

**ORDINANCE NO. 536
BOROUGH OF PARKESBURG
CHESTER COUNTY, PENNSYLVANIA**

**AN ORDINANCE OF THE BOROUGH OF PARKESBURG, CHESTER
COUNTY, PENNSYLVANIA AMENDING THE POLICE PENSION PLAN TO
INCLUDE AN ACT 44 RETIREMENT PROGRAM FOR NON-BARGAINING
UNIT POLICE OFFICERS**

WHEREAS, the Borough of Parkesburg is a Borough and Municipality in the Commonwealth of Pennsylvania organized and governed by the Borough Code; and

WHEREAS, the Borough of Parkesburg on February 7, 1966, established a retirement plan for certain of its employees known as the Borough of Parkesburg 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 determined it is desirable and beneficial to establish an Act 44 Retirement Program for its Non-Bargaining Unit Police Officers who meet certain eligibility requirements providing for such Act 44 Retirement Program; and,

WHEREAS, it is necessary for the Borough to adopt an Ordinance amending its Police Pension Plan; and

NOW, THEREFORE, BE IT ORDAINED THAT:

SECTION I – Ordinance No. 530, the Police Pension Plan, is hereby AMENDED to add a new section establishing and implementing an Act 44 Retirement Program for Non-Bargaining Unit Police Officers:

1. **Title:** This Section shall be known as the "Borough of Parkesburg Non-Bargaining Unit Police Officers Act 44 Retirement Program."
2. **Definitions:** When used in this Section, the below words shall have the meaning indicated.

"Borough" – Borough of Parkesburg, Chester County, Pennsylvania.

"ACT 44 PROGRAM" – The ACT 44 DEFERRED RETIREMENT OPTION PROGRAM between the Borough of Parkesburg Non-Bargaining Unit Police Officers and the Borough of Parkesburg.

"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.

"Fund" or "Plan" – the Police Pension Plan.

"Participant" – a Non-Bargaining Unit 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.

"Police Officers" – Non-Bargaining Unit Police Officers of the Police Department.

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

Non-Bargaining Unit 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, (the superannuation date as defined by the pension plan).

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

- A. A Non-Bargaining Unit 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 Non-Bargaining Unit Police Officer and be notarized and submitted prior to the date on which the member wishes ACT 44 PROGRAM participation to commence. The ACT 44 PROGRAM Participation Election Form shall include an irrevocable notice to the Borough, by the Non-Bargaining Unit Police Officer member, that the Non-Bargaining Unit Police Officer shall resign from employment with the Police Department effective on a specific date (the "resignation date") that is no later than five (5) years from the effective date of the ACT 44 PROGRAM Election Form. A Non-Bargaining Unit Police Officer shall cease to work as and may no longer be employed as a Non-Bargaining Unit or Bargaining Unit Police Officer on the officer's resignation date, unless the Borough properly terminates or honorably discharges the Non-Bargaining Unit 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 Non-Bargaining Unit 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 of Parkesburg Police Pension Plan. The average monthly compensation of the Non-Bargaining Unit 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.
6. **Accumulation of the ACT 44 PROGRAM Account:** The monthly retirement benefits that would have been payable had the Non-Bargaining Unit Police Officer elected to cease employment and receive a normal retirement benefit, shall, upon the Non-Bargaining Unit Police Officer commencing participation in ACT 44 PROGRAM, accumulate to the benefit of that Non-Bargaining Unit Police Officer and be accounted for on that Non-Bargaining Unit 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 Non-Bargaining Unit 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 Non-Bargaining Unit Police Officer shall continue to participate in the ACT 44 PROGRAM as if fully employed. The Non-Bargaining Unit Police Officer shall receive disability pay in the same amount as disabled Non-Bargaining Unit Police Officers that are not participating in ACT 44 PROGRAM. In no event shall a Non-Bargaining Unit 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 Non-Bargaining Unit 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 Non-Bargaining Unit 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 Non-Bargaining Unit Police Officer based upon an inability to perform his or her full duties as a Non-Bargaining Unit 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.

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 Non-Bargaining Unit 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 Non-Bargaining Unit 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 from the Pension Fund and not by Parkesburg Borough.
13. **Amendment:** Any amendments to this ACT 44 PROGRAM Ordinance shall be consistent with the provisions covering Individual Retirement option plans 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 Non-Bargaining Unit 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 Non-Bargaining Unit Police Officer for just cause or to grant the Non-Bargaining Unit 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 January 1, 2019.

SECTION II: All elected and appointed officials of Parkesburg Borough 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 Parkesburg 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 Parkesburg Borough Council.

ORDAINED and ENACTED by the Parkesburg Borough Council this 17th day of

December, 2018

PARKESBURG BOROUGH COUNCIL


CHARLES J. PERSCH, SR., President

ATTEST:



WENDY A. KEEGAN, Secretary

Approved this 17th day of December, 2018.



JOHN P. HAGAN, II, Mayor