five (5) years, who was not employed by the Eastern Adams Regional Police prior to such military service. The amount due for the purchase of this credit for military service other than intervening military service shall be computed by applying the average nominal cost rate for the Eastern Adams Regional Police plan as certified by the Public Employee Retirement commission, as calculated by the Eastern Adams Regional Police actuary, but not to exceed 10%, to the participant's average 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 4³/₄% compounded annually from the date of initial entry into the Eastern Adams Regional Police service to the date of payment.

SECTION 7. Funding.

Funding for the plan provisions herein shall be from the following sources in the following order of priority:

1. State funds and aid. Funds from the General Municipal Pension System or any other amount of state aid received by the Borough or Townships.

2. Participants. Police Officers/participants shall contribute into the pension fund a maximum of five (5) percent of his or her salary. Based on an actuarial study, the governing body may on an annual basis, reduce or eliminate the participants' contributions. The provisions of this paragraph 2 shall be construed and enforced in accordance with contract provisions between The Eastern Adams Regional Police Commission and the Eastern Adams Regional Police Association.

3. Earnings and/or dividends which may be available pursuant to Section 8, paragraph 2.

4. After payments and/or receipts of the above funds, each Borough or Township which may be a participant of the EARP shall be required to pay a proportional share for the expenses of funding the pension established hereby, which proportionate share shall be the same share which is paid by the participant Borough or Township as to costs which is calculated periodically based on the proportionate per capita for the particular Borough or Township participating in the EARP, unless an annual actuarial study determines that such funding shall not be necessary to maintain the ability for the pension fund to pay benefits as established herein.

SECTION 8. Miscellaneous.

1. The police pension plan hereby established may be discontinued or modified, at any time by the trustees. In the event of discontinuance of the plan, the trustees shall, upon the anniversary date of the plan next following such discontinuance, calculate, based on the value of the funds and contracts then held by the trustees, the monthly benefits available for the participants based on their relative years of service and, upon said calculation, shall provide monthly benefits to the participants commencing upon the normal retirement age of the

participants in accordance with the schedule and calculation applicable as of the time of the discontinuance of the plan.

2. Any dividends, earnings or other income as a result of the fund or contracts held or owned by the trustees under this plan shall be utilized by the trustees and applied by the trustees to reduce the cost of this plan to the EARP.

3. The establishment of this police pension plan shall not operate to restrict any other benefits which may inure to the benefit of any police officer or officers under applicable laws or regulations now in existence or which may hereafter be enacted by the Commonwealth of Pennsylvania or by joint ordinance of the Townships or other governmental entities which may know or in the future participate as a member of the EARP.

4. The plan herein described and established shall be established and maintained in accordance with whatever laws or regulations may apply to said pension under the laws of the Commonwealth of Pennsylvania and the applicable regulations of the Internal Revenue Service, if applicable.

5. Administrative expenses of the plan include, but not necessarily limited to, actuarial, accounting, legal and investment expenses may be paid from plan assets to the extent permitted by applicable law.

6. The provisions of this police pension plan and ordinance shall be construed so as to comply with the provisions of Act of 1955 (P.L. 1804, No. 600) and Act 30 of 2002, and any amendments thereto, notwithstanding anything to the contrary contained herein. Specifically, police officers must contribute into the pension fund a maximum of five (5) percent of his or her salary. Based on an Actuarial Study, the governing body may, on an annual basis, reduce or eliminate the participants' contributions. The provisions of this paragraph 6 shall be construed and enforced in accordance with contract provisions between The Eastern Adams Regional Police Commission and the Eastern Adams Regional Police Association.

7. All prior Ordinances, Resolutions, Plan Documents and Agreements pertaining to The Eastern Adams Regional Police Department pension fund are hereby repealed effective the date and to the extent that they may be inconsistent herewith, including Section 5(e)(2) of the Municipal Pension Law, Act 600 of 1955 and Sections 202(b)(s)(vi) of the Municipal Pension Plan Funding Standard and Recovery Act 205 of 1984.

8. The provision of this Ordinance are severable. If any sentence, clause, or section of this Ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections of this Ordinance. It is hereby declared to be the intent of the Board of Supervisors of Berwick Township that this Ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, or section not been included herein.

9. The effective date of this Ordinance shall be January 1, 2010.

ENACTED and ORDAINED, this 10th day of May, 2010.