

BOROUGH OF LIGONIER POLICE PENSION PLAN
(as amended and restated, effective October 1, 2004)

ORDINANCE NO. 552

AN ORDINANCE OF THE BOROUGH OF LIGONIER RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE OF EMPLOYEES PENSION, ANNUITY, INSURANCE AND BENEFIT FUND OR FUNDS, TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM APPLICABLE TO THE POLICE EMPLOYEES OF SAID BOROUGH.

WHEREAS, the Borough of Ligonier (the "Borough") has previously enacted an Ordinance establishing the Borough of Ligonier Police Pension Plan (the "Plan"); and

WHEREAS, the Plan was totally amended and restated, effective October 1, 2004; and

WHEREAS, the Borough reserved the right to amend the Plan pursuant to section 10.01; and

WHEREAS, the state legislature has enacted Act 51 of 2009 with the purpose of removing the Killed in Service provision from all police pension plans required to comply with Act 600 of 1956 and replacing the Killed in Service provision of the pension plan with a similar benefit to be administered by the Commonwealth of Pennsylvania, and

WHEREAS, the Borough intends that the Plan shall continue to meet the requirements for government plans under the applicable laws of the Commonwealth of Pennsylvania, and the Internal Revenue Code of 1986, as applicable to government plans and as amended, including, but not limited to, the Pension Protection Act of 2006 ("PPA"), and the Heroes' Earnings Assistance and Relief Tax Act of 2008 ("HEART" or "Heroes' Act"); and

WHEREAS, the Borough now desires the Plan to be further amended in order to comply with the mandates of Act 51 of 2009 and the Internal Revenue Code of 1986;

BE IT ORDAINED AND ENACTED by the Council of the Borough of Ligonier and it is HEREBY ORDAINED AND ENACTED by authority of the same that:

Effective as of the date of adoption of this Ordinance, the Plan shall be amended in the following respects:

Sections 1.21 and 6.03 shall be amended in their entirety by deleting said sections and section 6.05 shall be deleted in its entirety and replaced with the following:

6.05 Death of Participant Prior to Survivor Benefit Eligibility - If a Participant shall die before payment of a benefit has commenced and without eligibility for payment of a Survivor Benefit under sections 6.02, the Beneficiary shall be eligible to receive a distribution in an amount equal to the Accumulated Contributions of the Participant as of the date of

death of the Participant. If the Participant has received Disability Benefits hereunder, the amount of the distribution of Accumulated Contributions shall be reduced by the amount of Disability Retirement Benefits which have been paid hereunder.

Section 4.05 is amended by deleting the second paragraph of subsection (g) and adding subsections (h) and (i) as follows:

(h) effective for distributions with annuity starting dates beginning on or after December 31, 2008, notwithstanding any other Plan provisions to the contrary, the applicable mortality table used solely for purposes of adjusting any benefit or limitation under 415(b)(2)(B), (C), or (D) of the Internal Revenue Code as set forth in the applicable Maximum Benefit Limitations section of the Plan is the applicable mortality table under Code section 417(e)(3)(B); and

(i) effective as of January 1, 2008, for the purpose of Code section 415(b)(1)(A), the “applicable mortality table” and “applicable interest rate” are found in Rev. Rul. 2007-67.

Incorporation of Code Section 415 by Reference - Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed in this section shall at all times comply with the provisions of Code section 415 and the Regulations thereunder (as such apply to governmental plans), the terms of which are specifically incorporated herein by reference. Effective for limitation years beginning on and after July 1, 2007, the Plan shall comply with the final regulations issued under Code section 415.

Section 4.06 is amended by adding subsection (d) as follows:

(d) General Rules. The requirements of this section will take precedence over any inconsistent provisions of the Plan. All distributions required under this section will be determined and made in accordance with section 401(a)(9) of the Internal Revenue Code and the Treasury regulations thereunder, and the Employer’s good faith interpretation of such Code and Regulations.

Section 4.12 is amended in its entirety by deleting said section and substituting a new section 4.12 as follows:

4.12 Direct Rollovers

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee’s Election under this section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.

(b) This subsection (b) shall apply to distributions made on or after January 1, 2006. Notwithstanding any provisions of the Plan to the contrary that would otherwise limit a

Distributee's Election under this section, if a distribution in excess of one-thousand dollars (\$1,000.00) is made and the Distributee does not make an Election under subsection (a) and does not elect to receive the distribution directly, the Plan Administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer pursuant to Authority and Duties of the Plan Administrator section of the Plan. The Plan Administrator shall notify the Distributee in writing, within a reasonable period of time and as otherwise prescribed by law, that the distribution may be transferred to another individual retirement plan.

(c) For purposes of this section, the following definitions shall apply:

(1) "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Code section 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

For purposes of the direct rollover provisions in this section of the Plan, a portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be paid only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code (effective for distributions on or after January 1, 2007, any qualified trust or Code section 403(b) plan) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(2) "Eligible Retirement Plan" is a qualified trust described in Code section 401(a), an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b), an annuity plan described in Code section 403(a), an annuity contract described in Code section 403(b), an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan.

(3) "Distributee" includes a Participant or former Participant. In addition, the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse or former spouse who is the alternate payee under a Qualified

Domestic Relations Order, as defined in Code section 414(p), are Distributees with regard to the interest of the spouse or former spouse.

(4) "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee or the Plan Administrator, if the Distributee does not make an Election.

(5) Effective January 1, 2008, Direct Rollovers may be made to a Roth IRA described in section 408A of the Internal Revenue Code to the extent that the applicable requirements of Code section 408A are satisfied with respect to any Direct Rollover to such Roth IRA.

(d) This section applies to distributions made on or after January 1, 2010. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Nonspouse Beneficiary's Election under this section, a Nonspouse Beneficiary may elect to have any portion of a Plan distribution (that is payable to such Nonspouse Beneficiary due to a Participant's death) paid in a direct trustee-to-trustee transfer to an individual retirement account described in Code section 408(a) or to an individual retirement annuity described in section 408(b) (other than an endowment contract) that has been established for the purposes of receiving the distribution on behalf of such Nonspouse Beneficiary. For these purposes, a "Nonspouse Beneficiary" is an individual who is a designated beneficiary (as defined by section 401(a)(9)(E) of the Internal Revenue Code) of a Participant and who is not the surviving spouse of such Participant.

A new Section 6.06 and 7.04 shall be added:

6.06 Veterans' Survivor Benefits - Notwithstanding any other provision of the Plan to the contrary, in the case of the death of a Participant who dies on or after January 1, 2007 while performing qualified military service (as defined in Code section 414(u)), the survivors of the Participant are entitled to any additional benefits under the Plan (if any) had the Participant resumed and then terminated employment on account of death.

7.04 Forfeiture - To the extent permissible under the Code, rights under this Plan shall be subject to forfeiture pursuant to the act of July 8, 1978 (P.L. 752, No. 140), known as the Public Employee Pension Forfeiture Act, 43 Pa.C.S. § 1311, et seq.

ORDAINED AND ENACTED this 14 day of JUNE, A.D., 2012.

ATTEST:


Paul A. Fay

BOROUGH OF LIGONIER

Kim J. Shaffer
Council President, *Vice President*