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## Chapter 17 — Police Pension Plan

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## **Article I — Title & General Definitions**

### **§ 17-101 Short Title.**

This Chapter shall be known, and may be cited, as the “Borough of Alburtis Police Pension Plan Ordinance.”

### **§ 17-102 Definitions: In General.**

When used in this Chapter with initial capital letters, the words and phrases defined in the following sections of this Article shall have the following meaning, unless the context in which they are used clearly indicates a different meaning.

**§ 17-103 Accumulated Contributions.**

The term “Accumulated Contributions” shall mean, with respect to any Participant on any given date, the amount of contributions made by the Participant to this Plan pursuant to § 17-403 through the given date.

**§ 17-104 Administrator.**

The term “Administrator” shall mean the Plan Administrator described in Article VII.

**§ 17-105 Alternate Payee.**

The term “Alternate Payee” shall mean a person entitled to receive, by virtue of a Qualified Domestic Relations Order (*see* § 17-313), some of the benefits under this Plan of a Participant .

**§ 17-106 Anniversary Date.**

The term “Anniversary Date” shall mean the last day of each Plan Year.

**§ 17-107 Authorized Leave of Absence.**

The term “Authorized Leave of Absence” shall mean any absence authorized by the Employer (or any Related Employer) under the Employer’s (or Related Employer’s) standard personnel practices, *provided that* all persons under similar circumstances must be treated alike in the granting of such leaves, and *provided further* that the employee returns or retires within the period of authorized absence. An absence due to service in the uniformed services of the United States shall be considered an Authorized Leave of Absence if the employee complies with all of the requirements of federal law in order to be entitled to reemployment and in fact does return to employment with the Employer (or any Related Employer) within the period provided by law.

**§ 17-108 Beneficiary.**

The term “Beneficiary” shall have the meaning provided in § 17-305(c)(2).

**§ 17-109 Code.**

The term “Code” shall mean the Internal Revenue Code of 1986, as amended (Title 26, U.S. Code). Reference to a section of the Code shall mean that section as it may be amended or

renumbered from time to time, or any corresponding provision of any future legislation that amends, supplements or supersedes that section.

## **§ 17-110 Compensation.**

**(a) In General.** Except as provided in subsections (b) through (h), the “Compensation” of a Qualified Employee for a given year (or other period for which a determination is being made) shall mean the Qualified Employee’s total Wages from the Employer actually paid, made available, or includible in gross income for the year (or other determination period).

### **(b) Certain Non-taxable Compensation.**

**(1)** “Compensation” shall also include amounts not currently includible in the Qualified Employee’s gross income by reason of the application of Code § 457 (relating to compensation deferred under an eligible deferred compensation plan for state and local governments and tax exempt organizations), Code § 414(h)(2) (relating to employee contributions to governmental plans that are picked up by the employing unit and thus are treated as employer contributions), Code § 132(f)(4) (relating to qualified transportation fringes; but only after July 1, 2001), or any elective deferrals (within the meaning of Code § 402(g)(3)), but only with respect to contributions made to plans maintained by the Employer.

**(2)** For periods before January 1, 2012, the term “Compensation” shall also include amounts not currently includible in the Qualified Employee’s gross income by reason of the application of Code § 125 (relating to cafeteria plans). For periods on and after January 1, 2012:

**(A)** “Compensation” shall also include employee contributions towards medical coverage under § 12-403(b.1) (relating to Personnel Policies—Benefits—Health & Hospitalization—Employee Contributions to Premiums) or corresponding provisions of the collective bargaining agreement for police officers as in effect from time to time (*e.g.*, § 18(a)(2) of the 2012-14 collective bargaining agreement), even though not includible in the Qualified Employee’s gross income by reason of the application of Code § 125 (relating to cafeteria plans) or other provisions of the Code.

**(B)** “Compensation” shall *not* include cash payments made under § 12-403(c)(1) (relating to Personnel Policies—Benefits—Health & Hospitalization—Waiver of Coverage—In General), or corresponding provisions of the collective bargaining agreement for police officers as in effect from time to time (*e.g.*, § 18(a)(3)(B) of the 2012-14 collective bargaining agreement), due to the waiver of medical coverage, even though includible in the Qualified Employee’s gross income.

**(C)** The purpose of subparagraphs (A) and (B) is to insure that a Participant shall receive the same pension benefits under this Plan regardless of whether the Participant elects to receive medical coverage or waives the receipt of medical coverage, and regardless of the medical coverage option he/she elects. “Compensation” is the same as it would be if the Employer had maintained a medical coverage plan which covered all Qualified Employees, required no employee contributions, and provided no incentives to Qualified Employees to select any particular coverage option.

(c) **Heart and Lung Act Payments.** “Compensation” shall also include amounts not currently includible in the Qualified Employee’s gross income but paid as income replacement during a period of temporary disability under the Heart and Lung Act, 53 PA. STAT. ANN. § 637.

(d) **Compensation During Periods of Uniformed Service.** In the case of a period during which a Qualified Employee is serving in the uniformed services of the United States, the employee’s “Compensation” shall be computed—

(1) at the rate the Qualified Employee would have received but for the uniformed service; or

(2) in the case that the determination of such rate is not reasonably certain, on the basis of the Qualified Employee’s average rate of Compensation during the 12-month period immediately preceding the period of uniformed service (or, if shorter, the period of employment immediately preceding such period).

(e) **Maximum Amount Which May Be Treated As Compensation.**

(1) **General Rule.**

(A) **Code § 401(a)(17).** The “Compensation” of a Qualified Employee for any given year shall not exceed the amount in effect for such year under Code § 401(a)(17), as adjusted for changes in the cost of living. (The amount in effect for years beginning in the following calendar years are: 1994-96—\$150,000; 1997-99—\$160,000; 2000-01—\$170,000; 2002-03—\$200,000; 2004—\$205,000.)

(B) **Prior to January 1, 2002.** In determining benefits or restrictions as of any date on or after the Effective Date and before January 1, 2002, the “Compensation” taken into account for any year ending on or before December 31, 1993 shall not exceed \$150,000.

(C) **On and After January 1, 2002.** Notwithstanding any lower restrictions set forth in subparagraph (A), in determining benefits or restrictions as of any date on or after January 1, 2002, the “Compensation” taken into account for any year ending on or before December 31, 2001 shall not exceed \$200,000.

(2) **Certain Highly Compensated Employees Prior to 1997.** The “Compensation” for any given year which begins after December 31, 1988 and before January 1, 1997 of any Qualified Employee who is a member of a Highly Compensated Immediate Family shall be equal to the Compensation of the Qualified Employee for the year (determined without regard to this subsection (e)), **multiplied** by a fraction—

(A) whose numerator is equal to the amount in effect for such year under Code § 401(a)(17); **and**

(B) whose denominator is equal to the total Compensation of all members of the Highly Compensated Immediate Family from the Employer and Related Employers for the year (determined without regard to this subsection (e)).

(3) **Short Years.** If Compensation is ever required to be determined for a period of time which contains fewer than 12 months, the amount of effect for such period under Code § 401(a)(17) shall be equal to the amount in effect under Code § 401(a)(17) for the calendar year in which the period begins, multiplied by a fraction whose numerator is equal to the number of months in the period, and whose denominator is equal to 12.

(f) **Modified Definition of Compensation for Purposes of Certain Provisions.** For purposes of § 17-306 (relating to Limitation on Benefits), the term “Compensation” shall be modified as described in that Section.

(g) **Lump-Sum Payments for Accumulated Unused Leave.** The “Compensation” of a Qualified Employee shall not include any lump-sum payment upon retirement for accumulated unused leave (*e.g.*, vacation, sick, or personal leave) to the extent that such amounts are not permitted to be included in Compensation by the Pennsylvania Department of the Auditor General.

(h) **Extraordinary Payments Attributable to a Different Period.** In determining the “Compensation” of a Qualified Employee for any particular period of time, any extraordinary payments, such as back pay awards, which are made at one time but are attributable to service for a different period of time, shall be treated as “Compensation” for the period to which they are attributable and not “Compensation” at the time of payment.

### § 17-111 Disabled.

A person shall be considered “Disabled” if he/she has a physical or mental condition which renders him permanently disabled from performing one or more of the essential functions of a full-time police officer position of employment for the Employer (or any Related Employer), as determined by a licensed physician satisfactory to the Administrator; *provided that* such condition was not caused by —

- (a) chronic or excessive use of intoxicants, drugs, or narcotics;
- (b) intentionally self-inflicted injury or intentionally self-induced sickness; or
- (c) an unlawful act or enterprise on the part of the individual.

### § 17-112 Effective Date.

The “Effective Date” shall mean **February 1, 1996**, the date on which this Amended and Restated Plan becomes effective.

### § 17-113 Eligible Spouse.

The term “Eligible Spouse” shall mean the spouse to whom a Participant was married on the date of the Participant’s death (*except* to the extent a former spouse is to be treated as an Eligible Spouse under a Qualified Domestic Relations Order).

### § 17-114 Employer.

The term “Employer” shall mean the Sponsor and all Related Employers which have adopted this Plan and executed a copy of this Plan and Trust Agreement, and their successors.

**§ 17-115 Equivalent Actuarial Value.**

The term “Equivalent Actuarial Value” shall mean the equivalent value when computed on the basis of the following actuarial assumptions, which are the actuarial assumptions upon which this Plan is funded:

- (a) Mortality: UP-1984 table.
- (b) Interest: Seven percent (7%) per annum.

**§ 17-116 ERISA.**

The term “ERISA” shall mean the Employee Retirement Income Security Act of 1974 (P.L. 93-406), as amended (29 U.S. Code § 1001 *et seq.*). Reference to a section of ERISA shall mean that section as it may be amended or renumbered from time to time, or any corresponding provision of any future legislation that amends, supplements, or supersedes that section.

**§ 17-117 Fiduciary.**

The term “Fiduciary” shall mean the Trustees, the Administrator, any Investment Manager, and any other person who exercises any discretionary authority or discretionary control respecting the management of the Plan; or who exercises any authority or control respecting the management or disposition of Plan assets; or who renders investment advice for a fee or other direct or indirect compensation with respect to any monies or property of the Plan or has any authority or responsibility to do so; or has any discretionary authority or discretionary responsibility in the administration of the Plan.

**§ 17-118 Final Average Monthly Compensation.**

The term “Final Average Monthly Compensation” shall mean the Compensation paid to a Participant as a Qualified Employee during the thirty-six (36) month period ending on his/her Final Police Date, divided by thirty-six (36). If the Participant shall not have been a Qualified Employee for a total of at least thirty-six (36) months before his/her Final Police Date, his/her “Final Average Monthly Compensation” shall be his/her Compensation during his employment as a Qualified Employee divided by the number of months of his employment as a Qualified Employee through the Final Police Date (rounded to the nearest 0.001 of a month).

**§ 17-119 Final Police Date.**

The term “Final Police Date” shall mean, with respect to any given Participant, the last date for which the Participant earned Compensation as a Qualified Employee on or before the date of his/her Separation from Service.



## § 17-120 Highly Compensated Employee.

(a) **In General.** The term “Highly Compensated Employee” shall include Highly Compensated Active Employees and Highly Compensated Former Employees. However, since the term is only applicable under this Plan for purposes of the definition of Compensation prior to 1997 (other nondiscrimination requirements not being applicable to collectively-bargained government plans), this term shall only be defined for the period before January 1, 1997.

(b) **Highly Compensated Active Employees.** The term “Highly Compensated Active Employee” for any Plan Year includes any employee (including Leased Employees) who performs service for the Employer during the Plan Year **and** who, *either* (A) during the 12-month period immediately preceding the Plan Year, **or** (B) during the Plan Year—

(1) was at any time a 5-percent owner (within the meaning of Code § 416(i)(1)(B)(i)) of the Employer or any Related Employer;

(2) received total Compensation from the Employer and all Related Employers in excess of \$75,000 (as adjusted pursuant to Code § 415(d)). (For any year beginning in 1996, the adjusted amount is \$100,000.00);

(3) received total Compensation from the Employer and all Related Employers in excess of \$50,000 (as adjusted pursuant to Code § 415(d)) **and** was a member of the Top-Paid Group for such year. (For any year beginning in 1996, the adjusted amount is \$66,000.00);

(4) was an officer of the Employer or any Related Employer and received total Compensation during the year from the Employer and all Related Employers that is greater than 50% of the dollar limitation in effect for such year under Code § 415(b)(1)(A). (For any year beginning in 1996, the minimum Compensation for this clause (4) to be applicable is \$60,000); **or**

(5) was the highest paid officer of the Employer or any Related Employer for such year.

However, when making the above determination with respect to the Plan Year, but not with respect to the 12-month period immediately preceding the Plan Year, a person shall not be treated as satisfying paragraphs (2), (3), (4), or (5) unless he was **also** one of the 100 employees who received the greatest total Compensation from the Employer and all Related Employers during the Plan Year.

(c) **Highly Compensated Former Employees.** The term “Highly Compensated Former Employee” for any Plan Year includes any former employee (including Leased Employees) who separated from service (or was deemed to have separated from service) prior to the beginning of the Plan Year, and was a Highly Compensated Active Employee for **either** the separation year **or** any Plan Year ending on or after the employee’s 55<sup>th</sup> birthday.

(d) **Determination under Code § 414(q) and Regulations.** The determination of who is a Highly Compensated Employee, including the determinations of the number and identity of employees in the Top-Paid Group (generally, the most highly paid 20% of employees) and the top 100 employees, the separation year, and the number and identity of employees treated as officers, will be made in accordance with the detailed provisions set forth in Code § 414(q) and the regulations issued thereunder.

### § 17-121 Highly Compensated Immediate Family.

For the period prior to January 1, 1997, the term “Highly Compensated Immediate Family” shall mean any group of persons consisting of—

(a) either—

(1) a 5% owner (as defined in Code § 416(i)(1), Treas. Regs. § 1.416-1 T-17 & 18, and Treas. Regs. § 1.414(q)-1T Q&A 8) of the Employer or any Related Employer at any time during the year in question who is an active or former employee; **or**

(2) a Highly Compensated Employee who is in the group consisting of the 10 Highly Compensated Employees paid the greatest total Compensation (determined without regard to § 17-109(b) [relating to elective deferrals]) from the Employer and any Related Employer for the year in question;

(b) any person who is or was the spouse of the person described in subsection (a) on any day during the year in question; **and**

(c) all lineal descendants of the person described in subsection (a) who have not attained age 19 before the close of the year in question;

*provided* that the total Compensation of the all such persons from the Employer for the year in question (considered before the application of § 17-109(b)) is greater than the amount in effect for such year under Code § 401(a)(17). (For any year beginning in 1996, the amount is \$150,000.00.)

### § 17-122 Investment Manager.

The term “Investment Manager” shall mean an investment manager appointed under § 17-605.

### § 17-123 Participant.

The term “Participant” shall mean an “Active Participant” or an “Inactive Participant”:

(a) **Active Participant.** An “Active Participant” shall mean a Qualified Employee who is currently an Active Participant in this Plan (*see* Article II).

(b) **Inactive Participant.** An “Inactive Participant” shall mean any person, other than an Active Participant, who had previously been an Active Participant, and still has an accrued benefit under this Plan (whether vested or not).

### § 17-124 Plan or Plan and Trust.

The terms “Plan” or “Plan and Trust” shall mean the **Borough of Alburtis Police Pension Plan and Trust**, as set forth in this Chapter and as it may be amended from time to time. For

periods prior to the Effective Date, the term “Plan” shall mean the Sponsor’s pension plan for police officer employees under the Prior Provisions of the Plan.

### **§ 17-125 Plan Year.**

The term “Plan Year” shall mean any 12 consecutive month period beginning on January 1 and ending on the following December 31.

### **§ 17-126 Prior Provisions of the Plan.**

The term “Prior Provisions of the Defined Benefit Plan” shall mean the terms and provisions of the Sponsor’s pension plan for police officer employees as in effect from time to time prior to the Effective Date.

### **§ 17-127 Qualified Employee.**

(a) **In General.** The term “Qualified Employee” shall mean, as of any given date, any person employed as a full-time police officer of the Employer or any Related Employer for a stated salary or compensation.

(b) **Definition of “Full-Time”.** For purposes of this Section, a “full-time” position is one for which work is regularly scheduled for an average of not less than forty (40) hours per week (or would be so scheduled except for authorized sick time, holidays, vacation time, and similar paid or unpaid time off.)

### **§ 17-128 Related Employer.**

The term “Related Employer” shall mean any —

(a) corporation which is a member of a controlled group of corporations (as defined in Code § 414(b)) which includes the Sponsor;

(b) trade or business (whether or not incorporated) which is under common control (as defined in Code § 414(c)) with the Sponsor;

(c) member of an affiliated service group (as defined in Code § 414(m)) which includes the Sponsor; **and**

(d) other entity required to be aggregated with the Sponsor pursuant to Code § 414(o) and the regulations thereunder;

*provided that* for purposes of § 17-306 (relating to Limitation on Benefits), the definitions of Code §§ 414(b) and (c) shall be read as modified by Code § 415(h).

### § 17-128.1 Salary

The monthly “Salary” of a Qualified Employee as of any given date on or after April 17, 2002 shall mean the Qualified Employee’s base hourly rate of compensation as of that date, multiplied by 2080 and divided by 12. {The term “Salary” is defined for purposes of the new Pa. Act 2002-30 minimum disability benefits which are based on salary at the time of the injury causing disability, in contrast to the pre-existing Act 600 benefits which are based on compensation averaged over a 36-month period—“Final Monthly Average Compensation”.}

### § 17-129 Separation from Service.

(a) **In General.** The term “Separation from Service” shall mean the end of a continuous period of employment of a given person by the Employer (or any Related Employer) and may result from retirement, death, resignation, involuntary termination, unauthorized absence, a condition which renders the person Disabled, or by failure to return to active employment with the Employer (or any Related Employer) or to retire by the date on which an Authorized Leave of Absence expires. For purposes of the preceding sentence, periods of Authorized Leaves of Absence and temporary lay-offs are considered to be periods of employment by the Employer. A person “Separates from Service” if he incurs a Separation from Service. The mere cessation of a person’s status as a Qualified Employee shall not constitute a “Separation from Service”; only a termination from all employment with the Employer (and all Related Employers) shall be a “Separation from Service”.

(b) **Temporary Lay-Offs.** If the Employer (or any Related Employer) shall terminate a person’s employment due to insufficient work for such person and shall indicate that the termination is temporary and that the Employer (or Related Employer) anticipates being able to re-employ the person within six (6) months, the termination shall be considered a “temporary lay-off” and not a “Separation from Service.” In that case, if the person does not return to active employment with the Employer (or any Related Employer) immediately upon recall and within six (6) months, he shall incur a “Separation from Service” as of the earlier of:

- (1) the date specified in any recall as the date to return to work, **or**
- (2) the date six (6) months after the temporary lay-off began.

(c) **Transfers Among Related Employers.** The term “Separation from Service” shall not include transfers between employers all of whom are included within the definition of “Employer” or “Related Employer,” or the mere cessation of a person’s status as a “Qualified Employee” if he remains in the employment of the Employer (or any Related Employer).

(d) **Sale of Business.**

(1) A person shall not incur a “Separation from Service” if the Employer or any Related Employer sells the trade or business for which the person performs services to an unrelated purchaser, but the person continues to work for the trade or business. Thereafter, the person shall incur a “Separation from Service” if he does so under the provisions of this § 17-129 as modified by substituting the purchaser of the trade or business (and his related employers) for the Employer (and Related Employers).

(2) A person shall not incur a “Separation from Service” if the corporation for which he works shall cease to be included within the definition of Employer or Related Employer (*e.g.*, through the transfer of its stock), but the person continues to work for the corporation. Thereafter, the person shall incur a “Separation from Service” if he does so under the provisions of this § 17-129 as modified by substituting the corporation for which he works (and its related employers) for the Employer (and Related Employers).

### **§ 17-130 Sponsor.**

The term “Sponsor” shall mean **Borough of Alburtis**, Lehigh County, Pennsylvania, a Pennsylvania borough and municipal corporation, and its successors.

### **§ 17-131 Trust.**

The term “Trust” shall mean the trust established for this Plan in § 17-601.

### **§ 17-132 Trust Fund.**

The term “Trust Fund” shall mean any and all assets held under the Plan or the Trust by the Trustees.

### **§ 17-133 Trustees.**

The term “Trustees” shall mean those individuals or corporations who, at any given time are the trustees of the Trust (*see* § 17-602).

### **§ 17-134 Wages.**

The term “Wages” shall mean wages as defined in Code § 3401(a) and all other payments of compensation to an employee by the Employer or any Related Employer (in the course of such employers’ trade or business) for which the Employer or any Related Employer is required to furnish the employee a written statement under Code §§ 6401(d), 6051(a)(3), and 6052. *See* Treas. Regs. §§ 1.6041-1(a), 1.6041-2(a)(1), 1.6052-1, 1.6052-2, 31.6051-1(a)(1)(i)(C). Compensation must be determined without regard to any rules under Code § 3401(a) that limit covered employment based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code § 3401(a)(2)). (This amount is the amount shown on the “Wages, Tips, and Other Compensation” box on Form W-2.)