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PART 1
ADMINISTRATIVE CODE

A. General Provisions.

§ 101. Short Title. [Ord. 1, 1/3/1994, § 101]

This Part shall be known and cited as the "Administrative Code of the City of St. Marys."

§ 102. Authority. [Ord. 1, 1/3/1994, § 102]

This Part is enacted pursuant to the provisions of Article XXIII, § 2304, of the Home Rule Charter for the City of St. Marys.

§ 103. Purpose. [Ord. 1, 1/3/1994, § 103]

The purpose of this Part is to provide the organizational and operational framework for City government.

§ 104. Interpretation. [Ord. 1, 1/3/1994, § 104]

This Part shall be interpreted to be consistent with the provisions of the Home Rule Charter of the City of St. Marys. Where the provisions of this Part may be found to conflict with the Home Rule Charter, the provisions of the Home Rule Charter shall control. If any provision of this Part is found to be invalid, it shall not affect the validity of any other provisions.

§ 105. Definitions. [Ord. 1, 1/3/1994, § 105]

When used in this Part, certain words and phrases shall have the following meanings:

CITY — The City of St. Marys.

HOME RULE CHARTER — The Home Rule Charter of the City of St. Marys prepared and submitted by the St. Marys Government Study Commission on August 26, 1992, and duly adopted by the voters of the City of St. Marys on November 4, 1992, as it may from time to time be amended.

MANAGER — The person duly appointed as City Manager by City Council.

B. Compensation.

§ 111. Compensation of Council Members. [Ord. 1, 1/3/1994, § 201; as amended by Ord. 167, 12/16/2002]

The annual compensation for each member of Council, except the Mayor, shall be \$2,000, which shall be paid in the same manner as compensation for City employees. Beginning the first Monday of January in the year 2004, and repeating on the first Monday of January in each even-numbered year thereafter, the annual compensation paid to each Council Member shall be increased by 10%, until such time as the rate of annual compensation paid to Council Members equals \$3,000. At such time when the rate of annual compensation paid to Council Members reaches or exceeds \$3,000 (in the year 2012), the increases shall stop and the salary shall remain constant at \$3,000, unless amended by subsequent ordinance of Council. Nothing herein shall be construed to increase the annual compensation paid to Council Members above the maximum rate of \$3,000 set forth in § 305 of the Home Rule Charter of the City of St. Marys.

§ 112. Compensation of Mayor. [Ord. 1, 1/3/1994, § 202; as amended by Ord. 167, 12/16/2002]

The annual compensation of the Mayor shall be determined in accordance with § 111 of the Code, which establishes the compensation for Council Members, applied through § 401 of the Home Rule Charter, which provides that the compensation of the Mayor is equal that compensation paid to the City Council Members, plus an extra compensation equal to 20% of his Council Member compensation. This compensation shall be paid in the same manner as for City employees.

§ 113. Insurance Coverage. [Ord. 1, 1/3/1994, § 203]

The City shall provide annually for errors and omissions insurance and liability insurance coverage for Council Members when on municipal business or in the performance of their official duties.

§ 114. Expenses. [Ord. 1, 1/3/1994, § 204]

Council Members shall be reimbursed for their reasonable expenses incurred in the performance of their duties in the same manner as City employees.

C. Treasurer.

§ 121. Manager as Treasurer. [Ord. 1, 1/3/1994, § 301]

The Manager shall serve as the Treasurer of the City.

§ 122. Compensation. [Ord. 1, 1/3/1994, § 302]

The Manager shall receive no additional compensation for performance of the duties of Treasurer.

§ 123. Bond. [Ord. 1, 1/3/1994, § 303]

Before entering into his duties as Treasurer, the Manager shall post a bond, in an amount determined from time to time by resolution of City Council, with one or more sureties approved by City Council. The premium for such bond shall be paid by the City.

§ 124. Financial Reports. [Ord. 1, 1/3/1994, § 304]

At each regular meeting of City Council, the Treasurer shall provide City Council with a current financial statement in a form approved by City Council.

D. Tax Collector.**§ 131. (Reserved)¹****§ 132. Facilities. [Ord. 1, 1/3/1994, § 402; as amended by Ord. 89, 11/16/1998, § 2]**

City Council shall provide the Tax Collector with suitable office space, light, heat, furniture, janitor service, bond, stationery, supplies, printing notices, postage, telephone service, office equipment and other incidental expenses necessarily incurred in the conduct of the Tax Collector's office. These expenses must be shared between the City of St. Marys, the County of Elk and the St. Marys Area School District in the manner provided by § 33 of the Local Tax Collection Law.

§ 133. Employees. [Ord. 1, 1/3/1994, § 403]

Deputies, clerks and assistants for the Tax Collector shall be appointed and compensated as provided in § 33 of the Pennsylvania Local Tax Collection Law, Act of May 25, 1945, P.L. 1050, as amended.

§ 134. Bond. [Ord. 1, 1/3/1994, § 404; as amended by Ord. 40, 2/19/1996, § 1]

The bond for the Tax Collector shall be set by resolution of City Council at the beginning of the term of office of the Tax Collector and before delivery of the tax duplicates. The bond may be reset annually by resolution of City Council.

E. Expenses of Officials and Employees.

¹Editor's Note: Former § 131, Compensation (Ord. 1, 1/3/1994, § 401; as amended by Ord. 60, 2/3/1997, § 1; by Ord. 89, 11/16/1998, § 1; by Ord. 128, 12/18/2000; and by Ord. 192, 1/10/2005), was deleted from the Code, as the Tax Collector's compensation is now set by resolution. The current resolution, Res. 13-2, 1/21/2013, is on file in the City offices.

§ 141. Mileage Rate. [Ord. 1, 1/3/1994, § 501]

The rate of reimbursement for mileage necessarily incurred by the elected and appointed officials and employees of the City shall be established from time to time by resolution of City Council.

§ 142. Local Mileage. [Ord. 1, 1/3/1994, § 502]

No reimbursement shall be made to any elected or appointed officials or employees of the City for mileage traveled within the boundaries of the City, except that City Council may contract in writing with the supervisory employees of the City for reimbursement for the regular use of their personal automobiles on a daily basis on City business.

§ 143. Travel Outside City. [Ord. 1, 1/3/1994, § 503]

No elected officials of the City shall be reimbursed for expenses for travel outside of the City unless prior approval is obtained from City Council. No appointed City officials or employees shall be reimbursed for expenses for travel outside of the City unless prior approval is obtained from the Manager. Reimbursement shall be made only for necessary expenses actually incurred and only upon submission of a written voucher itemizing the expenses claimed.

§ 144. Seminars and Meetings. [Ord. 1, 1/3/1994, § 504]

Elected and appointed officials and employees of the City shall be entitled to reimbursement for registration fees and necessary expenses for attending seminars and meetings relevant to City business, provided that prior approval is obtained. Elected and appointed officials shall receive approval from City Council. Employees of the City shall receive approval from the Manager. Reimbursement shall be made only upon submission of a written voucher itemizing the expenses claimed.

F. National, State and Local Associations.

§ 151. Membership. [Ord. 1, 1/3/1994, § 601]

1. The City is authorized to become a member of any league or association of cities or other municipalities which are formed for the study and consideration of municipal affairs. The Mayor, Council Members, Manager and Solicitor are authorized to serve as delegates to any annual conventions of such leagues or associations, subject to prior approval by City Council.
2. The Mayor, Manager, Treasurer and Tax Collector are authorized to become members of any national, state or local associations formed for the purpose of study and consideration of municipal affairs relevant to their respective offices and to attend the annual conventions of such associations.

§ 152. Expenses. [Ord. 1, 1/3/1994, § 602; as amended by Ord. 40, 2/19/1996, § 2]

1. The membership fees for all leagues and associations described in § 151 above shall be paid by the City.
2. The actual expenses incurred by any delegate or officer to attend any of the annual conventions of the leagues or associations described in § 151, above, shall be paid by the City; provided, that:
 - A. The delegate or officer submits an itemized account of expenses; and,
 - B. The delegate or officer shall not be reimbursed for expenses for family members and others who attend the convention with the delegate or officer; and,
 - C. The maximum limit for the daily expense for meals and lodging shall be established from time to time by resolution of City Council.

G. Council Meetings.**§ 161. Regular Meetings. [Ord. 1, 1/3/1994, § 701]**

Regular meetings of City Council shall be held at least once each month at a date and time designated by City Council according to a schedule adopted at its organizational meeting. The date and time of regular meetings may thereafter be changed by City Council, subject to proper public notice.

§ 162. Special Meetings. [Ord. 1, 1/3/1994, § 702]

Special meetings of City Council may be held at the call of the Mayor or at the request of two or more Council Members. The Manager shall provide each Council Member and the Mayor with notice by personal service or regular mail at least 24 hours prior to the special meeting.

§ 163. Workshop Meetings. [Ord. 1, 1/3/1994, § 703]

In addition to regular meetings, City Council may conduct workshop meetings, which shall be public meetings. Public participation at workshop meetings may be limited to the specific matters to be discussed at the workshop meeting.

§ 164. Agenda. [Ord. 1, 1/3/1994, § 704]

The Manager shall prepare a written agenda of each regular and workshop meeting of City Council and shall provide copies of the agenda to the Mayor and each Council Member at least 24 hours before the meeting. The agenda for each public meeting shall include, before action is taken on any agenda items, an opportunity for the public to be heard on agenda items.

§ 165. Mayor as Presiding Officer. [Ord. 1, 1/3/1994, § 705]

The Mayor shall serve as presiding officer at all public meetings of City Council. In the absence of the Mayor, the Deputy Mayor shall serve as presiding officer.

§ 166. Rules of Order. [Ord. 1, 1/3/1994, § 706; as amended by Ord. 89, 11/16/1998, § 3]

All meetings of City Council shall be conducted in the following manner:

- A. All formal action by Council shall be taken by motion duly seconded. The presiding officer shall permit discussion of a motion by members of Council after the motion is seconded. The presiding officer may, in his discretion, permit members of the public to comment on a pending motion. The presiding officer, or any Council member, may call for a roll call vote in adopting any ordinance, resolution or motion.
- B. The order of the meeting shall follow the written agenda, subject to the discretion of the presiding officer, or the majority vote of the Council members present.
- C. All public comments and inquiries at a meeting shall be directed to the presiding officer. The presiding officer shall have the discretion to refer comments and questions to particular Council members, the Manager, the Solicitor or any other City employee for answer or comment.
- D. The use of abusive language and personal attacks on the Mayor, Council members, Manager and City employees at public meetings shall be forbidden.
- E. The presiding officer shall have the discretion to terminate discussion of any issue when the presiding officer believes that further comment is repetitive or where such action is necessary to restore order at the meeting. The presiding officer shall have the discretion to have any person removed from the meeting who fails to abide by the rules of order or otherwise disrupts the meeting.

- F. Except as otherwise provided in this section, the proceedings of City Council shall be governed by Roberts Rules of Order.

H. Contracts.

§ 171. When Bidding is Required. [Ord. 1, 1/3/1994, § 801; as amended by Ord. 89, 11/16/1998, § 5; and by Ord. 258, 8/2/2010]

Except as otherwise provided in this Part, all contracts or purchases by the City shall be made only with the lowest responsible bidder and after advertisement in one newspaper of general circulation within the City at least two times and at intervals of not less than three days. The first advertisement shall be published not more than 45 days and the last advertisement not less than 10 days prior to the date fixed for the opening of bids. Where a contract or purchase involves an expenditure of \$25,000 or more, such contract must be approved by City Council. All other contracts must be approved by the City Manager.

§ 172. Lowest Responsible Bidder. [Ord. 1, 1/3/1994, § 802]

The lowest responsible bidder need not in all circumstances be the bidder submitting the lowest dollar amount bid. The City is authorized to consider, in addition to the amount bid, such other relevant factors as quality of goods or services supplied, ease of repair, compatibility with other City equipment and responsiveness of the supplier.

§ 173. Exceptions to Advertising Requirements. [Ord. 1, 1/3/1994, § 803; as amended by Ord. 258, 8/2/2010]

The City shall not be required to advertise for bids in the following circumstances:

- A. The contract or purchase involves an expenditure of under \$25,000.
- B. Contracts for maintenance, repairs or replacements for public works of the City not constituting new additions, extensions or enlargements of existing facilities and equipment.
- C. Contracts for improvements, repairs or maintenance of any kind performed by City employees; provided, that materials in excess of \$25,000 used for such projects shall be subject to the advertising requirements.
- D. Contracts where particular types, models or pieces of new equipment, apparatus, appliances, vehicles or parts thereof are manufactured products.
- E. Contracts for repairs or replacements needed due to a bona fide emergency, such that compliance with the advertising requirements would create an unreasonable risk of injury or damage to person or property.
- F. Contracts involving any policies of insurance or surety company bonds.

- G. Contracts for public utility service under tariffs on file with the Pennsylvania Public Utility Commission.
- H. Contracts made with another political subdivision, county, the Commonwealth of Pennsylvania, or the federal government, or any agency of the commonwealth or federal government, or any municipal authority or any cooperative purchasing program with any state, federal, or other governmental body.
- I. Contracts involving personal or professional services.

§ 174. Small Contracts.¹ [Ord. 259, 8/2/2010]

1. All contracts or purchases by the City involving an expenditure of at least \$10,000 but less than \$25,000 shall only be approved after a reasonable attempt has been made to obtain three written price quotations thereon.
2. All contracts involving an expenditure equal to or exceeding \$25,000 shall not require the aforesaid written price quotations but shall be subject to the bidding process as provided for hereinabove.

§ 175. Bonds. [Ord. 1, 1/3/1994, § 805]

Unless required in the advertisement for bids, no bidder shall be required to submit a bid bond. Within 20 days after the contract has been awarded, or within such shorter time as the City may require, the successful bidder shall submit a performance bond and a labor and materials bond in such form and amount as is required by law. The City shall have the right to reject or cancel any bids failing to meet bond requirements.

§ 176. Conflicts of Interest. [Ord. 1, 1/3/1994, § 806]

No elected or appointed City official shall be interested to any appreciable degree, either directly or indirectly, in any contract for the sale or furnishing of any supplies or materials for the use of the City or for any work to be done for the City involving the expenditure by the City of more than \$300 in any year, except where such officer or appointee is an employee of the person, firm or corporation to which the money is to be paid and is employed in a capacity with no possible influence on the transaction and in which the officer or appointee cannot be possibly benefited thereby, either financially or otherwise. If a City Council Member or the Mayor comes within the exception just mentioned, he shall so inform City Council and shall refrain from voting on the award of such contract. Any City official or appointee who knowingly violates the provisions of this section shall be subject to surcharge to the extent of the damage shown to be done to the City and shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay a fine not exceeding \$500.

¹Editor's Note: Former § 174, Small Contracts, adopted 1/3/1994 by Ord. 1, was repealed 9/25/2006 by Ord. 222.

§ 177. Evasion of Advertising Requirements. [Ord. 1, 1/3/1994, § 807; as amended by Ord. 258, 8/2/2010]

The City shall not evade the provisions of this Part requiring advertising for bids by purchasing or contracting for goods or services piecemeal for the purpose of obtaining prices under \$25,000 upon any transactions which should, in the exercise of reasonable prudence, be conducted as one transaction amounting to more than \$25,000. Any Council member who votes for action in violation of this section and who knows that the transaction upon which he voted is or ought to be part of a larger transaction and is being divided in order to evade the advertising requirements shall be jointly and severally subject to surcharge for 10% of the full amount of the contract or purchase.

§ 178. Architects and Engineers. [Ord. 1, 1/3/1994, § 808]

No architect or engineer engaged by the City to prepare plans, specifications or estimates shall bid on or have any interest in any contractor who bids on any public work project in which such architect or engineer has been involved; nor shall such architect or engineer receive any remuneration or gratuity from any such contractor. The violation of this provision shall render such contract null and void.

§ 179. Capital Improvement Projects. [Ord. 1, 1/3/1994, § 809]

No contract for the construction of public capital improvements shall be made by the City except by resolution or ordinance adopted by City Council.

§ 180. Approval by Solicitor. [Ord. 1, 1/3/1994, § 810]

All written contracts shall be submitted to the City Solicitor for approval as to the form of contract before it is executed.

§ 181. Signature on Contracts. [Ord. 1, 1/3/1994, § 811]

Any contract requiring execution by the City shall be signed by the Mayor and the Secretary.

§ 182. Limit on Terms. [Ord. 1, 1/3/1994, § 812]

Contracts for the purchase of materials and supplies shall not extend beyond the end of the fiscal year in which such contract is made. Contracts for the lease or installment purchase of equipment may extend for a period not exceeding the reasonable useful life, as determined by City Council, of such equipment.

§ 183. Contract Disbursements. [Ord. 1, 1/3/1994, § 813]

The City shall not disburse monies for the payment of goods and services until such goods or services have been received or performed.

§ 184. Negotiation with Bidder. [Ord. 1, 1/3/1994, § 814; as added by Ord. 89, 11/16/1998, § 4]

Unless otherwise prohibited by law, the City Manager shall have the authority to negotiate with any successful bidder for a reduction in the bid price and for adjustments in the specifications for the work. Any such adjustments shall be promptly reported in writing to City Council.

§ 185. Sale of Equipment or Goods. [Ord. 1, 1/3/1994, § 815; as added by Ord. 89, 11/16/1998, § 4]

The City Manager shall have the discretion to sell any City equipment or goods no longer needed by the City by public or private sale, as the Manager shall deem appropriate. The sale of any used equipment or goods having a value in excess of \$500 shall be first approved by City Council. The City Manager shall maintain a written record of all such sales and shall promptly report thereon to City Council.

I. Departments.

§ 191. Administrative Organization. [Ord. 1, 1/3/1994, § 901; as amended by Ord. 40, 2/19/1996, § 3; by Ord. 157, 4/15/2002; by Ord. 168, 12/16/2002; and by Ord. 169, 1/16/2003]

The administrative service of the City shall consist of the following departments and heads thereof:

- A. Administrative Department — Manager.
- B. Community Development and Services Department — Manager.
- C. Police Department — Chief of Police.
- D. Sewage Treatment Plant — Chief Operator.
- E. Street Department — Street Supervisor.
- F. Finance Department — Finance Director.
- G. Public Works Department — Public Works Director.
- H. Public Safety Department — Public Safety Director.

§ 192. Appointment of Department Heads. [Ord. 1, 1/3/1994, § 901]

Except for the Chief of Police and the Manager, all department heads shall be appointed by the Manager with prior approval of City Council and shall serve at the pleasure of the Manager and Council. All department heads, including the Chief of Police, shall report to the Manager.

§ 193. Accounting and Administration Department. [Ord. 1, 1/3/1994, § 903; as amended by Ord. 89, 11/16/1998, § 6]

The Accounting and Administrative Department shall have the following duties:

- A. Provide budgeting, accounting, purchasing and clerical support to City Council, the Tax Collector, other departments, boards, commissions and the Main Street Program.
- B. City administration and management.
- C. Payroll administration.
- D. Bookkeeping and accounting for the City and its municipal authorities.
- E. Collection of bills for utility services provided by the City.
- F. Receipt and tracking of citizen comments, questions and complaints.
- G. Administration of purchasing for all departments.
- H. Administrative assistance to the Main Street Program.
- I. Building custodial services.

§ 194. Community Development and Services Department. [Ord. 1, 1/3/1994, § 904; as amended by Ord. 40, 2/19/1996, § 3]

1. The Community Development and Services Department shall provide code enforcement, recreation programs, building and development inspection, on-lot sewage system permitting, and grant applications and administration.
2. The specific duties of the Community Development and Services Department shall include, but are not limited to:
 - A. Issuing, processing and filing various zoning, sewer, sewage disposal, plumbing, road and other permits.
 - B. Issuing recreation passes.
 - C. Grantmanship and grants management services.
 - D. Review of building and subdivision plans.
 - E. Inspection of new construction and remodeling.
 - F. Handling of health-related matters.
 - G. Civil enforcement of all codes.
 - H. Administration of housing rehabilitation programs.

- I. Coordination of the recycling program.
 - J. Vector control.
 - K. Liaison to the Recreation Board.
 - L. Management and filing of subdivision, sewer, road, engineering and other plans and related work.
3. The following appointed officials shall serve in the Community Development and Services Department: Health Officers, Sewage Enforcement Officer, Zoning Officer, Code Enforcement Officer and Administrative Assistant.

§ 195. Police Department. [Ord. 1, 1/3/1994, § 905]

1. The Police Department shall be responsible for the maintenance of law and order within the City. Members of the City Police Department shall have such police powers as are regularly vested in police officers by Pennsylvania law.
2. The Chief of Police shall have supervision and control of the members of the Police Department in their regular activities. The Chief of Police shall report to the Manager.

§ 196. Sewage Treatment Plant. [Ord. 1, 1/3/1994, § 906; as amended by Ord. 224, 11/20/2006, § 1]

1. The Sewage Treatment Plant Department shall be responsible for wastewater collection and for the operation and maintenance of the sewage treatment plant for the City, as well as the operation and supervision of the pretreatment program.
2. The specific duties of the Department shall include but are not limited to:
 - A. Operation and maintenance of the sewage treatment plant.
 - B. Purchasing.
 - C. Laboratory analysis.
 - D. Pretreatment program operation.
 - E. Certificates of compliance.
 - F. Sludge handling and disposal.
 - G. Operation and maintenance of pumping stations.
 - H. Installation of sanitary sewer taps.

- I. Sanitary sewer inspection, cleaning, flushing, and maintenance and repairs.

§ 197. Street Department. [Ord. 1, 1/3/1994, § 907; as amended by Ord. 224, 11/20/2006, § 2]

1. The Street Department shall be responsible for maintenance and repair of all streets and roads, stormwater drainage, parks, vehicles, equipment and buildings within the City.
2. Specific duties of the Street Department shall include but are not limited to:
 - A. Street and road maintenance and repairs.
 - B. Snow plowing and removal.
 - C. Ice control on streets and City-owned sidewalks.
 - D. Storm drain installation, cleaning, maintenance and repair.
 - E. Stream and drainageway maintenance.
 - F. Equipment and vehicle maintenance and repair.
 - G. Maintenance of Crystal Fire Department equipment.
 - H. Street cleaning.
 - I. Signing and striping.
 - J. Parking lot cleaning and maintenance.
 - K. Building maintenance.
 - L. Mowing of parks and other grassy areas.
 - M. Leaf pickup.
 - N. Street tree trimming.

J. Boards and Commissions.

§ 201. Creation of Boards and Commissions. [Ord. 1, 1/3/1994, § 1001]

There are hereby created the following Municipal Boards and Commissions:

- A. Health Board.
- B. Recreation Board.

- C. Zoning Hearing Board.
- D. Planning Commission.
- E. Police Civil Service Commission.
- F. Nonuniformed Employee Pension Board.
- G. Police Pension Committee.
- H. Shade Tree Commission.

§ 202. General Provisions. [Ord. 1, 1/3/1994, § 1002]

1. Each Board and Commission shall be required to submit an annual report of activities and financial expenditures and such special reports as the City Manager and City Council shall require.
2. Appointments to all Boards and Commissions shall be made by City Council.

§ 203. Health Board. [Ord. 1, 1/3/1994, § 1003]

1. The City Health Board shall be responsible for administration of the health laws and ordinances of the City.
2. The Health Board shall consist of five members, at least one of whom shall be a licensed physician.
3. At its organizational meeting in January of 1994, City Council shall appoint one member for a five-year term, one member for a four-year term, one member for a three-year term, one member for a two-year term and one member for a one-year term. Thereafter, all members of the Health Board shall serve for terms of five years. Vacancies on the Health Board shall be filled by City Council for the unexpired term. The members of the Health Board shall serve without compensation.
4. City Council shall have the power to appoint a Health Officer and a Secretary to the Health Board and to establish the compensation for such appointees. The Health Officer and the Secretary shall attend all meetings of the Health Board.
5. The Health Board shall have the power, and it shall be its duty, to enforce the laws of the Commonwealth, the regulations of the Department of Environmental Resources, and all ordinances of the City enacted to prevent the introduction and spread of infectious or contagious disease; to abate and remove all nuisances which the Board shall deem prejudicial to the public health; and to recommend such regulations as shall be deemed necessary for the preservation of the public health.

6. In furtherance of its powers, the Health Board shall have the power to enter onto private property for the purpose of inspection and abatement of any nuisance in the manner provided by law.
7. The Health Board shall be authorized to adopt rules and regulations for operation of its own internal affairs, consistent with this Part.

§ 204. Recreation Board. [Ord. 1, 1/3/1994, § 1004; as amended by Ord. 89, 11/16/1998, § 7]

1. The Recreation Board shall be responsible for management of the facilities and activities of the Community Pool and all the parks and playgrounds within the City.
2. The Recreation Board shall consist of not more than seven residents of the City. Each member of the Recreation Board shall serve for a term of five years. Vacancies on the Recreation Board shall be filled by City Council for the unexpired term. **[Amended by Ord. 287, 1/6/2014³]**
3. The power to hire and fire employees for the Community Pool, parks and playgrounds shall be vested in the Manager, upon recommendation of the Recreation Board.
4. The Recreation Board shall, on or before September 1 of each year, provide the Manager with a detailed budget estimate for the following calendar year.
5. The Recreation Board shall have the authority to adopt rules and regulations for the internal management of its affairs, consistent with this Part.

§ 205. Zoning Hearing Board. [Ord. 1, 1/3/1994, § 1005; as amended by Ord. 89, 11/16/1998, § 9]

1. The Zoning Hearing Board shall consist of five members and one alternate, who shall be residents of the City and shall exercise such duties and responsibilities as are provided under Article IX of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, as from time to time amended.
2. At its organizational meeting in January of 1994, City Council shall appoint one member for a five-year term, one member for a four-year term, one member for a three-year term, one member for a two-year term, one member for a one-year term, and one alternate for a three-year term. Thereafter, all members of the Zoning Hearing Board shall be appointed for five-year terms, and the alternate member shall be appointed for a three-year term.

³Editor's Note: This ordinance also stated: "All past appointments to the Recreation Board shall be considered to have been made for a term of five (5) years; and the records of the City shall be reconciled by the City Manager to so reflect such terms of office."

- Vacancies on the Zoning Hearing Board shall be filled by City Council for the unexpired term.
3. The Zoning Hearing Board shall be authorized to appoint a Solicitor, who shall not be the City Solicitor, to provide counsel to the Board on all matters before it. The reasonable fees and expenses incurred by the Zoning Hearing Board Solicitor shall be paid by the City.
 4. The Zoning Hearing Board shall be authorized to adopt rules and regulations for the conduct of its affairs, consistent with this Part and the Pennsylvania Municipalities Planning Code.
 5. Compensation for the Zoning Hearing Board shall be determined by resolution of City Council.

§ 206. Planning Commission. [Ord. 1, 1/3/1994, § 1006]

1. The City Planning Commission shall consist of not more than nine members appointed by City Council. At its organizational meeting in January of 1994, City Council shall appoint three members for four-year terms, three members for three-year terms, and three members for two-year terms. Thereafter, all Planning Commission members shall serve for four-year terms. Vacancies in the Planning Commission shall be filled by City Council for the unexpired term.
2. All members of the Planning Commission shall be residents of the City. At least six members of the Planning Commission shall be citizen members, as defined by § 205 of the Pennsylvania Municipalities Planning Code.
3. The Planning Commission shall have such powers as are vested in it by the provisions of the Pennsylvania Municipalities Planning Code and by the ordinances from time to time adopted by City Council.
4. The Planning Commission shall be authorized to adopt rules and regulations for the conduct of its affairs, consistent with this Part and the Pennsylvania Municipalities Planning Code.

§ 207. Police Civil Service Commission. [Ord. 1, 1/3/1994, § 1007; as amended by Ord. 40, 2/19/1996, § 3; and by Ord. 188, 12/6/2004]

1. The Police Civil Service Commission shall consist of three registered electors of the City appointed by City Council. At its organizational meeting in January of 1994, City Council shall appoint one member for a three-year term, one member for a two-year term, and one member for a one-year term. Thereafter, all members shall be appointed for three-year terms. Vacancies on the Civil Service Commission shall be filled by City Council for the unexpired term.

2. The Police Civil Service Commission shall have such powers and duties as are established under the City Civil Service Code.

§ 208. Nonuniformed Employee Pension Board. [Ord. 1, 1/3/1994, § 1008]

1. The Nonuniformed Employee Pension Board shall consist of the Mayor, two other Council Members chosen by City Council, the Manager, and one nonuniformed employee chosen by the employees covered by the Nonuniformed Employee Pension Fund.
2. The Nonuniformed Employee Pension Board shall administer the Nonuniformed Employee Pension Fund and shall make such reasonable rules for the operation of its affairs as are consistent with the ordinance creating such Pension Fund.

§ 209. Police Pension Committee. [Ord. 1, 1/3/1994, § 1009; as amended by Ord. 89, 11/16/1998, § 8]

1. The Police Pension Committee shall consist of the Mayor, two other Council Members chosen by City Council, the Manager and two members of the police force chosen by the members of the Police Department who participate in the Pension Fund.
2. The Police Pension Committee shall administer the Police Pension Fund and shall make such rules and regulations governing the operation of its affairs as are consistent with the ordinance creating such Pension Fund.

§ 210. Shade Tree Commission. [Ord. 1, 1/3/1994, § 1010; as amended by Ord. 28, 5/15/1995, § 1; and by Ord. 40, 2/19/1996, § 4]

1. The Shade Tree Commission shall consist of five residents of the City appointed by City Council. All Shade Tree Commission members shall serve for three-year terms. Vacancies on the Shade Tree Commission shall be filled by City Council for the unexpired term.
2. The shade Tree Commission shall develop and implement a plan for the planting, maintaining and removal of shade trees within the public rights-of-way and public parks of the City for the purpose of maintaining a healthy and aesthetic environment within the City.
3. The Shade Tree Commission shall have such powers as are vested in it by ordinances from time to time adopted by City Council.
4. The members of the Shade Tree Commission shall serve without compensation but may be reimbursed for the reasonable and necessary expenses incurred by them in the performance of their duties.

§ 210A. Youth Activities Commission.² [Ord. 1, 1/3/1994, § 1010; as added by Ord. 129, 12/18/2000]

1. The Youth Activities Commission shall consist of nine members appointed by City Council. Four of the members shall be teenagers or young adults under the age of 21 years. No more than two members may be nonresidents of the City. If possible, one of the youth members shall be a representative of the St. Marys Youth Center. Any member of the Commission may be removed by City Council at any time.
2. The members of the Commission shall be appointed for a term of two years. Vacancies on the Commission shall be filled by City Council for the unexpired term.
3. The Youth Activities Commission shall investigate, prepare and proposed to City Council a plan to provide one or more facilities to provide recreation for the teenage and young adult population of the City.
4. The power to implement the plan and to establish and manage any facilities shall initially remain with the City subject to such delegation as City Council may, from time to time, determine.
5. The Youth Activities Commission is charged with the responsibility to prepare and submit a plan for establishing and maintaining facilities within two years from the date of adoption of this section.
6. The Youth Activities Commission shall go out of existence upon the submission of its plan or two years from the date of adoption of this section, whichever event shall first occur, unless the City Council shall, by ordinance, extend the life of the Commission.

²Editor's Note: Enacted by Ord. 129, 12/18/2000 as Chapter 1, § 211. Section 211, "Civil Service Code, Short Title," previously existed; therefore, codified as § 210A, "Youth Activities Commission."

PART 2
CIVIL SERVICE CODE**A. General Provisions.****§ 211. Short Title. [Ord. 6, 2/28/1994, § 101]**

This ordinance shall be known and cited as the "St. Marys Civil Service Code."

§ 212. Authority and Purpose. [Ord. 6, 2/28/1994, § 102]

This Part is adopted pursuant to Section 2002 of the Home Rule Charter of the City of St. Marys adopted by the citizens of the City on November 3, 1992. The purpose of this Code is to establish regulations governing the appointment, suspension, furlough and dismissal of members of the City Police Force.

§ 213. Interpretation. [Ord. 6, 2/28/1994, § 103]

This Part shall be interpreted to be consistent with the relevant provisions of the Home Rule Charter of the City of St. Marys and the provisions of the Home Rule Charter and Optional Plans Law, Act of April 13, 1972, Act No. 62, as amended. If any provision of this Part is found to be invalid, it shall not affect the validity of the remaining provisions.

B. Civil Service Commission.**§ 221. Creation of Commission. [Ord. 6, 2/28/1994, § 201]**

There is hereby created a Civil Service Commission for the City of St. Marys, consisting of three registered electors of the City, who shall be appointed according to the provisions of the Administrative Code of the City of St. Marys [Part 1].

§ 222. Power of Commission. [Ord. 6, 2/28/1994, § 202]

The Civil Service Commission shall have the exclusive power and authority to govern the provisions of this Civil Service Code.

§ 223. Compensation. [Ord. 6, 2/28/1994, § 203]

The members of the Civil Service Commission shall serve without compensation but shall be entitled to reimbursement of all reasonable expenses incurred in the performance of their duties.

§ 224. Conflicts. [Ord. 6, 2/28/1994, § 204]

No member of the Civil Service Commission shall at the same time hold any elective office in the City of St. Marys.

§ 225. Organization of Commission. [Ord. 6, 2/28/1994, § 205]

The Civil Service Commission shall meet and organize within 30 days after each organizational meeting of Council and shall elect one of its members as the Chairman and one as the Secretary. The Commission may at any time change its officers by majority vote of the Commission members then in office.

§ 226. Quorum. [Ord. 6, 2/28/1994, § 206]

Two members of the Commission shall constitute a quorum for the conduct of any meeting or hearing. No action of the Commission shall be valid unless it shall have the concurrence of at least two members.

§ 227. Rules and Regulations. [Ord. 6, 2/28/1994, § 207]

The Commission shall have the power to adopt and enforce rules and regulations for the governing of its business consistent with this Part and all applicable laws and regulations.

§ 228. Investigations. [Ord. 6, 2/28/1994, § 208]

The Civil Service Commission shall have the power to make investigations concerning all matters affecting the administration and enforcement of the Civil Service Code and the rules and regulations adopted hereunder. The Chairman of the Commission shall have the power to administer oaths and affirmations in connection with such investigations and to issue subpoenas to require the attendance of witnesses and the production of records and papers pertaining to any such investigation. The fees of such witnesses for attendance and travel shall be the same for witnesses appearing in the courts of this Commonwealth and shall be paid from appropriations for the incidental expenses of the Commission. If any person shall refuse or neglect to obey any subpoena issued by the Commission, a petition may be filed with the Court of Common Pleas of Elk County for its subpoena requiring the attendance of such persons before the Commission or the Court to testify and to produce any records and papers necessary. Any person who shall refuse or neglect to obey any such subpoena may be held in contempt of court and may be subject to a penalty in a summary proceeding in an amount not exceeding \$100 and may undergo imprisonment for a term not exceeding 30 days.

C. Examinations.**§ 231. Rules and Regulations. [Ord. 6, 2/28/1994, § 301]**

The Civil Service Commission shall make rules and regulations for the examination of applicants for appointment to or promotion within the police force. The rules and regulations shall prescribe the minimum qualifications of all applicants to be examined and the passing grades. All examinations shall be practical in character and shall relate to such matters as will fairly test the merit and fitness of the persons examined to discharge the duties of the employment sought by them. Each applicant shall also be required to submit to physical and psychological

examinations. All rules and regulations shall be approved by City Council prior to their use or enforcement.

§ 232. Veterans Preference. [Ord. 6, 2/28/1994, § 302]

The rules and regulations of the Commission shall guarantee to all applicants such rights as are granted under the Pennsylvania Veterans Preference Act.

§ 233. Rejection of Applicants; Hearing. [Ord. 6, 2/28/1994, § 303]

The Commission may refuse to examine, or may refuse to certify after examination as eligible, any applicant who is found to lack any of the minimum qualifications for examination prescribed in its rules and regulations, who is physically disabled and unfit for the performance of the duties of the position for which employment is sought, who is addicted to the habitual use of intoxicating liquors or narcotic drugs, who has been found guilty of any crime involving moral turpitude or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct in office, who is affiliated with any group whose policies or activities are subversive to the form of government set forth in the Constitutions and laws of the United States and the Commonwealth of Pennsylvania. Any applicant or other person aggrieved by the action of the Commission under this section shall be entitled to a hearing before the Commission.

D. Eligibility Lists and Appointment.

§ 241. Maintenance of Eligibility List. [Ord. 6, 2/28/1994, § 401]

The Civil Service Commission shall keep, in numerical order, a list containing the names of all applicants for police officer positions in the City who have passed the required examinations. The Commission shall furnish the list to the City Manager. The list shall remain valid until a new set of examinations is conducted by the Commission, but not for a period exceeding two years.

§ 242. Procedure for Appointment. [Ord. 6, 2/28/1994, § 402]

Appointments to any vacancy in the City Police Force shall be made in the following manner:

- A. Whenever a vacancy shall occur in a police officer position in the City, the Manager shall make written application to the Civil Service Commission for an eligibility list.
- B. The Civil Service Commission shall thereupon certify to the Manager and the Chief of Police in writing the three names on the list of applicants for such position having the highest percentage.
- C. The Chief of Police shall then nominate to the Manager a person from the list submitted to fill such vacancy.

- D. If the Manager approves such nomination, the person so nominated shall be appointed by the Manager to fill the vacancy.
- E. If the Manager does not approve the nomination, then the Chief of Police shall submit other nominations from the same eligibility list until a nomination is approved by the Manager.

§ 243. Promotions. [Ord. 6, 2/28/1994, § 403]

Promotions within the police department shall be made according to rules and regulations established by the Civil Service Commission and approved by City Council.

§ 244. Probationary Period. [Ord. 6, 2/28/1994, § 404]

All original appointments to any position in the police force shall be for a probationary period of not less than six months and not more than one year. If at the close of a probationary period the conduct or fitness of the probationer has not been satisfactory to the Chief of Police and to the Manager, the probationer shall be notified in writing that he will not receive a permanent appointment. Thereupon, his appointment shall cease. Otherwise, his retention shall be equivalent to a permanent appointment.

§ 245. Provisional Appointments. [Ord. 6, 2/28/1994, § 405]

Whenever there are no names on the eligibility list and an urgent reason arises for filling a vacancy in any position on the police force, the Manager, with the recommendation of the Chief of Police, may appoint a person provisionally to fill such vacancy. It shall thereupon become the duty of the Civil Service Commission, within three weeks after such appointment, to hold a competitive examination and certify a list of eligibles so that a regular appointment may be made at the earliest possible date. A provisional appointment shall not qualify the appointee for rights to continued employment or to priority in receiving any regular appointment. Provisional appointments shall not extend for a period beyond 30 days.

E. Suspension or Discharge.

§ 251. Just Cause. [Ord. 6, 2/28/1994, § 501]

No City police officer may be demoted in rank, suspended or discharged without just cause, which shall include, but not be limited to:

- A. Physical or mental disability affecting his ability to continue in service, in which case the person shall receive an honorable discharge from service.
- B. Neglect or violation of any official duty.
- C. Violation of any law which provides that such violation constitutes a misdemeanor or felony.

- D. Inefficiency, neglect, intemperance, immorality, disobedience of orders or conduct unbecoming an officer.
- E. Intoxication while on duty.
- F. Engaging or participating in the conduct of any political or election campaign otherwise than to exercise his own right of suffrage.
- G. No police officer shall be removed for religious, racial or political reasons. A written statement of any charges made against a police officer shall be furnished to such person within five days after the same are filed.

§ 252. Furloughs. [Ord. 6, 2/28/1994, § 502]

If City Council shall deem it necessary to reduce the number of paid employees of the police force, then the City shall apply the following procedure in giving furloughs:

- A. If there are any employees eligible for retirement under the terms of any retirement or pension law, if the party to be retired exceeds the maximum age as defined in the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, Act No. 222, then such reduction in numbers shall be made by retirement of such employees, starting with the oldest employee and following in order of descending age respectively.
- B. Any other reductions in force shall be effected by furloughing the person or persons, including probationers, last appointed to the police force.
- C. In the event that the police force shall again be increased, the employees furloughed shall be reinstated in the order of their seniority in the service.
- D. The provisions of this section are not applicable to the Chief of Police.

§ 253. Right to Hearing. [Ord. 6, 2/28/1994, § 503]

If the person suspended, removed or reduced in rank shall desire a hearing by the Civil Service Commission:

- A. The demand shall be made in writing to the Commission not more than 30 days after the person receives written notice of the discipline.
- B. Such person may make written answers to any charges filed against him not later than the day fixed for hearing.
- C. The Commission shall grant him a hearing which shall be held within a period of 10 days from the filing of the demand, unless continued by the Commission for cause at the request of the Manager or the police officer.
- D. At any such hearing, the person against whom the charges are made may be present in person and may be represented by counsel. The Commission shall

- comply with the provisions of the Local Agency Law in conducting the hearing and rendering its decision.
- E. The Manager may suspend any such person without pay pending the determination of the charges against him.
 - F. Any stenographic record of testimony taken at such hearing shall be filed with and preserved by the Commission, which record shall be sealed and not be available for public inspection in the event the charges are dismissed.
 - G. No order of suspension made by the Commission shall be for a longer period than one year.
 - H. Appeals from the decision of the Commission shall be taken within 30 days from the date of filing by the Commission of its final order in the City Office.

F. Penalties.

§ 261. Penalties. [Ord. 6, 2/28/1994, § 601]

Any Manager, Chief of Police, Mayor or City Council Member who willfully causes to be appointed to the police force any person contrary to the provisions of this Civil Service Code or who willfully refuses to comply with the provisions of the Civil Service Code shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine not exceeding \$100, or suffer imprisonment not exceeding three months, or both.

G. Miscellaneous Provisions.

§ 271. Police Force Defined. [Ord. 6, 2/28/1994, § 701]

As used in this Civil Service Code, "Police Force" shall mean the members of the City police department who devote their normal working hours to police duty and who are paid a salary or compensation for such work by the City, excluding:

- A. Any special police appointed by the Manager to act in emergencies.
- B. Any provisional police appointed by the Manager under this Part.
- C. Any person appointed solely for parking meter enforcement duties.
- D. Any special school police.
- E. Any auxiliary policemen appointed under the Act of January 14, 1952, P.L. 2016.
- F. Any secretaries, clerks or other office personnel working in the City police department.

§ 272. Discrimination. [Ord. 6, 2/28/1994, § 702]

No question in any form of application for examination or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall inquiry be made concerning such opinion or affiliations in the hiring or promoting of police officers. No discrimination shall be exercised, threatened or promised by any person against or in favor of any applicant or employee because of political or religious opinions or affiliations or race. No offer or promise of reward, favor or benefit, directly or indirectly, shall be made to or received by any person for any act done or duty omitted to be done under this Civil Service Code.

PART 3
FIRE DEPARTMENT

§ 301. Appointment. [Res. 94-9, 3/14/1994, § 1]

The Crystal Fire Department is hereby appointed as the primary provider of fire services to the City of St. Marys. Secondary fire protection services will be provided through mutual aid pacts between Crystal Fire Department and the various other volunteer municipal fire departments situated throughout Elk County; and the Crystal Fire Department is hereby granted authority to enter into such mutual aid agreements.

§ 302. Powers of the Chief. [Res. 94-9, 3/14/1994, § 2]

The Fire Chief elected by the members of the Crystal Fire Department, and his duly elected or appointed assistants, are hereby authorized to exercise such powers as are granted to fire chiefs by the various laws of the Commonwealth of Pennsylvania and the ordinances duly adopted by City Council. The powers of the Fire Chief shall be exercised by his assistants only in case of the absence or incapacity of the Fire Chief.

§ 303. Written Designation. [Res. 94-9, 3/14/1994, §§ 3, 4]

1. The Crystal Fire Department shall, from time to time, supply the City Secretary with the written designation of the election of the Fire Chief and his assistants, which written designation shall be kept on file in the City offices.
2. No change in the elected officers of the Crystal Fire Department shall have effect under this Part until written designation is filed with the City Secretary.

§ 304. Duties of Members. [Res. 94-9, 3/14/1994, § 5]

The members of the Crystal Fire Department shall be considered to be engaged in the exercise of their duties under this Part while participating in the following activities:

- A. Normal fire-fighting, rescue and emergency duties.
- B. Drills, practices, training sessions and prefire activities authorized by the Fire Chief and supervised by a qualified instructor.
- C. Community celebrations, ceremonial observances and funerals for deceased fire fighters or other public figures where such attendance is deemed appropriate and authorized in writing by the Fire Chief.
- D. Duties necessary to prepare a fire station for use as a polling place for the primary and general elections.

- E. Preparation for and responsible participation in parades provided that attendance has the prior written approval of the Fire Chief and written notice is provided to the City prior to the event.
- F. Any public service functions performed for the welfare of the community as long as these activities are responsibly supervised and are sanctioned by the fire department and written notice is provided to the City prior to the function.
- G. Any and all public safety activities undertaken by the fire department members to render care to the injured, prevent the loss of life, provide comfort and security to victims and limit or prevent damage or loss of property as circumstances may dictate.
- H. Rendering assistance to police officers where such aid is specifically requested or is done without request to protect citizens from imminent danger.
- I. Participation in fire prevention inspections, post-fire investigations, bomb threat searches, evacuation drills and organized searches for missing persons.
- J. Participation in public programs to promote health and safety, to enlist new members, to solicit community support or to conduct fund-raising activities so long as the activity is specifically sanctioned by the fire department with written notice to the City prior to the activity or event.
- K. Safely and responsibly performing maintenance and remodeling work on the vehicles, buildings, grounds or equipment of the fire department.
- L. Performing such other duties necessary for the efficient operation of the fire department as may from time to time be assigned by City Council, the City Manager or officers of the fire department.

PART 4
FIRE-LOSS ESCROW PROGRAM

§ 401. Name. [Ord. 21, 1/30/1995, § 1]

The program and procedures established under this Part shall be known as the "St. Marys Fire-Loss Escrow Program.

§ 402. Authority. [Ord. 21, 1/30/1995, § 2]

This Part is adopted pursuant to and in compliance with § 508 of the Pennsylvania Insurance Company Law of 1921, as amended, 40 P.S. § 638.

§ 403. Designated Officer. [Ord. 21, 1/30/1995, § 3]

The City Manager is hereby designated as the municipal officer to receive, invest and distribute fire insurance proceeds under the St. Marys Fire-Loss Escrow Program.

§ 404. Prohibition. [Ord. 21, 1/30/1995, § 4]

No insurance company, association or exchange shall pay a claim of a named insured for fire damage to a structure located within the City of St. Marys where the amount recoverable for the fire loss to the structure under all policies exceeds \$7,500 unless the insurance company, association or exchange shall first receive from the City Treasurer either:

- A. A certificate or, at the discretion of the City Treasurer, a verbal notification (which shall be confirmed in writing by the insurer) that there are no delinquent taxes, assessments, penalties or user charges against the property and that the City has not certified any amount as total cost incurred by the City for the removal, repair or securing of a building or other structure on the property.
- B. A certificate and bill showing the amount of delinquent taxes, assessments, penalties and user charges against the said property and the amount of the total costs, if any, certified to the City Treasurer that have been incurred by the City for the removal, repair or securing of any building or other structure on the property.

§ 405. Payment Under Certification. [Ord. 21, 1/30/1995, § 5]

Where the insurance company, association or exchange receives a certificate from the City Treasurer showing delinquent taxes, assessments, penalties, user charges or costs for removal, repair or securing of any building or other structure on the property, the insurance company, association or exchange shall pay from the insurance proceeds the amount necessary to pay the certificate in full.

§ 406. Escrow Account. [Ord. 21, 1/30/1995, § 6]

1. When the fire loss agreed to between the named insured and the insurance company, association or exchange equals or exceeds 60% of the aggregate limits of liability on all fire policies covering the building or other structure, the insurance company, association or exchange shall transfer from the insurance proceeds to the City Manager the amount necessary to cover the costs of removing, repairing or securing the building or other structure, as set forth in a signed contractor's estimate submitted by the named insured. In the absence of such an estimate, there shall be transferred to the City Manager an amount equal to \$2,000 for each \$15,000 and each fraction of that amount of the claim.
2. The City Manager shall place the proceeds so received in a separate fund to be used solely as security against the total cost of removing, repairing or securing the building or structure which might be incurred by the City. The City Manager shall also notify the named insured concerning the procedures for distribution of the proceeds so escrowed.
3. The escrowed funds shall be returned to the named insured when repairs, removal or securing of the building or other structure have been completed and the required proof of payment received by the City Manager. If the City has incurred costs for repairs, removal or securing of the building or other structure, the costs shall be paid from the fund, and, if excess funds remain, the City Manager shall transfer the remaining funds to the named insured.

§ 407. Limitation. [Ord. 21, 1/30/1995, § 7]

Nothing in this Part shall be construed to limit the right of the City to recover any deficiency in costs incurred to repair, remove or secure any such building or such other structure.

PART 5
SHADE TREE COMMISSION

§ 501. Organization and Purpose. [Ord. 31, 9/18/1995, § 1]

1. The Shade Tree Commission shall elect a chairperson, a vice-chairperson and such other offices as the Shade Tree Commission may determine necessary. All officers of the Commission shall be eligible for reelection. The Commission shall keep a written record of its meetings as required by law. The Commission shall regularly provide City Council with its minutes and with such annual or other reports of its activities as City Council may request or as the law may otherwise require.
2. The Shade Tree Commission shall develop and implement a plan for the planting, maintaining and removal of shade trees within the public rights-of-way and public parks of the City for the purpose of maintaining a healthy and aesthetic environment within the City.

§ 502. Definitions. [Ord. 31, 9/18/1995, § 2]

The following words and phrases, when used in this Part, shall have the meanings hereby ascribed to them, except in those instances where the context clearly indicates a different meaning:

CITY MANAGER — The duly appointed Manager of the City of St. Marys or a person designated by the City Manager to exercise his powers and duties under this Part.

COMMISSION — The duly appointed Shade Tree Commission of the City of St. Marys.

MAINTENANCE — Fertilizing, spraying, pruning or trimming or any earth moving or other activity in or around a shade tree which may have a significant impact on the health or safety of a shade tree.

PERMIT — Any permit in writing issued by the City.

PERSON — Any natural person, firm, association, partnership or corporation.

PUBLIC HIGHWAY — Any street, sidewalk or alley open to use by the public, including both lands of the City and lands of the Commonwealth of Pennsylvania.

PUBLIC PARK — Any park owned and operated by the City of St. Marys.

SHADE TREE — Any tree, shrub, or other woody plant, the center line of the base of which is located between the curblines of any City street or State highway and the adjacent public sidewalk, or which is located within any public park. **[Amended by Ord. 281, 5/6/2013]**

§ 503. Authorized Activities. [Ord. 31, 9/18/1995, § 3]

The Commission is authorized to engage in all of the following activities:

- A. The selection and planting of new shade trees within public highways and public parks.
- B. The identification, inspection and correction of hazards created by shade trees.
- C. The identification, inspection and notification of property owners and correction of hazards to public highways and public parks by trees on adjacent private property.
- D. The maintenance and removal of shade trees, whether by the City, the Commission or any person authorized by the Shade Tree Commission.
- E. The adoption of policies and specifications for the planting, maintenance and removal of shade trees.
- F. The adoption of rules and regulations for the enforcement of the powers and duties of the Commission with the approval of City Council.

§ 504. Prohibition. [Ord. 31, 9/18/1995, § 4]

1. No person shall plant, maintain or remove any shade tree without first obtaining a permit from the City and approval by the Commission.
2. No person shall:
 - A. Cut, break, climb with spikes or otherwise injure or destroy a shade tree.
 - B. Interfere with any City employee or agent who is planting, maintaining or removing any shade tree.
 - C. Apply any pesticides to any shade tree without a permit or license.
 - D. Fasten any ropes, wires, cables, electric attachments, signs or other devices to any shade tree without a permit from the City.
 - E. Cut or disturb the roots of any shade tree without first obtaining a permit from the City.

- F. Conduct any construction activities without guards or protective devices that prevent injury to a shade tree.
- G. Remove or tamper with any device set out for the protection of any shade tree.
- H. Pile any materials which may obstruct oxygen flow to the root system of any shade tree.
- I. Hitch or fasten any animal, bicycle or vehicle to any shade tree.
- J. Apply any chemical that will injure any shade tree.

§ 505. Permit Procedure. [Ord. 31, 9/18/1995, § 5]

1. Where a permit is required under this Part, an application for such permit shall be made in writing at the office of the City Manager. The application shall be on a form provided by the Commission.
2. An application for a permit shall be granted or denied within 30 days after the application is filed. The failure to issue a permit within the time required shall not be deemed an approval of the permit.
3. No permit shall be valid for a period of more than one year from date of issuance.
4. The work performed under a permit shall be in accordance with the rules and regulations of the Commission.
5. The City Manager shall have the right to revoke a permit at any time for violation of the terms of the permit or the rules and regulations of the Commission.
6. The permit shall be produced upon request by the Commission, the City Manager or their agent.

§ 506. Insurance. [Ord. 31, 9/18/1995, § 6]

The rules and regulations of the Commission shall provide that any applicant for a permit who is engaged in the business of trimming, cutting and pruning trees be required to carry a policy of general liability insurance covering the activities involved in the permit in such minimum amounts of coverage as the Commission may from time to time determine.

§ 507. Penalties. [Ord. 31, 9/18/1995, § 7]

Any person who violates any provision of this Part shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than \$600 together with the costs of prosecution, or in default of payment thereof, to undergo imprisonment for a period not exceeding 30 days.

§ 508. Injunctive Relief. [Ord. 31, 9/18/1995, § 8]

In addition to all the powers and duties granted to the Commission under this Part, the Commission shall have the right, on behalf of the City of St. Marys, to seek injunctive relief to prohibit any continuing violations of this Part or the rules and regulations of the Commission.

§ 509. Appeals. [Ord. 31, 9/18/1995, § 9]

Any person who is aggrieved by any action of the Commission may file an appeal with the office of the City Manager within 10 days after receiving written notice of the action. The appeal shall be heard by a board consisting of the City Manager, a community forester appointed by City Council and the Chairman of the Commission. The hearing shall be conducted in accordance with the Pennsylvania Local Agency Law.

PART 6**NONUNIFORMED EMPLOYEE PENSION PLAN****A. Nonuniformed Employee Pension Plan Prior to January 24, 2001.****§ 601. Definitions. [Ord. 151, 1/21/2002, Art. I; as amended by Ord. 171, 1/20/2003]**

The following words and phrases as used herein shall have the meanings set forth in this Part, unless a different meaning is plainly required by the context:

ACCRUED BENEFIT —

- (1) As of any given computation date, a participant's normal retirement benefit calculated in accordance with § 604, Subsection 1, of this Part but exclusive of the service increment included in § 604, Subsection 1, of this Part, which amount shall be based upon the participant's final monthly average compensation and projected credited service if the participant were to continue in employment until attainment of normal retirement age and which will be multiplied by a fraction, the numerator of which shall be the participant's actual credited service and the denominator of which would be the projected credited service of the participant if the participant were to continue in employment until attainment of normal retirement age. In no event shall such fraction be greater than one.
- (2) In no event, however, shall the accrued benefit exceed the maximum limitation, determined as of the date of computation, provided under § 604, Subsection 1, of this Part. All accrued benefits are subject to all applicable limitations, reductions, offsets and actuarial adjustments provided by the plan prior to the actual payment thereof.

ACCUMULATED CONTRIBUTIONS — The total amount contributed by a participant to this plan or its predecessor by way of payroll deduction or otherwise, plus simple interest credited at the rate of 5% per annum, from the midpoint of the plan year when paid into the pension fund until the first day of the month in which a distribution of accumulated contributions occurs, or the payment of retirement benefits commences.

ACT — The Municipal Pension Plan Funding Standard and Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. § 895.101 et seq.

ACTUARIAL EQUIVALENT —

- (1) Two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the UP 1984 Mortality Table and 7% interest unless otherwise expressly provided herein.

- (2) Effective January 1, 1995, for purposes of § 415 of the Code, effective the first limitation year beginning after December 31, 1994, the applicable mortality table shall be substituted for the UP 1984 Mortality Table. This amendment applies to all benefits including benefits accrued before the first limitation year beginning after December 31, 1994. The applicable mortality table is the mortality table described in Revenue Ruling 95-6, 1995-1 C.B. 80.

ACTUARY — The person, partnership, association or corporation which at any given time is serving as actuary; provided, that such actuary must be an approved actuary as defined in the Act.

ANNIVERSARY DATE — January 1 of a given plan year.

AUTHORIZED LEAVE OF ABSENCE — Any leave of absence granted in writing by the employer for reasons including, but not limited to, accident, sickness, pregnancy or temporary disability, education, training, jury duty or such other reasons as may necessitate authorized leave from active employment.

BENEFICIARY — The person or persons validly designated in writing by a participant to receive such benefits as may be due hereunder upon the participant's death. A designation shall become effective only upon the participant's death and shall be valid only if delivered prior to such participant's death to the plan administrator in such form as the plan administrator shall specify. In the event that there is no validly designated beneficiary that survives the participant or that is legally able to take the benefits provided as beneficiary, then the Board shall make payments in the order given:

- (1) Spouse;
- (2) Living children; and
- (3) To the estate of the deceased.

BOARD — The Nonuniformed Employees Pension Board as that body is described in § 608 of this Part.

CHIEF ADMINISTRATIVE OFFICER — The person designated by the municipality, who has the primary responsibility for the execution of the administrative affairs for the plan.

CODE — The Internal Revenue Code of 1986, as amended.

COMMONWEALTH — The Commonwealth of Pennsylvania.

COMPENSATION —

- (1) The total base annual salary or wages paid to an employee by the employer for active services rendered in employment, but compensation

shall exclude payments for accrued or unused sick leave, vacation, holiday and personal days. Compensation shall be limited on an annual basis for the purposes of this plan to the amount specified in accordance with Code § 401(a)(17), as adjusted under Code § 415(d).

- (2) Effective for plan years beginning after December 31, 1997, the term compensation for Code § 415 purposes, in accordance with § 415(c)(3)(D) of the Code and Treasury Regulation § 1.415-2(d), shall include:
- A. An elective deferral [as defined in Code § 402(g)(3)]; and
 - B. Any amount which is contributed or deferred by the employer at the election of the employee and which is includable in gross income of the employee by reason of Code § 125 or 457.

COUNCIL — The City Council of the City of St. Marys, Pennsylvania.

CREDITED SERVICE — A participant's total years of service as determined from the participant's date of hire and shall be calculated to the completed month. Credited service shall include each period of active employment and each period of time during which an employee is on an authorized leave of absence. Credited service shall not include any period of time during which an employee failed or refused to make required employee contributions pursuant to § 603, Subsection 1, of this Part.

EARLY RETIREMENT AGE — The date a participant attains age 60 and the completion of 20 years of service.

EMPLOYEE — Any individual employed by the employer as a regular full-time employee who is entitled to receive a regular stated salary or wage, excluding any pension, retainer or fee under contract. A regular full-time employee shall mean an employee who completes more than 35 hours of service per week for at least six months in a plan year. Any police officer, fireman or individual covered under another retirement plan or program sponsored by the employer shall be excluded as an employee under this plan.

EMPLOYER — The City of St. Marys, Pennsylvania.

EMPLOYMENT — Any period of time in which an employee renders services for the employer for which the employee is entitled to receive compensation. Employment shall exclude any period of time in which services are performed as an independent contractor paid on a contractual or fee basis.

FINAL MONTHLY AVERAGE COMPENSATION — The average monthly compensation earned by the participant during the highest 12 consecutive months during the previous five years prior to retirement or severance. Only full months of active rendering of service shall be included in the averaging period. If any single sum or extraordinary payments are made to the participant which are not directly attributable to active employment during the averaging period including, but not limited to, payment for accumulated sick leave or payment of a back pay damage award, those payments shall be

excluded for the purpose of determining the participant's final monthly average compensation.

MINIMUM MUNICIPAL OBLIGATION — The minimum obligation of the municipality as determined by the actuary pursuant to the provisions of the Act.

NORMAL FORM — For the payment of a normal retirement benefit, an early retirement benefit, a late retirement benefit or a disability retirement benefit as follows:

- (1) For those participants who are married for at least one year on the date of retirement, a monthly annuity for the life of the participant and on the participant's death, 1/2 of the participant's monthly annuity payable to the spouse for her lifetime.
- (2) For those participants who die prior to retirement, there shall be paid to the beneficiary the present value of the participant's accrued benefit at the date of death. In no event will the death benefit be less than the participant contributions account. In the event no beneficiary designation is on file at the time of the death of the participant, the payment shall be made in the following order:
 - A. Spouse;
 - B. Living children; and
 - C. The estate of the deceased.

NORMAL RETIREMENT AGE — The date a participant attains 65 years of age and completes at least 20 years of credited service.

NOTICE or ELECTION — A written document prepared in the form specified by the plan administrator and delivered as follows: If such notice or election is to be provided by the employer or the plan administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified notice or election period; or, if such notice or election is to be provided to the employer or the plan administrator, it must be received by the recipient on or before the last day of the specified notice or election period.

PARTICIPANT — Any employee who has commenced participation in this plan in accordance with § 602 of this Part, and has not for any reason ceased to participate hereunder.

PENSION FUND — The assets of the plan, which shall be accounted for separately from the assets of any other plans maintained by the employer, whether actually held separately or commingled with the assets of another plan, and which shall be administered under the supervision of the employer in accordance with the terms of the plan and applicable law.

PLAN — The City of St. Marys Nonuniformed Employees Pension Plan as herein set forth and as it may be amended from time to time hereafter.

PLAN ADMINISTRATOR — The person or persons appointed by the Council for the purpose of supervising and administering the plan. In the event no person is so appointed, the plan administrator shall be the Board.

PLAN YEAR — The consecutive twelve-month period beginning on January 1 and ending on December 31 of each year.

RESTATEMENT DATE — January 1, 2002, the effective date of this plan as hereby amended and restated.

§ 602. Eligibility. [Ord. 151, 1/21/2002, Art. II]

1. Eligibility for Participation. Each employee who was a participant in the plan on the day prior to the restatement date shall continue to be a participant on and after the restatement date, subject to the terms and conditions of the plan as set forth herein. Each other person shall become a participant on the first day of employment provided that the participant completes all necessary forms authorizing payroll deduction of employee contributions.
2. Participation Requirements. Each participant hereunder shall be required to make contributions to the plan, as provided in § 603, Subsection 1, of this Part, and shall execute and complete any enrollment or application forms as required by the plan administrator authorizing payroll deduction of such contributions. No employee shall be eligible to participate hereunder until any and all such forms are completed and delivered to the plan administrator.
3. Re-Entry. Each person that had previously been an active participant in the plan and who shall have ceased being an active participant for any reason shall be eligible to participate pursuant to Subsection 1 of this section as of the date such eligibility requirements are met.
4. Change in Status. In the event a participant who remains in the service of the employer ceases to be an employee eligible for participation hereunder, or who ceases or fails to make any contributions which are required as a condition of participation hereunder, no further benefit accruals shall occur until the participant again qualifies under such participation requirements.
5. Leave of Absence. During any leave of absence that is not an authorized leave of absence, a participant shall be deemed an inactive participant and shall not be given credit for years of service for vesting, nor shall any benefits accrue hereunder. If the employee is not reemployed by the expiration of the leave of absence, participation in the plan shall cease on the date on which the leave of absence commenced.

6. Recordkeeping. The employer shall furnish the administrator with such information as will aid the administrator in the administration of the plan. Such information shall include all pertinent data on employees for purposes of determining their eligibility to participate in this plan initially and subsequently.

§ 603. Contributions. [Ord. 151, 1/21/2002, Art. III]

1. Employee Contributions. As a condition of participation in the plan, each employee shall contribute to the plan by payroll deduction. Each participant shall contribute an amount equal to 2% of the participant's compensation. Each employee must have executed the appropriate documents authorizing the employer to deduct the contributions from the pay of the employee. Such contributions shall be required until such time as the employer, consistent with any provisions of applicable law, shall reduce or eliminate the requirement. For a participant who is on an authorized leave of absence, the obligation to contribute hereunder shall be waived during the period of such authorized leave of absence.
2. Employer Contributions. The employer shall contribute to the plan the amount determined by the plan's actuary and certified by the chief administrative officer as the amount which is necessary to adequately fund the benefits hereunder in accordance with the requirements of the Act, as provided in § 612, Subsection 2, of this Part. The contributions of the employer for a given year may be reduced by other contributions to the plan including, but not limited to, employee contributions, state aid contributions or gifts.
3. State Aid Contributions. Payments of general municipal pension system state aid, or any other amount of state aid payments in accordance with the Act, which are received by the employer and deposited into the pension fund shall be used to the extent permitted pursuant to the Act to reduce the unfunded liability or, after such liability has been funded, to apply against the annual obligation of the employer for future service costs or, to the extent that the payment may be in excess of such obligation, to reduce employee contributions hereunder.
4. Gifts. To the extent permitted by law, the plan administrator may accept gifts, outright or in trust, for deposit into the pension fund. The application of such gifts shall be governed by the rules of the plan and such directions prescribed by the donor as are not inconsistent with the rules of the plan and applicable law. Such gifts shall be applied in the same manner as state aid contributions.
5. No Reversion to the Employer. At no time shall it be possible for the plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the participants and their beneficiaries, except that contributions made by the employer may be returned to the employer if the contribution

was made due to a mistake of fact and the contribution is returned within one year of the mistaken payment of the contribution, the plan is terminated, as provided in § 611 of this Part, or as otherwise permitted by the laws of this Commonwealth.

§ 604. Retirement Benefits. [Ord. 151, 1/21/2002, Art. IV]

1. Normal Retirement. A participant who retires upon attainment of normal retirement age shall be entitled to receive a monthly retirement benefit in an amount equal to 30% of the participant's final monthly average compensation plus an extended service increment (not to exceed \$100 a month) of 1% of the participant's final monthly average compensation for years of credited service in excess of 25 years paid in the normal form commencing on the first day of the month coincident with or next following the date of retirement. Notwithstanding the foregoing, the normal retirement benefit shall not be less than \$18 multiplied by the credited service.
2. Early Retirement. A participant who terminates employment after attaining early retirement age shall be entitled to any early retirement benefit in an amount equal to the accrued benefit to the date of early retirement. The early retirement benefit shall be payable in the normal form commencing on the first day of the month coincident with or next following the date of retirement.
3. Late Retirement. A participant who retires after the first day of the month coincident with or next following the date on which normal retirement age has been attained shall receive a retirement benefit pursuant to Subsection 1 of this section in an amount equal to the amount calculated as of the date on which actual retirement occurs.
4. Disability Benefit. A member who becomes disabled after he has completed 10 years of credited service will be entitled to a total and permanent disability pension after being disabled for a period of six months. The amount of the pension will be equal to the pension accrued to the date of disability. The disability pension shall continue until death or recovery from disability prior to normal retirement age. In the event a disabled employee recovers from disability and returns to the service of the City, his subsequent retirement pension shall be based on service rendered prior to disability plus service rendered after recovery from disability. The existence and continuance of disability shall be determined by the Board upon the advice of a physician or a panel of physicians selected by the Board. Disability retirement benefits shall be available only to members who were active employees of the City at the time disability is incurred.
5. Application for Benefit. A participant must complete and execute an application for benefit on a form and in the manner prescribed by the plan administrator and deliver the said application to the plan administrator at

- least 30 days prior to the date on which benefit payments are to commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments or any other benefit payments shall be due or payable on or before the first day of the month coincident with or next following the date that is 30 days after the date the plan administrator receives the application for benefits.
6. **Nonduplication of Benefit.** A participant who shall be receiving a monthly retirement benefit under this plan and who shall resume employment as an employee, shall have benefit payments suspended until the first day of the month coincident with or next following the date such employment shall cease. Such benefit payments shall be adjusted to reflect any previous pension payments received and any additional service or change in compensation.
 7. **Small Amounts.** If the value of a participant's accrued benefit is equal to or less than \$5,000, the plan administrator shall cause the vested accrued benefit to be paid in a lump sum.
 8. **Cessation of Benefit Payments.** Any pension benefit payable hereunder shall be payable through and including the later of the month in which such participant's death occurs or the month in which any period certain payments due on or after the participant's death have been paid. Any survivor annuity payable on or after the participant's death in accordance with the form of pension benefit elected shall be paid through the month in which such surviving annuitant's death occurs.
 9. **Special Provision for Restated Plans.** The benefit amount of any participant who may have retired prior to the restatement date shall not be in any way altered by the provisions of this plan, except where otherwise expressly indicated herein, and shall continue to be determined on the basis of the terms of the plan in effect on the day preceding the restatement date.
 10. **Maximum Benefit Limitations.**
 - A. Notwithstanding any other provision of this plan, no benefit provided under this Part attributable to contributions of the City shall exceed, as an annual amount, \$90,000, assuming a single life annuity or qualified joint and survivor annuity (as defined for purposes of Code § 415), subject to cost-of-living adjustments made from time to time by plan amendments or automatically in accordance with and in such amounts as are prescribed in or pursuant to regulations promulgated under Code § 415(d) (which adjustments shall not become effective prior to January 1 of the year for which such adjustment is made) and the rate of benefit accrual shall be frozen or reduced accordingly, subject to the provisions of Subsection 10B below.
 - B. The limitation provided in Subsection 10A above shall be subject to the following conditions:

- (1) For purposes of the above limitation, if the benefit under the plan is payable in any form other than in the forms described therein (without regard to ancillary benefits) or if the employees contribute to the plan or make rollover contributions, the determination as to whether the limitation has been satisfied shall be made by adjusting the benefit so that it is the actuarial equivalent of the benefit described in Subsection 10A. For the purpose of making the adjustment in the form of the benefit to an actuarial equivalent, the interest rate shall not be less than the greater of 5% or the rate specified under the plan's definition of "actuarial equivalent."
- (2) If retirement income benefits commence prior to a participant's attainment of age 62, the limitation contained in Subsection 10A shall be adjusted to the actuarial equivalent of a \$90,000 annual benefit commencing at age 62. The reduction under this paragraph shall not reduce the limitation of Subsection 10A below \$75,000 if the benefit begins at or after 55, or, if the benefit begins before age 55, the amount which is the equivalent of the \$75,000 limitation for age 55. For the purpose of making this adjustment, the interest rate used shall not be less than the greater of 5% or the rate specified in the plan's definition of "actuarial equivalent." The above adjustment shall not apply with respect to disability or survivor benefits under the plan.
- (3) If retirement income benefits commence after the participant's attainment of age 65, the limitation described in Subsection 10A shall be adjusted so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is the actuarial equivalent of a \$90,000 annual benefit commencing at age 65. For the purpose of making this adjustment, the interest rate assumption shall not be greater than the lesser of 5% or the rate specified in the plan's definition of "actuarial equivalent."
- (4) Benefits payable to a participant under this Part shall be deemed not to exceed the limitation imposed by Subsection 10A if the annual benefit payable to such participant does not exceed \$10,000 (for this year or any prior year), provided that such participant has never participated in a defined contribution plan maintained by the employer.
- (5) In the event a participant (other than a participant receiving disability benefits under the plan) has less than 10 years of service, the limitations described in Subsections 10A and 10B(2) of this section shall be multiplied by a fraction, the numerator of which is the number of years of service credited to the participant and the denominator of which is 10.

- (6) For purposes of applying the limitations of this section, all defined benefit plans of the Borough shall be treated as one defined benefit plan, and all defined contributions plans shall be treated as one defined contribution plan.
 - (7) For purposes of the above limitations, the limitation year shall be the plan year, unless such period is otherwise defined in a written resolution adopted by the employer.
11. Incorporation of Code § 415 by Reference. Notwithstanding anything contained in this Part to the contrary, the limitations, adjustments and other requirements prescribed in this Part shall at all times comply with the provisions of Code § 415 and the regulations thereunder (as such apply to governmental plans), the terms of which are specifically incorporated herein by reference. Thus, for the first 415 limitation year beginning after December 31, 1994, the applicable mortality table described in Rev. Ruling 95-6, 1995-1 C.B. 80 shall be utilized, and effective for plan years beginning after December 31, 1997, the term compensation for Code § 415 purposes, in accordance with § 415(c)(3)(D) of the Code and Treasury Regulation § 1.415-2(d), shall include:
 - A. An elective deferral [as defined in Code § 402(g)(3)]; and
 - B. Any amount which is contributed or deferred by the employer at the election of the employee and which is includable in gross income of the employee by reason of Code § 125 or 457.
12. Qualified Domestic Relations Order Distribution. All rights and benefits, including elections, provided to a participant in this plan shall be subject to the rights afforded to any alternate payee pursuant to a domestic relations order as provided by applicable state law. In evaluating any such domestic relations order, Code § 414(p) may be used as a guide.
13. Direct Rollover.
 - A. Notwithstanding any provisions 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. For purposes of this section, the following definitions shall apply:
 - (1) An 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 10 years or more; any distribution to the extent such distribution is required under Code § 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

- (2) An eligible retirement plan is an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a) or a qualified trust described in Code § 401(a) that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- (3) A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code § 414(p), are distributees with regard to the interest of the spouse or former spouse.
- (4) A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

C. **Effective Date.** This section shall apply to distributions made after December 31, 2001.

- (1) **Modification of Definition of Eligible Retirement Plan.** For purposes of the direct rollover provisions in this Subsection 13, an eligible retirement plan shall also mean an annuity contract described in § 403(b) of the Code and an eligible plan under § 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. The definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in § 414(p) of the Code.
- (2) **Modification of Definition of Eligible Rollover Distribution to Include After-Tax Employee Contributions.** For purposes of the direct rollover provisions in this Subsection 13, a portion of a distribution shall not fail to be an eligible rollover distribution

merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be paid only to an individual retirement account or annuity described in § 408(a) or (b) of the Code, or to a qualified defined contribution plan described in §§ 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is not so includable.

14. Credit for Qualified Military Service. Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with § 414(u) of the Code.

§ 605. Payment of Benefits. [Ord. 151, 1/21/2002, Art. V]

1. "Normal form" shall mean for the payment of a normal retirement benefit, an early retirement benefit, a late retirement benefit or a disability retirement benefit as follows:
 - A. For those participants who are married for at least one year on the date of retirement, a monthly annuity for the life of the participant and on the participant's death, 1/2 of the participant's monthly annuity payable to the spouse for her lifetime.
 - B. For those participants who die prior to retirement, there shall be paid to the beneficiary the present value of the participant's accrued benefit at the date of death. In no event will the death benefit be less than the participant contributions account. In the event no beneficiary designation is on file at the time of the death of the participant, the payment shall be made in the following order:
 - (1) Spouse;
 - (2) Living children; and
 - (3) The estate of the deceased.
2. Commencement Benefits. A participant may elect to commence receiving distribution of retirement benefits as of the first day of the month coincident with or next following the date on which retirement occurs with an eligibility to receive benefits.
3. Required Distributions.
 - A. Notwithstanding any other provision of this plan, the entire benefit of any participant who becomes entitled to benefits prior to his death shall be distributed either:

- (1) Not later than the required beginning date.
- (2) Over a period beginning not later than the required beginning date and extending over the life of such participant or over the lives of such participant and a designated beneficiary (or over a period not extending beyond the life expectancy of such participant, or the joint life expectancies of such participant and a designated beneficiary).

If a participant who is entitled to benefits under this plan dies prior to the date when his entire interest has been distributed to him after distribution of his benefits has begun in accordance with Subsection 3A(2) of this section, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under Subsection 3A(2) of this section as of the date of his death.

- B. If a participant who is entitled to benefits under this plan dies before distribution of his benefit has begun the entire interest of such employee shall be distributed within five years of the death of such employee, unless the following sentence is applicable. If any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary, such portion shall be distributed over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and such distributions begin not later than one year after the date of the employee's death or such later date as provided by regulations issued by the Secretary of the Treasury, then for purposes of the five-year rule set forth in the preceding sentence, the benefit payable to the beneficiary shall be treated as distributed on the date on which such distributions begin. Provided, however, that notwithstanding the preceding sentence, if the designated beneficiary is the surviving spouse of the participant, then the date on which distributions are required to begin shall not be earlier than the date upon which the employee would have attained age 70 1/2 and, further provided, if the surviving spouse dies before the distributions to such spouse begin this subsection shall be applied as if the surviving spouse were the employee.
- C. For purposes of this section, the following definitions and procedures shall apply:
 - (1) "Required beginning date" shall mean April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 1/2, or the calendar year in which the employee retires.
 - (2) The phrase "designated beneficiary" shall mean any individual designated by the employee under this plan according to its rules.

- (3) Any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child's reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
 - (4) For purposes of this section, the life expectancy of an employee and/or the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.
4. **Personal Right of Participant.** Each participant's right to receive any benefits hereunder is personal and expires on such participant's death. No heir, legatee, devisee, beneficiary, assignee or other person claiming by or through a participant shall have any interest in any benefits hereunder unless clearly and expressly so provided by the terms of this plan. A participant's election, failure to file an election hereunder or revocation of an election shall be final and binding on all persons.

§ 606. Termination of Employment. [Ord. 151, 1/21/2002, Art. VI]

- 1. **Rights of Terminated Employees.** A participant who shall cease to be an employee except as otherwise hereinbefore provided, shall be limited to those rights under the plan contained in the following sections of this Part.
- 2. **Distribution of Accumulated Contributions.** A participant whose employment ceased for any reason before completion of one year of service shall be entitled to receive a distribution of accumulated contributions account. Upon receipt of such accumulated contributions account, said participant, survivor and his or her beneficiary shall not be entitled to any further payments from the plan.
- 3. **Deferred Vested Benefit.** A participant who has completed at least one year of credited service and whose employment with the employer shall terminate for any reason prior to attainment of normal retirement age shall be entitled to elect to receive a deferred vested benefit in lieu of a distribution of accumulated contributions under Subsection 2 of this section. The election hereunder shall be made within 90 days prior to the date on which the participant's employment shall cease or shall be forever waived and a distribution pursuant to Subsection 2 of this section shall occur. Such a deferred vested benefit shall be in an amount equal to the participant's accrued benefit as of the date employment terminates multiplied by the following vesting percentage:

Number of Years of Credited Service	Vesting Percentage
1	14.25%
2	28.50%

Number of Years of Credited Service	Vesting Percentage
3	42.75%
4	57.00%
5	71.25%
6	85.50%
7 or more	100.00%

The deferred vested benefit shall commence as of the first day of the month coincident with or next following the date on which the participant's normal retirement age would be attained if the participant were to continue in employment until such date.

If the lump-sum present value of the vested accrued benefit is not more than \$5,000, the benefit shall automatically be paid in a lump sum.

4. Forfeiture. A participant who terminates employment with the employer at a time when not vested in any portion of the accrued benefit derived from employer contributions shall cease to be a participant hereunder and shall not be entitled to any benefits under the plan derived from not vested employer contributions.

§ 607. Death Benefits. [Ord. 151, 1/21/2002, Art. VII]

1. Death Benefit. Except as hereinafter set forth, no benefit shall be payable hereunder upon or by reason of the death of any participant.
2. Death Prior to Retirement. A benefit shall be payable to the beneficiary of a participant who shall die prior to retirement in a single payment and in an amount equal to the present value of the participant's accrued benefit as of the date of death of the participant. In no event will the death benefit be less than the participant's accumulated contribution account.
3. Death After Retirement. If a participant shall die after the payment of retirement benefits has commenced and if the participant is eligible for survivor benefits, then such shall be paid as set forth in § 605, Subsection 1, of this Part.

§ 608. Administration. [Ord. 151, 1/21/2002, Art. VIII]

1. Plan Administrator. The Council of the employer shall appoint a plan administrator who, upon appointment, shall be the Board. The plan administrator shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this plan. The plan administrator may delegate authority to act on its behalf to any persons it deems appropriate. If the

- Council does not appoint a plan administrator, the employer shall be the plan administrator.
2. Board. The plan shall be administered by the Nonuniformed Employees Pension Board (the "Board"). The Board secretary shall keep minutes of the proceedings and all dates, records and documents pertaining to the administration of the plan. The Board may employ and suitably compensate such actuarial consulting services and advisory, clerical and other employees and attorneys as it may deem necessary for the performance of its duties. The expenses of the administration of the plan shall be paid from the assets of the fund. The action of the Board shall be determined by the vote or other affirmative expressions of the majority of its members. The Board shall make available to participants, for examination during business hours, such of its records that pertain only to the participant involved. The Board shall make its records available to proper governmental officials during business hours and members of the general public upon 24 hours notice.
 3. Authority and Duties of the Plan Administrator. The plan administrator shall have full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the plan. The interpretation or construction placed upon any term or provision of the plan by the plan administrator or any action of the plan administrator taken in good faith shall, upon the Council's review and approval thereof, be final and conclusive upon all parties hereto, whether employees, participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the plan administrator is authorized:
 - A. To construe this plan.
 - B. To determine all questions affecting the eligibility of any employee to participate herein.
 - C. To compute the amount and source of any benefit payable hereunder to any participant or beneficiary.
 - D. To authorize any and all disbursements.
 - E. To prescribe any procedure to be followed by any participant and/or other person in filing any application or election.
 - F. To prepare and distribute, in such manner as may be required by law or as the administrator deems appropriate, information explaining the plan.
 - G. To require from the employer or any participant such information as shall be necessary for the proper administration of the plan.
 - H. To appoint and retain any individual to assist in the administration of the plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws. The plan

administrator shall have no power to add to, subtract from or modify the terms of the plan or change or add to any benefits provided by the plan, or to waive or fail to apply any requirements of eligibility for benefits under the plan. Further, the plan administrator shall have no power to adopt, amend or terminate the plan, to select or appoint any trustee or to determine or require any contributions to the plan, said powers being exclusively reserved to the Council.

4. Employee Pension Board Organization. The Board, if one is appointed, may organize itself in any manner deemed appropriate to effectuate its purposes hereunder, subject to the following:
 - A. The Board shall act by a majority of its members at the time in office and such action may be taken either by vote at a meeting or in writing without a meeting.
 - B. The Board shall, from time to time, appoint a chairman, a secretary who may, but need not, be a Board member and such other agents as it may deem advisable.
 - C. The Board may, from time to time, authorize any one or more of its members to execute any document or documents including any application, request, certificate, notice, consent, waiver or direction and shall notify the Council, in writing, of the name or names of the member or members so authorized. In the absence of a designation, the chairman shall be deemed to be so authorized. Any trustee or other fiduciary appointed hereunder shall accept and be fully protected in relying upon any document executed by the designated member or members (or the chairman in the absence of a designation) as representing a valid action by the Board until the Board shall file with such fiduciary a written revocation of such designation.
 - D. The Board or its delegate shall maintain and keep such records as are necessary for the efficient operation of the plan or as may be required by any applicable law, regulation or ruling and shall provide for the preparation and filing of such forms or reports as may be required to be filed with any governmental agency or department and with the participants and/or other persons entitled to benefits under the plan.
5. Employee Pension Board Costs. The Board members shall each serve without compensation for services unless otherwise agreed by the Council in writing. All reasonable expenses incident to the functioning of the Board, including, but not limited to, fees of accountants, counsel, actuaries and other specialists and other costs of administering the plan, may be paid from the pension fund upon approval by the Council to the extent permitted under applicable law and not otherwise paid by the employer.
6. Hold Harmless. No member of the Council, the plan administrator, the Board, the enrolled actuary nor any other person involved in the

- administration of the plan shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this plan. To the extent permitted by law, the City of St. Marys shall, and hereby does agree to, indemnify and hold harmless each present member of the Board and each successor and each of any such member's heirs, executors and administrators, and the Board's delegates and appointees (other than any person, bank, firm or corporation which is independent of the City of St. Marys and which renders services to the plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit or proceeding to which he is or may be made a party by reason of being or having been a member, delegate or appointee of the Board, except in matters involving criminal liability, intentional or willful misconduct. If the City of St. Marys purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.
7. Approval of Benefits. The plan administrator shall review and approve or deny any application for retirement benefits within 30 days following receipt thereof or within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.
 8. Appeal Procedure. Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the plan ("claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth.
 - A. Any claimant shall file a notice of the claim with the plan administrator which shall fully describe the nature of the claim. The plan administrator shall review the claim and make an initial determination approving or denying the claim.
 - B. If the claim is denied in whole or in part, the plan administrator shall, within 90 days (or such other period as may be established by applicable law) from the time the application is received, mail notice of such denial to the claimant. Such ninety-day period may be extended by the plan administrator if special circumstances so require for up to 90 additional days by the plan administrator's delivering notice of such extension to the claimant within the first ninety-day period. Any notice hereunder shall be written in a matter calculated to be understood by the claimant and, if a notice of denial, shall set forth:
 - (1) The specific plan provisions on which the denial is based;

- (2) An explanation of additional material or information, if any, necessary to perfect such claim and a statement of why such material or information is necessary; and
 - (3) An explanation of the review procedure.
- C. Upon receipt of notice denying the claim, the claimant shall have the right to request a full and fair review by the Council of the initial determination. Such request for review must be made by notice to the Council within 60 days of receipt of such notice of denial. During such review, the claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. The Council shall, within 60 days after the receipt of the notice requesting such review (or in special circumstances, such as where the Council in its sole discretion holds a hearing, within 120 days of receipt of such notice), submit its decision in writing to the person or persons whose claim has been denied. The decision shall be final, conclusive and binding on all parties, shall be written in a manner calculated to be understood by the claimant and shall contain specific references to the pertinent plan provisions on which the decision is based.
- D. Any notice of a claim questioning the amount of a benefit in pay status shall be filed within 90 days following the date of the first payment which would be adjusted if the claim is granted unless the plan administrator allows a later filing for good cause shown.
- E. A claimant who does not submit a notice of a claim or a notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.
- F. All notices as set forth in this Subsection 8 must be in writing.

§ 609. The Pension Fund. [Ord. 151, 1/21/2002, Art. IX]

1. Operation of the Pension Fund.
 - A. The Council is hereby authorized to hold and supervise the investment of the assets of the pension fund, subject to the provisions of the laws of the Commonwealth of Pennsylvania and of this plan and any amendment thereto.
 - B. The pension fund shall be used to pay benefits as provided in the plan and, to the extent not paid directly by the employer, to pay the expenses of administering the plan pursuant to authorization by the employer.

- C. The employer intends the plan to be permanent and for the exclusive benefit of its employees. It expects to make the contributions to the trust required under the plan. The employer shall not be liable in any manner for any insufficiency in the pension fund; benefits are payable only from the pension fund, and only to the extent that there are monies available therein.
 - D. The pension fund will consist of all funds held by the employer under the plan, including contributions made pursuant to the provisions hereof and the investments, reinvestments and proceeds thereof. The pension fund shall be held, managed and administered pursuant to the terms of the plan. Except as otherwise expressly provided in the plan, the employer has exclusive authority and discretion to manage and control the pension fund assets. The employer may, however, appoint a trustee, custodian and/or investment manager, at its sole discretion.
2. Powers and Duties of Employer. With respect to the pension fund, the employer shall have the following powers, rights and duties, in addition to those vested in it elsewhere in the plan or by law, unless such duties are delegated.
- A. To retain in cash so much of the pension fund as it deems advisable and to deposit any cash so retained in any bank or similar financial institution (including any such institution which may be appointed to serve as trustee hereunder), without liability for interest thereon.
 - B. To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which are at the time legal investments for fiduciaries under the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended.
 - C. To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate, to exchange such property, to grant options for the purchase or exchange thereof.
 - D. To consent to and participate in any plan of reorganization, consolidation, merger, extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
 - E. To exercise all conversion and subscription rights pertaining to property held in the fund.

- F. To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
- G. To place money at any time in a deposit bank deemed to be appropriate for the purposes of this plan no matter where situated including in those cases where a bank has been appointed to serve as trustee hereunder, the savings department of its own commercial bank.
- H. In addition to the foregoing powers, the employer shall also have all of the powers, rights and privileges conferred upon trustees by the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the employer may deem necessary to administer the pension fund.
- I. To maintain and invest the assets of this plan on a collective and commingled basis with the assets of other pension plans maintained by the employer, provided that the assets of each respective plan shall be accounted for and administered separately.
- J. To invest the assets of the pension fund in any collective commingled trust fund maintained by a bank or trust company, including any bank or trust company which may act as a trustee hereunder. In this connection, the commingling of the assets of this plan with assets of other eligible, participating plans through such a medium is hereby specifically authorized. Any assets of the plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the plan, to the extent of the participation in such collective or commingled trust fund by the plan.
- K. To make any payment or distribution required or advisable to carry out the provisions of the plan, provided that if a trustee is appointed by the employer, such trustee shall make such distribution only at the direction of the employer.
- L. To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the plan.
- M. To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.

- N. To pay, and to deduct from and charge against the pension fund, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the fund is required to pay, to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the pension fund, the income, property or transfer thereof, or any matter or thing connected therewith.
- O. To appoint any persons or firms (including, but not limited to, accountants, investment advisors, counsel, actuaries, physicians, appraisers, consultants, professional plan administrators and other specialists), or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the management of the fund; to the extent not prohibited by applicable law, the employer shall be entitled to rely conclusively upon and shall be fully protected in any action or omission take by it in good faith reliance upon, the advice or opinion of such persons or firms, provided such persons or firms were prudently chosen by the employer, taking into account the interests of the participants and beneficiaries and with due regard to the ability of the persons or firms to perform their assigned functions.
- P. To retain the services of one or more persons or firms for the management of (including power to acquire and dispose of) all or any part of the fund assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that Act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the law of more than one state; in such event, the employer shall follow the directions of such investment manager or managers with respect to the acquisition and disposition of fund assets, but shall not be liable for the acts or omissions of such investment manager or managers, nor shall it be under any obligation to review or otherwise manage any fund assets which are subject to the management of such investment manager or managers. If the employer appoints a trustee, the trustee shall not be permitted to retain such an investment manager except with the express written consent of the employer.
3. Common Investments. The employer shall not be required to make separate investments for individual participants or to maintain separate investments for each participant's account, but may invest contributions and any profits or gains therefrom in common investments.
4. Compensation and Expenses; Appointed Trustee. The Board may select a trustee. If a trustee is appointed, the trustee shall be entitled to such reasonable compensation as shall from time to time be agreed upon by the employer and the trustee, unless such compensation is prohibited by law.

- Such compensation, and all expenses reasonably incurred by the trustee in carrying out his functions, shall constitute a charge upon the employer or the pension fund, which may be executed at any time after 30 days written notice to the employer. The employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to reimburse themselves for the payment thereof, from the pension fund.
5. **Periodic Accounting.** If a trustee is appointed, the pension fund shall be evaluated annually, or at more frequent intervals, by the trustee and a written accounting rendered as of each fiscal year end of the fund, and as of the effective date of any removal or resignation of the trustee, and such additional dates as requested by the employer, showing the condition of the fund and all receipts, disbursements and other transactions effected by the trustee during the period covered by the accounting based on fair market values prevailing as of such date.
 6. **Value of the Pension Fund.** All determinations as to the value of the assets of the pension fund, and as to the amount of the liabilities thereof, shall be made by the employer or its appointed trustee, whose decisions shall be final and conclusive and binding on all parties hereto, the participants and beneficiaries and their estates. In making any such determination, the employer or trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts, and shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

§ 610. Amendment. [Ord. 151, 1/21/2002, Art. X]

1. **Right to Amend.**
 - A. The employer shall have the right to amend the plan, at any time, by adoption of the appropriate resolution or ordinance and with respect to any provisions thereof, and all parties thereto or claiming any interest thereunder shall be bound thereby, provided, however, that no amendment shall revise the accrued benefit of a participant determined as of the later of the date such amendment is adopted or the date such amendment becomes effective, if such revised vested accrued benefit is less than that computed under the plan without regard to such amendment.
 - B. No amendment to the pension plan which provides for a benefit modification shall be made unless the cost estimate described in § 612, Subsection 3, of this Part has been prepared and presented to the employer in accordance with the Act.

§ 611. Plan Termination. [Ord. 151, 1/21/2002, Art. XI]

1. Right to Terminate. It is the present intention of the employer to maintain the plan indefinitely. Nevertheless the employer reserves the right, at any time, to permanently discontinue further contributions to the plan or to terminate the entire plan consistent with the provisions of applicable law.
2. Distribution upon Termination.
 - A. In the event of the termination or partial termination of the plan, all amounts of benefits accrued by the affected participants to the date of such termination, to the extent funded on such date, shall immediately become fully vested and nonforfeitable. In the event of termination of the plan, the employer shall direct either:
 - (1) That the accrued benefits of participants in the plan continue to be held in the pension fund in accordance with the provisions of the plan (other than those provisions related to forfeitures) without regard to such termination until all funds have been distributed in accordance with such provisions; or
 - (2) That distribution be made to each participant in an amount equal to his accrued benefit as of such date in the form of a lump sum, or such other form as may be approved by the employer
 - B. If there are insufficient assets in the pension fund to provide for all vested accrued benefits as of the date of plan termination, priority shall first be given to the distribution of any amounts attributable to participant contributions before assets are applied to the distribution of vested benefits attributable to other sources hereunder.
3. Residual Assets. If all liabilities under the plan to participants and others entitled to receive a benefit have been satisfied, and there remain any residual assets in the pension fund, the residual assets shall be returned to the employer insofar as such return does not contravene any provision of law, and any remaining balance in excess of employer contributions, shall be returned to the Commonwealth.

§ 612. Provisions to Comply with the Municipal Pension Plan Funding Standard and Recovery Act of 1984. [Ord. 151, 1/21/2002, Art. XII]

1. Actuarial Valuations.
 - A. The plan's actuary shall perform an actuarial valuation at least biennially unless the employer is applying or has applied for supplemental state assistance pursuant to § 603 of the Act, whereupon actuarial valuation reports shall be made annually.

- B. Such biennial actuarial valuation report shall be made as of the beginning of each plan year occurring in an odd-numbered calendar year, beginning with the year 1985.
 - C. Such actuarial valuation shall be prepared and certified by an approved actuary, as such term is defined in the Act.
 - D. The expenses attributable to the preparation of any actuarial valuation report or experience investigation required by the Act or any other expense which is permissible under the terms of the Act and which are directly associated with administering the plan shall be an allowable administrative expense payable from the assets of the pension fund. Such allowable expenses shall include, but not be limited to, the following:
 - (1) Investment costs associated with obtaining authorized investments and investment management fees.
 - (2) Accounting expenses.
 - (3) Premiums for insurance coverage on fund assets.
 - (4) Reasonable and necessary counsel fees incurred for advice or to defend the fund.
 - (5) Legitimate travel and education expense for pension plan officials; provided, however, that the municipal officials of the employer, in their fiduciary role, shall monitor the services provided to the plan to ensure that the expenses are necessary, reasonable and benefit the pension plan and further provided, that the plan administrator shall document all expenses item by item, and where necessary, hour by hour.
2. Reporting Requirements.
- A. Such actuarial reports shall be prepared and filed under the supervision of the chief administrative officer of the municipality:
 - B. The chief administrative officer of the pension plan shall determine the financial requirements of the pension plan on the basis of the most recent actuarial report and shall determine the minimum municipal obligation of the employer with respect to funding the plan for any given plan year. The chief administrative officer shall submit the financial requirements of the plan and the minimum municipal obligation of the employer to the governing body of the employer annually and shall certify the accuracy of such calculations and their conformance with the Act.
3. Benefit Modifications. Prior to the adoption of any benefit plan modification by the employer, the chief administrative officer of the plan shall provide to

the employer a cost estimate of the proposed benefit plan modification. Such estimate shall be prepared by an approved actuary, which estimate shall disclose to the employer the impact of the proposed benefit plan modification on the future financial requirements of the plan and the future minimum municipal obligation of the employer with respect to the plan.

§ 613. Miscellaneous. [Ord. 151, 1/21/2002, Art. XIII]

1. Incapacity of Participant. If any participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder the employer, upon the receipt of satisfactory evidence that such participant is so incapacitated and that another person or institution is maintaining him and that no guardian or board has been appointed for him, may provide for such payment of pension benefits hereunder to such person or institution so maintaining him, and any such payments so made shall be deemed for every purpose to have been made to such participant.
2. Benefits for a Deceased Participant. If any benefit shall be payable under the plan to or on behalf of a participant who has died, if the plan provides that the payment of such benefits shall be made to the participant's estate, and if no administration of such participant's estate is pending in the court of proper jurisdiction, then the employer, at its sole option, may pay such benefits to the surviving spouse of such deceased participant, or, if there be no such surviving spouse, to such participant's then living issue, per stripes; provided, however, that nothing contained herein shall prevent the employer from insisting upon the commencement of estate administration proceedings and the delivery of any such benefits to a duly appointed executor or administrator.
3. Liability of Officers of the Employer. Subject to the provisions of the Act, no past, present or future officer of the employer shall be personally liable to any participant beneficiary or other person under any provision of the plan, or any policy issued pursuant thereto.
4. Assets in Pension Fund not Property of Individual Participants. Nothing contained herein shall be deemed to give any participant or beneficiary any interest in any specific property of the pension fund or any right except to receive such distributions as are expressly provided for in this plan.
5. Employment Rights not Affected by the Plan. Participation in this plan shall not give any right to any employee to be retained in the employ of the employer nor shall it interfere with the right of the employer to discharge any employee and to deal with him without regard to the effect that such treatment might have upon him as a participant in this plan.
6. Pension Fund for Sole Benefit of Participants. The income and principal of the pension fund are for the sole use and benefit of the participants of this plan, and, to the extent permitted by law, shall be free, clear and discharged

- of and from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any participant or beneficiary.
7. **Meaning of Certain Words.** As used herein, the masculine gender shall include the feminine gender and the singular shall include the plural in all cases where such meaning would be appropriate. Headings of articles and sections are inserted only for convenience of reference and are not to be considered in the construction of the plan.
 8. **Information to be Furnished by the Employer.** The employer shall furnish to the plan administrator (and where applicable, the trustee) information in the employer's possession as the plan administrator and the trustee shall require from time to time to perform their duties under this plan.
 9. **Spendthrift.** To the extent permitted by law, no payments to any person under any contract, nor the right to receive such payments, nor any interest in this plan and pension fund, shall be subject to assignment, alienation, transfer or anticipation, either by voluntary or involuntary act of any participant or beneficiary or by operation of law, nor shall such payment right or interest be subject to the demand or claims of any such person's debts, obligations or liabilities.

§ 614. Applicable Provisions of the Internal Revenue Code. [Ord. 213, 11/7/2005, Art. XIV; as amended by Ord. 247, 12/15/2008]

1. **Precedence.** The requirements of this § 614 shall take precedence over any inconsistent provisions of the Plan.
2. **Definitions.** The following definitions apply for purposes of this section only:

LEASED EMPLOYEE — Effective as of January 1, 1997, any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and any other person ("leasing organization"), has performed services for the recipient [or for the recipient and related persons determined in accordance with Code § 414(n)(6)] on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.

LIMITATION YEAR — The plan year.

3. **Leased employees and Independent Contractors.** Leased employees and independent contractors are not eligible to participate in this Plan. Any person whom the Council does not regard as being an employee shall not be eligible to participate.
4. **Limit on Compensation.** Compensation is subject to the limitation under Code § 401(a)(17), which is \$230,000 for the plan year beginning in 2008.

The limit is automatically adjusted periodically, without formal amendment, for changes in the law and cost-of-living adjustments under Code § 401(a)(17).

5. Maximum Annual Benefit.

- A. General Rule. Except as otherwise provided, this Plan shall at all times comply with the provisions of Code § 415 and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If a benefit payable to a participant under this Plan would otherwise exceed the limit under Code § 415, the benefit will be reduced to the maximum permissible benefit.
- B. Effective Date. If there is more than one permissible effective date for any required change in the Code § 415(b) provisions, then the change shall be effective as of the latest permissible effective date; however, any adjustment in the dollar limit under Code § 415(b)(1)(A), whether required or permissible, shall take effect automatically as of the earliest permissible effective date. The "applicable mortality table" in Rev. Rul. 2001-62 became effective as of December 31, 2002, and remained effective through December 31, 2007. The "applicable mortality table" and "applicable interest rate" after December 31, 2007, is found in Rev. Rul. 2007-67.
- C. No Reduction in Accrued Benefits. Notwithstanding the above, no change in the limits under this section shall reduce the benefit of any participant.
- D. Multiple Plans. If a participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code § 415(b) or (e), and if the aggregated benefits would otherwise exceed the limit under Code § 415(b) or (e), then benefits shall be reduced first under this Plan. [Historical Note: Code § 415(e) applied for limitation years beginning prior to 2000.]
- E. Mandatory Contributions. Participant contributions are annual additions, and any benefit attributable to participant contributions is not included in the benefit subject to the limits of Code § 415(b) or (e). This subsection does not apply to contributions "picked-up" in accordance with Code § 414(h).
- F. Permissive Service Credit. Effective as of January 1, 1998, if a participant makes a purchase of permissive service credit [within the meaning of Code § 415(n)] under the Plan, the benefit derived from the contributions made to purchase the service credit shall be treated as part of the benefit subject to the limitations under this section.

6. Limit on Annual Additions.

- A. Annual Additions. Except as otherwise provided, annual additions (which include participant contributions) under this Plan shall at all times comply with the provisions of Code § 415(c) and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If an annual addition would otherwise exceed the limit under Code § 415(c), the excess annual addition will be eliminated in accordance with methods permitted under Rev. Proc. 2008-50 (Rev. Proc. 2006-27 prior to 2009), or its successor.
 - B. Multiple Plans. If a participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code § 415(c), and if the annual additions would otherwise exceed the limit under Code § 415(c), annual additions will first be reduced under the other plan. If there is more than one other plan, annual additions will first be reduced under the plan with the greatest amount of annual additions.
 - C. Effective Date. The limits under which Code § 415(c) are adjusted periodically in accordance with changes in the law or cost-of-living adjustments without the need for a plan amendment. If there is more than one permissible effective date for any required change relating to Code § 415(c), then the change shall be effective as of the earliest permissible effective date.
 - D. Section 415(c) Compensation. For the purposes of this Section, "compensation" includes only those items specified in Treas. Reg. § 1.415(c)-2(b)1 or (2) and excludes all items listed in Treas. Reg. § 1.415(c)-2(c), the terms of which are specifically incorporated herein by reference. Effective as of January 1, 2009, to the extent required by the Heroes Earnings Assistance Tax Relief Tax Act of 2008 (HEART Act), differential wage payments shall be included in compensation. **[Added by Ord. 276, 10/1/2012]**
7. Direct Rollovers.
- A. Effective as of January 1, 1993, if a participant, a spousal beneficiary, or an alternate payee (who is a spouse or former spouse of a participant) is entitled (under other provisions of this Plan) to receive an "eligible rollover distribution" of at least \$200, the distributee may elect that the Plan Administrator transfer all or part (provided that the part is at least \$500 to any "eligible retirement plan" capable of accepting such a transfer.
 - B. For purposes of this section, the following definitions shall apply:
 - (1) **ELIGIBLE ROLLOVER DISTRIBUTION** — 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: (i) 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 10 years or more; (ii) any distribution to the extent such distribution is required under Code § 401(a)(9); (iii) 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); and (iv) effective as of January 1, 2002, any hardship distribution. Effective as of January 1, 2002, Clause (iii) does not apply to any after-tax participant contributions that are paid to an individual retirement account or annuity described in Code § 408(a) or (b), or to a qualified defined contribution plan described in Code § 401(a) or 403(a), or effective as of January 1, 2007, any 403(b) annuity contract 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** — An individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), or a qualified trust described in Code § 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse, prior to January 1, 2002, an eligible retirement plan was an individual retirement account or individual retirement annuity. Effective as of January 1, 2002, an "eligible retirement plan" includes an annuity contract described in Code § 403(b) and an eligible plan under Code § 457(b) 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. Effective January 1, 2008, a Roth IRA is an "eligible retirement plan."
- (3) **DISTRIBUTEES** — Includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code § 414(p)(11), are distributees with regard to the interest of the spouse or former spouse.
- (4) Effective as of January 1, 2002, an employee may, in accordance with Code § 457(e)(17), make a trustee-to-trustee transfer from an eligible deferred compensation plan [as

defined in Code § 457(b)] to this Plan for the purpose of purchasing service credit (to the extent that such purchases are permitted under the terms of the Plan) or repaying a cash-out of contributions refunded under the Plan.

8. **Minimum Required Distributions.** Notwithstanding any provision in this Plan to the contrary, the distribution of a participant's benefits shall be made in accordance with the requirements and conditions of and shall otherwise comply with Code § 401(a)(9). For purposes of complying with Code § 401(a)(9), life expectancies shall be determined in accordance with the 1987 proposed regulations prior to January 1, 2003, and with the final regulations [§ 1.401(a)(9)-1 through § 1.401(a)(9)-9] on or after January 1, 2003.
 - A. **Distribution.**
 - (1) Effective as of January 1, 1997, distribution of a participant's benefits shall begin not later than April 1 of the calendar year following the later of:
 - (a) The calendar year in which the participant attains age 70 1/2; or
 - (b) The calendar year in which the participant retires.
 - (2) Distributions must be made over a period not exceeding the life of the participant or the joint lives of a participant and his beneficiary.
 - B. Distributions to a participant and his beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code § 401(a)(9)(G) and the regulations thereunder.
 - C. This section does not authorize the payment of any benefit in any form not permitted under another provision of the Plan.
9. **Qualified Domestic Relations Orders.** All rights and benefits, including elections, provided to a participant in this Plan shall be subject to the rights afforded to any "alternate payee" under what is recognized pursuant to state law support provisions as a "qualified domestic relations order."
10. **Vesting Upon Plan Termination.** Upon the termination of this Plan, or complete discontinuance of contributions [within the meaning of pre-ERISA Code § 401(a)(7)] to this Plan, each employee, as of the date of such termination or discontinuance, shall become vested to the extent that the Plan is funded.
11. **Consent for Lump-Sum Distributions.** Effective January 1, 2006, notwithstanding any other provision of the Plan, any distribution to a participant made prior to the earlier of age 62 or normal retirement age of an

- amount in excess of \$1,000 that is an eligible rollover distribution as set forth in the Plan and the Code shall be made only upon consent of the participant.
12. Heroes Earnings Assistance Relief Tax Act (HEART Act). Effective for deaths occurring on or after January 1, 2007, if a participant dies while performing qualified military service [as defined in IRC § 414(u)], the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the participant resumed and then terminated employment on account of death. **[Amended by Ord. 276, 10/1/2012]**
 13. Non-Spouse Beneficiaries. Effective as of January 1, 2007, if a beneficiary who is not a surviving spouse is entitled to receive what would otherwise be an "eligible rollover distribution," the beneficiary may, in accordance with Code § 402(c)(11), make a trustee-to-trustee transfer of that amount to an IRA or individual retirement annuity (other than an endowment contract), provided that:
 - A. The transfer is made not later than the end of the fourth year after the year of the participant's death; and
 - B. The account or annuity to which the amount is transferred is treated as an inherited IRA or individual retirement annuity in accordance with Code § 408(d)(3)(C).
 14. Intent to Comply with Internal Revenue Code. The City intends that this Plan shall meet all the pertinent requirements established for a governmental plan [as defined in Internal Revenue Code § 414(d)] under Internal Revenue Code § 401(a), as amended, and the Plan shall be interpreted, wherever possible, to comply with the terms of said code and all formal regulations and rulings pertinent to the Plan. **[Added by Ord. 280, 1/21/2013]**
 15. A participant shall be 100% vested in his normal retirement benefit upon attainment of normal retirement age. **[Added by Ord. 280, 1/21/2013]**

B. Nonuniformed Employee Pension Plan Effective January 24, 2001.

§ 621. Preamble. [Ord. 176, 11/3/2003]

1. Whereas, the City of St. Marys is a home rule municipality under the laws of the Commonwealth of Pennsylvania. As a result of Municipality of Monroeville v. Monroeville Police Department Wage Policy Committee, 767 A.2d 596 (Pa. Cmwlth. 2001) and the Auditor General's Municipal Pension Bulletin No. 2001-01, pension benefits for employees hired on or after January 24, 2001 are subject to the limitations of the Third Class City Code 53 P.S. § 39340 et seq., This addendum (which includes this Preamble) to the

- City of St. Marys Nonuniformed Employees Pension Plan, is intended to comply with the aforementioned referenced legal requirements and will become part of the City of St. Marys Nonuniformed Employees Pension Plan, effective January 24, 2001.
2. Whereas, this addendum to the City of St. Marys Nonuniformed Pension Plan shall apply to all employees hired on or after January 24, 2001 and shall be the exclusive document for determining pension benefits for those employees. The pension benefits of employees hired before January 24, 2001 shall be determined according to the City of St. Marys Nonuniformed Pension Plan (exclusive of this addendum). This addendum will have no effect on the pension benefits of employees hired before January 24, 2001.
 3. Whereas, it is the City's intent that the addendum shall be established and maintained (1) in accordance with the mandatory benefits required by the Third Class City Code; and (2) as a qualified plan under § 401(a) of the Internal Revenue Code of 1986 as amended, as applicable to governmental plans and this addendum shall be amended as and when necessary to meet the Internal Revenue Code provisions applicable to governmental plans and shall be construed, clarified and amended as necessary to comply with the mandatory provisions of the Third Class City Code.

4. Now, therefore, the plan now known as the "City of St. Marys Nonuniformed Employee's Pension Plan" is hereby amended by this preamble and as follows:

§ 622. Definitions. [Ord. 176, 11/3/2003, Art. I-A; as amended by Ord. 213, 11/7/2005, Art. XIV]

The following words and phrases as used herein shall have the meanings set forth in this section, unless a different meaning is plainly required by the context. Furthermore, the use of the term "he" or "his" shall include the feminine "she" and "her" and vice versa. It is in the intent of this subpart to be gender neutral and the previous terms shall be interchangeable.

ACCRUED BENEFIT —

- (1) As of any given computation date, a participant's monthly normal retirement benefit determined in accordance with § 625, Subsection 1, of this Subpart, which amount shall be based upon the participant's final monthly average compensation and projected credited service if the participant were to continue in employment until attainment of normal retirement age and which will be multiplied by a fraction, the numerator of which shall be the participant's actual credited service and the denominator of which would be the projected credited service of the participant if the participant were to continue in employment until attainment of normal retirement age. In no event shall such fraction be greater than one.
- (2) In no event, however, shall the accrued benefit exceed the maximum limitation, determined as of the date of computation, provided under § 625, Subsection 1, of this Subpart. All accrued benefits are subject to all applicable limitations, reductions, offsets and actuarial adjustments provided by the plan prior to the actual payment thereof.

ACCUMULATED CONTRIBUTIONS ACCOUNT — The total amount contributed by a participant to this plan or its predecessor by way of payroll deduction or otherwise and shall not accrue interest.

ACT — The Municipal Pension Plan Funding Standard and Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. § 895.101 et seq.

ACTUARIAL EQUIVALENT —

- (1) Two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of the UP 1984 Mortality Table and 7% interest unless otherwise expressly provided herein.
- (2) For purposes of § 415 of the Code, "actuarial equivalent" shall mean a form of benefit differing in time, period or manner of payment from a specific benefit provided under the plan, but having the same value when computed using the "applicable interest rate" and "applicable

mortality table" as defined in Code § 417(e). The "applicable interest rate" shall be determined as of the second month prior to the first month of the limitation year. The "applicable mortality table" and "applicable interest rate" shall be adjusted automatically when necessary to maintain the qualified status of the plan, including this addendum. The applicable mortality table was found in Revenue Ruling 95-6, 1995 C.B. 80 and effective as of December 31, 2002 is found in Revenue Ruling 2001-62.

ACTUARY — The person, partnership, association or corporation which at any given time is serving as actuary; provided, that such actuary must be an approved actuary as defined in the Act.

ANNIVERSARY DATE — January 1 of a given plan year.

AUTHORIZED LEAVE OF ABSENCE — Any leave of absence granted in writing by the employer for reasons including, but not limited to, accident, sickness, pregnancy or temporary disability, education, training, jury duty or such other reasons as may necessitate authorized leave from active employment.

BENEFICIARY — The person or persons validly designated in writing by a participant to receive such benefits as may be due hereunder upon the participant's death. A designation shall become effective only upon the participant's death and shall be valid only if delivered prior to such participant's death to the plan administrator in such form as the plan administrator shall specify. In the event that there is no validly designated beneficiary that survives the participant or that is legally able to take the benefits provided as beneficiary, then the Board shall make payments in the order given:

- (1) Spouse;
- (2) Living children; and
- (3) To the estate of the deceased.

BOARD — The Nonuniformed Employees Pension Board as that body is described in § 629 of this Subpart.

CHIEF ADMINISTRATIVE OFFICER — The person designated by the municipality, who has the primary responsibility for the execution of the administrative affairs for the plan.

CODE — The Internal Revenue Code of 1986, as amended.

COMMONWEALTH — The Commonwealth of Pennsylvania.

COMPENSATION —

- (1) The total base annual salary or wages paid to an employee by the employer for active services rendered in employment, but compensation shall exclude payments for accrued or unused sick leave, vacation, holiday and personal days. Compensation shall be limited on an annual basis for the purposes of this plan to the amount specified in accordance with Code § 401(a)(17), as adjusted under Code § 415(d).
- (2) Effective for plan years beginning after December 31, 1997, the term compensation for Code § 415 purposes, in accordance with § 415(c)(3)(D) of the Code and Treasury Regulation § 1.415-2(d), shall include:
 - A. An elective deferral [as defined in Code § 402(g)(3)]; and
 - B. Any amount which is contributed or deferred by the employer at the election of the employee and which is includable in gross income of the employee by reason of Code § 125, 132(f)(4) or 457.

COUNCIL — The City Council of the City of St. Marys, Pennsylvania.

CREDITED SERVICE — A participant's total years of service as determined from the participant's date of hire and shall be calculated to the completed month. Credited service shall include each period of active employment and each period of time during which an employee is on an authorized leave of absence. Credited service shall not include any period of time during which an employee failed or refused to make required employee contributions pursuant to § 624, Subsection 1, of this Subpart.

DISABILITY — A participant shall be considered totally and permanently disabled if, after 10 years of credited service and before attaining the age of 60, he is determined, upon the sworn statement of three practicing physicians designated by the Board, that he is in a permanent condition of health which permanently disabled him from performing the duties of his or her position or office.

EMPLOYEE — Any individual employed by the employer as a regular full-time employee who is entitled to receive a regular stated salary or wage, excluding any pension, retainer or fee under contract. A regular full-time employee shall mean an employee who completes more than 35 hours of service per week for at least six months in a plan year. Any police officer, fireman or individual covered under another retirement plan or program sponsored by the employer shall be excluded as an employee under this plan. Employee for this purpose includes officers and officials of the employer whether elected or appointed.

EMPLOYER — The City of St. Marys, Pennsylvania.

EMPLOYMENT — Any period of time in which an employee renders services for the employer for which the employee is entitled to receive compensation. Employment shall exclude any period of time in which services are performed as an independent contractor paid on a contractual or fee basis.

FINAL MONTHLY AVERAGE COMPENSATION — The average monthly compensation earned by the participant during the last or any five years of employment with the employer, whichever is higher. Only full months of active rendering of service shall be included in the averaging period. If any single sum or extraordinary payments are made to the participant which are not directly attributable to active employment during the averaging period including, but not limited to, payment for accumulated sick leave or payment of a back pay damage award, those payments shall be excluded for the purpose of determining the participant's final monthly average compensation.

MINIMUM MUNICIPAL OBLIGATION — The minimum obligation of the municipality as determined by the actuary pursuant to the provisions of the Act.

NORMAL FORM — For the payment of a normal retirement benefit, a late retirement benefit or a disability retirement benefit as follows:

- (1) A monthly benefit for the life of the participant.
- (2) For those participants who die prior to retirement, the participants contributions account. In the event no beneficiary designation is on file at the time of the death of the participant, the payment shall be made in the following order:
 - A. Spouse;
 - B. Living children; and
 - C. The estate of the deceased.

NORMAL RETIREMENT AGE — The date a participant attains 60 years of age and completes at least 20 years of credited service.

NOTICE or ELECTION — A written document prepared in the form specified by the plan administrator and delivered as follows: If such notice or election is to be provided by the employer or the plan administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified notice or election period; or, if such notice or election is to be provided to the employer or the plan administrator, it must be received by the recipient on or before the last day of the specified notice or election period.

PARTICIPANT — Any employee who has commenced participation in this plan in accordance with § 623 of this Subpart, and has not for any reason ceased to participate hereunder.

PENSION FUND — The assets of the plan, which shall be accounted for separately from the assets of any other plans maintained by the employer, whether actually held separately or commingled with the assets of another

plan, and which shall be administered under the supervision of the employer in accordance with the terms of the plan and applicable law.

PLAN — The City of St. Marys Nonuniformed Employees Pension Plan as herein set forth and as it may be amended from time to time hereafter.

PLAN ADMINISTRATOR — The person or persons appointed by the Council for the purpose of supervising and administering the plan. In the event no person is so appointed, the plan administrator shall be the Board.

PLAN YEAR — The consecutive twelve-month period beginning on January 1 and ending on December 31 of each year.

§ 623. Eligibility. [Ord. 176, 11/3/2003, Art. II-A]

1. Eligibility for Participation. Each employee who is hired by the employer on and after the effective date of this addendum shall be eligible to participate in the plan and his benefits shall be determined according to the terms of this addendum. Anyone receiving benefits under this addendum shall be entitled to no benefits under the non-addendum provisions of the plan.
2. Participation Requirements. Each participant whose benefits are determined pursuant to this addendum shall be required to make contributions to the plan, as provided in § 624, Subsection 1, hereof, and shall execute and complete any enrollment or application forms as required by the plan administrator authorizing payroll deduction of such contributions. No employee shall be eligible to participate hereunder until any and all such forms are completed and delivered to the plan administrator.
3. Re-Entry. Each person who first became an employee after the effective date of this addendum and who shall have ceased being an active participant for any reason shall be eligible to participate pursuant to Subsection 1 above as of the date such eligibility requirements are met. If any such employee reenters this plan and again becomes an active participant and has his accumulated contribution account returned to him prior to reentry, said participant shall not be entitled to the pension designated herein until 20 years after reentry, unless he shall return to the pension fund the amount refunded to him, in which even that period of 20 years shall be computed from the time the participant first became an employee.
4. Change in Status. In the event a participant who remains in the service of the employer ceases to be an employee eligible for participation hereunder, or who ceases or fails to make any contributions which are required as a condition of participation hereunder, no further benefit accruals shall occur until the participant again qualifies under such participation requirements.
5. Leave of Absence. During any leave of absence that is not an authorized leave of absence, a participant shall be deemed an inactive participant and shall not be given credit for years of service for vesting, nor shall any

benefits accrue hereunder. If the employee is not reemployed by the expiration of the leave of absence, participation in the plan shall cease on the date on which the leave of absence commenced.

6. Recordkeeping. The employer shall furnish the administrator with such information as will aid the administrator in the administration of the plan. Such information shall include all pertinent data on employees for purposes of determining their eligibility to participate in this plan initially and subsequently.

§ 624. Contributions. [Ord. 176, 11/3/2003, Art. III-A]

1. Employees and Former Participants.
 - A. Employee Contributions. As a condition of participation in the plan, each employee shall contribute to the plan by payroll deduction. Each participant shall contribute an amount equal to 3.5% of the participant's compensation upon which Social Security allowances are payable and 5% of the participant's compensation that is in excess of the amount upon which Social Security allowances are payable. Each employee must have executed the appropriate documents authorizing the employer to deduct the contributions from the pay of the employee. Such contributions shall be required until such time as the employer, consistent with any provisions of applicable law, shall reduce or eliminate the requirement. For a participant who is on an authorized leave of absence, the obligation to contribute hereunder shall be waived during the period of such authorized leave of absence.
 - B. Contributions by Former Participants. Should any former participant, after 20 years of service, be dismissed, voluntarily retired or be in any manner deprived of his or her position or employment, before attaining the age of 60 years, upon continuing a monthly payment to the pension fund equal to the last amount due and paid monthly while an employee, said person shall be entitled to a normal retirement pension, notwithstanding he or she has not attained the age of 60 years at the time of his or her separation from employment, but said pension shall not commence until he or she has attained the age of 60 years.
2. Employer Contributions. The employer shall contribute to the plan the amount determined by the plan's actuary and certified by the Chief Administrative Officer as the amount which is necessary to adequately fund the benefits hereunder in accordance with the requirements of the Act, as provided in § 633 of this Subpart.
3. Gifts. To the extent permitted by law, the plan administrator may accept gifts, outright or in trust, for deposit into the pension fund. The application of such gifts shall be governed by the rules of the plan and such directions prescribed by the donor as are not inconsistent with the rules of the plan and

applicable law. Such gifts shall be applied in the same manner as state aid contributions.

4. No Reversion to the Employer. At no time shall it be possible for the plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the participants and their beneficiaries, except that contributions made by the employer may be returned to the employer if the contribution was made due to a mistake of fact and the contribution is returned within one year of the mistaken payment of the contribution, the plan is terminated, as provided in § 632 of this Subpart or as otherwise permitted by the laws of this Commonwealth.

§ 625. Retirement Benefits. [Ord. 176, 11/3/2003, Art. IV-A]

1. Normal Retirement.
 - A. Normal Retirement. A participant who retires upon attainment of normal retirement age shall be entitled to receive a monthly retirement benefit in an amount equal to 50% of the participant's final monthly average compensation reduced pursuant to Subsection 1B below.
 - B. Reduction for Social Security Benefit. Because the City has entered into an agreement with the Commonwealth of Pennsylvania to place employees eligible for benefits under this addendum under the federal Social Security Act, the pension to be to participants pursuant to this section, after the age and upon that portion of final monthly average compensation on which Social Security benefits are payable, shall be reduced by an amount equal to 40% of the primary insurance amount of Social Security paid or payable to the participant. Such reduction shall be subject to the following provisions:
 - (1) Upon attainment of the age at which Social Security benefits are payable of the age at which Social Security benefits are payable by a beneficiary receiving a pension or upon retirement of a participant after attaining that age, his eligibility to the old age insurance benefit and the primary insurance amount of Social Security upon which the reduction in the pension shall be based, shall be computed in the manner specified in the Federal Social Security Act, except that in determining such eligibility and such amount only wages or compensation for services performed in the employ of the City shall be included.
 - (2) The reduction shall not apply to a pension for total and permanent disability payable under this section.
 - (3) Whenever the amount of the reduction from the pension shall have been once determined, it shall remain fixed for the duration of the pension, except that any decrease in the

primary insurance amount under the Social Security Act shall result in a corresponding decrease in the amount of the reduction from the pension.

- (4) The total sum, including Social Security benefits, to be received upon retirement by a participant shall not be less than the pension that would be paid by the plan in the absence of the participant's participation in the Social Security system.
2. Former Participant Retirement. A former participant who has satisfied all of the conditions set for the in § 624, Subsection 1B, shall be entitled to the normal retirement benefit set forth in Subsection 1A above, upon attaining the age of 60 years.
3. Late Retirement. A participant who retires after the first day of the month coincident with or next following the date on which normal retirement age has been attained shall receive a retirement benefit pursuant to Subsection 1A above in an amount equal to the amount calculated as of the date on which actual retirement occurs.
4. Disability Benefit. A participant who has satisfied the definition of disability as set forth in § 622 after he has completed 10 years of credited service will be entitled to a disability pension equal to the normal retirement benefit set forth in Subsection 1A above. The disability pension shall continue until death or recovery from disability prior to normal retirement age. In the event a disabled employee recovers from disability and returns to the service of the City, his subsequent retirement pension shall be based on service rendered prior to disability plus service rendered after recovery from disability.
5. Application for Benefit. A participant must complete and execute an application for benefit on a form and in the manner prescribed by the plan administrator and deliver the said application to the plan administrator at least 30 days prior to the date on which benefit payments are to commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments or any other benefits shall be due or payable on or before the first day of the month coincident with or next following the date that is 30 days after the date the plan administrator receives the application for benefits.
6. Nonduplication of Benefit. A participant who shall be receiving a monthly retirement benefit under this addendum and who shall resume employment as an employee, shall have benefit payments suspended until the first day of the month coincident with or next following the date such employment shall cease. Such benefit payments shall be adjusted to reflect any previous pension payments received and any additional service or change in compensation.
7. Cessation of Benefit Payments. Any pension benefit payable hereunder shall be payable through and including the later of the month in which such

participant's death occurs. Any survivor annuity payable on or after the participant's death shall be paid through the month in which such surviving annuitant's death occurs.

8. Maximum Benefit Limitations.

A. Notwithstanding any other provision of this addendum, no benefit provided under this addendum attributable to contributions of the City shall exceed, as an annual amount, \$90,000, assuming a single life annuity or qualified joint and survivor annuity (as defined for purposes of Code § 415), subject to cost-of-living adjustments made from time to time by plan amendments or automatically in accordance with and in such amounts as are prescribed in or pursuant to regulations promulgated under Code § 415(d) (which adjustments shall not become effective prior to January 1 of the year for which such adjustment is made) and the rate of benefit accrual shall be frozen or reduced accordingly, subject to the provisions of Subsection 8B below.

B. The limitation provided in Subsection 8A above shall be subject to the following conditions:

(1) For purposes of the above limitation, if the benefit under this addendum is payable in any form other than in the forms described therein (without regard to ancillary benefits) or if the employees contribute to the pension fund or make rollover contributions, the determination as to whether the limitation has been satisfied shall be made by adjusting the benefit so that it is the actuarial equivalent of the benefit described in Subsection 8A. For the purpose of making the adjustment in the form of the benefit to an actuarial equivalent, the interest rate shall not be less than the greater of 5% or the rate specified under this addendum's definition of "actuarial equivalent."

(2) If retirement income benefits commence prior to a participant's attainment of age 62, the limitation contained in Subsection 8A above shall be adjusted to the actuarial equivalent of a \$90,000 annual benefit commencing at age 62. The reduction under this paragraph shall not reduce the limitation of Subsection 8A below \$75,000 if the benefit begins at or after 55, or, if the benefit begins before age 55, the amount which is the equivalent of the \$75,000 limitation for age 55. For the purpose of making this adjustment, the interest rate used shall not be less than the greater of 5% or the rate specified in the plan's definition of "actuarial equivalent." The above adjustment shall not apply with respect to disability or survivor benefits under this addendum.

- (3) If retirement income benefits commence after the participant's attainment of age 65, the limitation described in Subsection 8A above shall be adjusted so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is the actuarial equivalent of a \$90,000 annual benefit commencing at age 65. For the purpose of making this adjustment, the interest rate assumption shall not be greater than the lesser of 5% or the rate specified in this addendum's definition of "actuarial equivalent."
 - (4) Benefits payable to a participant under this section shall be deemed not to exceed the limitation imposed by Subsection 8A if the annual benefit payable to such participant does not exceed \$10,000 (for this year or any prior year), provided such participant has never participated in a defined contribution plan maintained by the employer.
 - (5) In the event a participant (other than a participant receiving disability benefits under the addendum) has less than 10 years of credited service, the limitations described in Subsections 8A and 8B(2) of this section shall be multiplied by a fraction, the numerator of which is the number of years of credited service credited to the participant and the denominator of which is 10.
 - (6) For purposes of applying the limitations of this section, all defined benefit plans of the employer shall be treated as one defined benefit plan, and all defined contributions plans shall be treated as one defined contribution plan.
 - (7) For purposes of the above limitations, the limitation year shall be the plan year, unless such period is otherwise defined in a written resolution adopted by the employer.
9. Incorporation of Code § 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 § 415 and the regulations thereunder (as such apply to governmental plans), the terms of which are specifically incorporated herein by reference.
 10. Qualified Domestic Relations Order Distribution. All rights and benefits, including elections, provided to a participant in this plan shall be subject to the rights afforded to any alternate payee pursuant to a domestic relations order as provided by applicable state law. In evaluating any such domestic relations order, Code § 414(p) may be used as a guide.
 11. Direct Rollover.

- A. Notwithstanding any provisions of this addendum 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 distributee in a direct rollover.
- B. For purposes of this section, the following definitions shall apply:
- (1) An 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 10 years or more; any distribution to the extent such distribution is required under Code § 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
 - (2) An eligible retirement plan is an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a) or a qualified trust described in Code § 401(a) that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
 - (3) A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code § 414(p), are distributees with regard to the interest of the spouse or former spouse.
 - (4) A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
- C. **Effective Date.** This section shall apply to distributions made after December 31, 2001.
- (1) **Modification of Definition of Eligible Retirement Plan.** For purposes of the direct rollover provisions in Subsection 11 above, an eligible retirement plan shall also mean an annuity contract described in § 403(b) of the Code and an eligible plan

under § 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. The definition of "eligible retirement plan" shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in § 414(p) of the Code.

- (2) **Modification of Definition of Eligible Rollover Distribution to Include After-Tax Employee Contributions.** For purposes of the direct rollover provisions in Subsection 11 above, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be paid only to an individual retirement account or annuity described in § 408(a) or (b) of the Code, or to a qualified defined contribution plan described in § 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is not so includable.

12. **Credit for Qualified Military Service.** Notwithstanding any provision of this addendum to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with § 414(u) of the Code.

§ 626. Payment of Benefits. [Ord. 176, 11/3/2003, Art. V-A]

1. "Normal form" shall mean for the payment of a normal retirement benefit, a late retirement benefit or a disability retirement benefit as follows:
- A. A monthly annuity for the life of the participant.
 - B. For those participants who die without entitlement to a retirement benefit, there shall be paid to the beneficiary the accumulated contributions account. In the event no beneficiary designation is on file at the time of the death of the participant, the payment shall be made in the following order:
 - (1) Spouse;
 - (2) Living children; and
 - (3) The estate of the deceased.
2. **Commencement Benefits.** A participant may elect to commence receiving distribution of retirement benefits as of the first day of the month coincident

with or next following the date on which retirement occurs with an eligibility to receive benefits.

3. Required Distributions.

A. Notwithstanding any other provision of this addendum, the entire benefit of any participant who becomes entitled to benefits prior to his death shall be distributed either:

- (1) Not later than the required beginning date.
- (2) Over a period beginning not later than the required beginning date and extending over the life of such participant or over the lives of such participant and a designated beneficiary (or over a period not extending beyond the life expectancy of such participant, or the joint life expectancies of such participant and a designated beneficiary).

If a participant who is entitled to benefits under this addendum dies prior to the date when his entire interest has been distributed to him after distribution of his benefits has begun in accordance with Subsection 2 above, the remaining portion of such benefit shall be distributed at least as rapidly as under the method of distribution being used under Subsection 2 above as of the date of his death.

B. If a participant who is entitled to benefits under this addendum dies before distribution of his benefit has begun the entire interest of such employee shall be distributed within five years of the death of such employee, unless the following sentence is applicable. If any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary, such portion shall be distributed over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and such distributions begin not later than one year after the date of the employee's death or such later date as provided by regulations issued by the Secretary of the Treasury, then for purposes of the five year rule set forth in the preceding sentence, the benefit payable to the beneficiary shall be treated as distributed on the date on which such distributions begin. Provided, however, that notwithstanding the preceding sentence, if the designated beneficiary is the surviving spouse of the participant, then the date on which distributions are required to begin shall not be earlier than the date upon which the employee would have attained age 70 1/2 and, further provided, if the surviving spouse dies before the distributions to such spouse begin, this subsection shall be applied as if the surviving spouse were the employee.

C. For purposes of this section, the following definitions and procedures shall apply:

- (1) "Required beginning date" shall mean April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 1/2, or the calendar year in which the employee retires.
 - (2) The phrase "designated beneficiary" shall mean any individual designated by the employee under this plan according to its rules.
 - (3) Any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child's reaching majority (or other designated event permitted under regulations issued by the Secretary of the Treasury).
 - (4) For purposes of this section, the life expectancy of an employee and/or the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.
4. Personal Right of Participant. Each participant's right to receive any benefits hereunder is personal and expires on such participant's death. No heir, legatee, devisee, beneficiary, assignee or other person claiming by or through a participant shall have any interest in any benefits hereunder unless clearly and expressly so provided by the terms of this addendum. A participant's election, failure to file an election hereunder or revocation of an election shall be final and binding on all persons.

§ 627. Termination of Employment. [Ord. 176, 11/3/2003, Art. VI-A]

1. Rights of Terminated Employees. A participant who shall cease to be an employee except as otherwise hereinbefore provided, shall be limited to those rights under this addendum contained in the following subsections of this section.
2. Distribution of Accumulated Contributions. A participant whose employment ceased for any reason before he becomes entitled to a pension, he shall be entitled to receive a distribution of his accumulated contributions account. Upon receipt of such accumulated contributions account, said participant, survivor and his or her beneficiary shall not be entitled to any further payments from the plan.
3. Forfeiture. A participant who terminates employment with the employer at a time when not vested in any portion of the accrued benefit derived from employer contributions shall cease to be a participant hereunder and shall not be entitled to any benefits under this addendum derived from not vested employer contributions.

§ 628. Death Benefits. [Ord. 176, 11/3/2003, Art. VII-A]

1. Death Benefit. Except as hereinafter set forth, no benefit shall be payable hereunder upon or by reason of the death of any participant.

§ 629. Administration. [Ord. 176, 11/3/2003, Art. VIII-A]

1. § 608 of the City of St. Marys Nonuniformed Employees Pension Plan Controls. The provisions set forth in § 608 of the City of St. Marys Nonuniformed Employees Pension Plan are hereby incorporated by reference as if set forth fully herein.

§ 630. The Pension Fund. [Ord. 176, 11/3/2003, Art. IX-A]

1. § 609 of the City of St. Marys Nonuniformed Employees Pension Plan Controls. The provisions set forth in § 609 of the City of St. Marys Nonuniformed Employees Pension Plan are hereby incorporated by reference as if set forth fully herein.

§ 631. Amendment. [Ord. 176, 11/3/2003, Art. X-A]

1. § 610 of the City of St. Marys Nonuniformed Employees Pension Plan Controls. The provisions set forth in § 610 of the City of St. Marys Nonuniformed Employees Pension Plan are hereby incorporated by reference as if set forth fully herein.

§ 632. Plan Termination. [Ord. 176, 11/3/2003, Art. XI-A]

1. § 611 of the City of St. Marys Nonuniformed Employees Pension Plan Controls. The provisions set forth in § 611 of the City of St. Marys Nonuniformed Employees Pension Plan are hereby incorporated by reference as if set forth fully herein.

§ 633. Provisions to Comply with the Municipal Pension Plan Funding Standard and Recovery Act of 1984. [Ord. 176, 11/3/2003, Art. XII-A]

1. § 612 of the City of St. Marys Nonuniformed Employees Pension Plan Controls. The provisions set forth in § 612 of the City of St. Marys Nonuniformed Employees Pension Plan are hereby incorporated by reference as if set forth fully herein.

§ 634. Miscellaneous. [Ord. 176, 11/3/2003, Art. XIII-A]

1. § 613 of the City of St. Marys Nonuniformed Employees Pension Plan Controls. The provisions set forth in § 613 of the City of St. Marys Nonuniformed Employees Pension Plan are hereby incorporated by reference as if set forth fully herein.

§ 635. Applicable Provisions of the Internal Revenue Code. [Ord. 213, 11/7/2005, Art. XIV; as amended by Ord. 247, 12/15/2008]

Section 614 of the City of St. Mary's Nonuniformed Employees Pension Plan Controls. The provisions set forth in § 614 of the City of St. Marys Nonuniformed Employees Pension Plan, as it may be amended from time to time, are hereby incorporated by reference as if fully set forth herein.

PART 7
POLICY AND PROCEDURE FOR CONSULTING ENGINEERING
SERVICES

§ 701. Purpose. [Ord. 57, 11/18/1996, § 1]

The procedures set forth in this Part shall be used by the City from time to time in the selection of consulting engineers for public works projects within the City involving the Pennsylvania Department of Transportation.

§ 702. City Manager to Make Determination of Need to Hire Consulting Engineer. [Ord. 57, 11/18/1996, § 2]

Upon being notified of the need to initiate engineering services on a project, the City Manager shall analyze the City forces to determine if the services of a consulting firm are necessary. The analysis regarding the need to engage consultants will be documented in the project file.

§ 703. Scope of Work. [Ord. 57, 11/18/1996, § 3]

Before entertaining proposals for engineering services, the City Manager shall prepare a detailed scope of work, describing the project, its location and the services required.

§ 704. General Request for Letters of Interest Form. [Ord. 57, 11/18/1996, § 4]

The general request for letters of interest form prepared by the Pennsylvania Department of Transportation for the particular program will be used. The request for letters of interest shall be advertised in a newspaper of local daily circulation and in the Pennsylvania Bulletin. At the time the advertisement is forwarded to the newspaper for publication, a copy thereof shall be sent to: Consulting Engineers Council of Pennsylvania, 2001 North Front Street, Suite 337, Harrisburg, Pennsylvania 17102.

§ 705. Advertisement for Consulting Firms. [Ord. 57, 11/18/1996, § 5]

Advertisements for consulting firms shall include the following information:

- A. The location and brief description of the required engineering services.
- B. A statement encouraging responses from small firms, minority firms and firms who have not previously performed work for the City.
- C. All significant evaluation factors, including price or costs, and their relative importance.
- D. A cutoff time for response to the advertisement.
- E. The special requirements of PennDOT Forms 254 and 255, when required.

§ 706. Qualification Committee. [Ord. 57, 11/18/1996, § 6]

A qualification committee, consisting of the City Manager, his administrative assistant and a Council member or other department head selected by the City Manager, shall review the qualifications of those who submit letters of interest. Documentation of the consultants considered and the committee's recommendation shall be maintained in the project file. The committee shall document the reasons for their recommendations. The committee shall, whenever possible, recommend three consultants from the list of those who submit letters of interest.

§ 707. City Council to Review Recommendations From Qualification Committee. [Ord. 57, 11/18/1996, § 7]

City Council shall review the recommendations of the qualification committee. City Council shall select one or more firms to be recommended to the Department to prepare a proposal. Upon receipt of the approval of the consultants from the Department, the approved consultants shall be requested to provide a proposal. The request for a proposal shall include a brief written scope of work and invite the consultant(s) to a scope of work meeting, at which time the project will be explained in detail. Representatives from the Department will be invited to the meeting. The consultant(s) will be advised of the applicable federal regulations, review procedures, contract format and administration for the project. A copy of Division One of the Department's Form 442 will be supplied to the consultant(s) with the understanding that the specifications will be made a part of the contract. The City's policy on limitations on profit and overhead factors, etc., will be explained. The consultant(s) will be given a name and phone number to contact in case of any questions during the preparation of any proposal.

§ 708. Receipt of Proposal; Qualification Committee to Review. [Ord. 57, 11/18/1996, § 8]

Upon receipt of the proposal from the consultant(s), the qualification committee shall review the technical content and make a recommendation for the consultant to be selected. The committee shall document the reasons for their recommendation.

§ 709. City Council to Select Consulting Firm. [Ord. 57, 11/18/1996, § 9]

City Council shall review the recommendation of the qualification committee and select the firm to be recommended to the Pennsylvania Department of Transportation as the consultant to perform the engineering services. Documentation supporting a selection of a particular consultant shall be forwarded to the Pennsylvania Department of Transportation when requesting approval of a consultant.

§ 710. Pre-Award Evaluation. [Ord. 57, 11/18/1996, § 10]

The Department will conduct the pre-award evaluation and schedule and hold negotiations, if necessary.

§ 711. Engineering Services Agreement. [Ord. 57, 11/18/1996, § 11]

The engineering services agreement will be prepared by the Department and circulated for signatures.

§ 712. City Council to Notify Consultant When Work May Begin. [Ord. 57, 11/18/1996, § 12]

The City shall advise the consultant that it cannot begin he work until the federal authorization has been obtained and notification of this fact has been received by the City.

§ 713. City Council to Designate Person to Perform Liaison Activities. [Ord. 57, 11/18/1996, § 13]

City Council will designate a person to perform liaison activities between the City, the Department and the consultant.

§ 714. Reimbursement Agreement. [Ord. 57, 11/18/1996, § 14]

The City will enter into a reimbursement agreement with the Department setting forth the methods for reimbursing the federal funds to the City. The reimbursement agreement shall be prepared by the Department.

PART 8
POLICE PENSION PLAN

§ 801. Definitions. [Ord. 152, 1/21/2002, Art. I; as amended by Ord. 206, 6/20/2005; and by Ord. 216, 1/16/2006]

ACCRUED BENEFIT — As of any given date, the benefit determined under § 804, Subsection 2, of this Part, calculated on the basis of final monthly average salary as of the date of determination and multiplied by a fraction, the numerator of which shall be the participant's or new plan participant's aggregate service determined as of such date and the denominator of which shall be the projected aggregate service of the participant (or new plan participant) as if the participant (nor new plan participant) continues in employment until attainment of normal retirement age. Notwithstanding anything contained herein to the contrary, in no event shall the fraction exceed one.

ACCUMULATED CONTRIBUTIONS — The total amount contributed by participant or new plan participant to this fund or its predecessor by way of payroll deduction or otherwise. In the case of participants, accumulated contributions shall include interest credited at 4 1/2% compounded annually. Interest shall be credited in the form of a simple interest rate from the first day of the plan year immediately following the date on which the contributions were paid to the first day of the month preceding the date that a refund of accumulated contributions under § 807, Subsection 2, of this Part shall be paid or payment of benefits shall commence or a payment at death pursuant to § 806, Subsection 3, of this Part. In the case of new plan participants, accumulated contributions shall not include any interest.

ACT — The Municipal Pension Plan Funding Standard and Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. § 895.101 et seq.

ACTUARIAL EQUIVALENT — Two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by use of a mortality table selected by the plan actuary at 7 1/2% interest.

ACTUARY — The person, partnership, association or corporation which at any given time is serving as actuary; provided, that such actuary must be an approved actuary as defined in the Act.

AGGREGATE SERVICE — The total period or periods of the participant's or new plan participant's employment with the employer whether or not interrupted. Notwithstanding the preceding sentence, should any such participant or new plan participant receive a distribution of accumulated contributions with respect to a period of employment, such period of employment shall not be included in aggregate service thereafter unless, at the commencement of the next period of employment, the participant or new

plan participant repays to the fund the amount of such withdrawal with interest. For purposes of this section, interest shall accrue as of the date the employee receives a refund of accumulated contributions and shall be computed at the same rate and in the same manner as described in "accumulated contributions" above.

BASIC MONTHLY EARNINGS —

- A. The total compensation of the participant paid by the employer, including salary or hourly wages, overtime pay, shift differential, holiday pay, rank differential, longevity pay, funeral leave, jury duty or similar form of paid leave, "acting" or "out of grade" pay and extra work pay and shall also include payments received pursuant to the Heart and Lung Act.
- B. Compensation for a new plan participant shall mean base remuneration plus longevity payments but shall exclude extra or additional forms of remuneration such as overtime that are not paid at regular periodic intervals. For both participants and new plan participants, compensation for such purposes does not include severance pay, refunds of expenses, back pay damage awards, clothing or uniform allowances, clothing or uniform cleaning monies, equipment allowances or monies or lump-sum payments made for:
 - A. Accumulated sick days;
 - B. Accumulated vacation days;
 - C. Accumulated personal days; or
 - D. Any other reason.
- C. The compensation used in determining an employee's basic monthly earnings shall be limited to the amount specified pursuant to Code § 401(a)(17), as adjusted under Code § 415(d), which amount shall be \$170,000 as of the restatement date.

BENEFICIARY — The person or entity designated by the participant to receive a refund of the participant's accumulated contributions should the participant die prior to becoming entitled to a retirement benefit. In the event that a participant does not designate a beneficiary or the beneficiary does not survive the participant, the beneficiary shall be the surviving spouse, or if there is no surviving spouse, the issue, per stirpes, or if there is no surviving issue, the estate; but if no personal representative has been appointed, to those persons who would be entitled to the estate under the intestacy laws of the Commonwealth of Pennsylvania if the participant had died intestate and a resident of Pennsylvania.

CHIEF ADMINISTRATIVE OFFICER — The person designated by the City who has the primary responsibility for the execution of the administrative affairs for the plan.

CODE — The Internal Revenue Code of 1986, as amended.

COMMITTEE — The Police Pension Committee as determined pursuant to § 808, Subsection 7, of this Part.

COUNCIL — The Council of the City of St. Marys.

DISABILITY DATE — The date when a participant or new plan participant is determined by the plan administrator to be incapacitated due to total and permanent disability, or the date when the participant's or new plan participant's employment terminates due to such total and permanent disability, if later. A participant or new plan participant who does not agree with the determination of the plan administrator with regard to disability date shall have the right to the appeal procedure outlined in § 808, Subsection 6, of this Part.

EMPLOYEE — Any individual employed by the employer on a regular, full-time basis as a member of the employer's police force.

EMPLOYER — City of St. Marys, Elk County, Pennsylvania. For the calculation of term of employment, employer shall include Benzinger Township and St. Marys Borough, the predecessor municipal entities which merged to form the City of St. Marys, a third class City.

EMPLOYMENT — For the purpose of determining aggregate service:

- A. The period of time for which an employee is directly or indirectly compensated or entitled or entitled to compensation by the employer for the performance of duties as a police officer with the condition that a regularly scheduled forty-hour work week shall be required.
- B. Any period of time for which an employee is paid a fixed, periodic amount in the nature of salary continuation payments for reasons other than the performance of duties (such as vacation, holidays, sickness, entitlement to benefits under workers' compensation or similar laws), either directly by the employer or through a program to which the employer has made contributions on behalf of the employee.
- C. Any period during which an employee is entitled to disability benefits under this plan, provided that the employee returns to employment within three months of the date on which it is determined that he is no longer totally and permanently disabled if such determination occurs prior to the date a participant attains normal retirement age.
- D. Any period of voluntary or involuntary military service with the armed forces of the United States of America, provided that the participant or new plan participant has been employed as a regular, full-time member of the employer's police force for a period of at least six months immediately prior to the period of military service; and the participant or new plan participant returns to employment within six months following his discharge from military service or within such longer period during which his employment rights are guaranteed by

applicable law or under the terms of a collective bargaining agreement with the employer.

FINAL MONTHLY AVERAGE SALARY —

- A. The average monthly salary earned by the participant and paid by the employer during the final 36 months immediately preceding termination of active employment and for new plan participants, the higher of monthly salary immediately preceding termination of active employment or the highest average annual salary received during any five years of service. "Salary" shall mean the total compensation the participant was paid by the employer, including salary or hourly wages, overtime pay, shift differential, holiday pay, rank differential, longevity pay, funeral leave, jury duty or similar form of paid leave, acting or out-of-grade pay and extra work pay and shall also include payments received pursuant to the Heart and Lung Act. With regard to new plan participants, "salary" shall mean base remuneration plus longevity payments but shall exclude extra or additional forms of remuneration such as overtime, that are not paid at regular periodic intervals. Salary for both participants and new plan participants does not include severance pay, refunds of expenses, back pay damage awards, clothing or uniform allowances, clothing or uniform cleaning monies, equipment allowances or monies or lump-sum payments made for:
- A. Accumulated sick days;
 - B. Accumulated vacation days;
 - C. Accumulated personal days; or
 - D. Any other reason.
- B. Final monthly average salary shall be calculated by taking into account only those periods during which an employee receives salary, as that term is defined in this section. Therefore, for example, the final monthly average salary for a participant who receives disability benefits from this plan or who is voluntarily or involuntarily serving in the United States armed forces during the final 36 months of aggregate service shall be based on the period during which the employee last received salary (as defined in the preceding paragraph) from the employer.
- C. Salary used to determine final monthly average salary shall be limited to the amount specified in accordance with Code § 401(a)(17), as adjusted under Code § 415(d), which amount shall be \$170,000 as of the restatement date.

INSURER or INSURANCE COMPANY — A legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.

NEW PLAN PARTICIPANT — An employee who was hired on or after January 1, 1995, and who has met the eligibility requirements to participate

in the plan as provided in § 802, Subsection 1, of this Part and who has not for any reason ceased to be a new plan participant hereunder.

NORMAL RETIREMENT AGE — The date on which the participant or new plan participant has completed 20 years of aggregate service with the employer and has attained age 50.

PARTICIPANT — An employee who was hired prior to January 1, 1995, and who has met the eligibility requirements to participate in the plan as provided in § 802, Subsection 1, of this Part and who has not for any reason ceased to be a participant hereunder.

PENSION FUND or FUND — The police pension fund administered under the terms of this plan and which shall include all money, property, investments, policies and contracts standing in the name of the plan.

PLAN — The plan set forth herein, as amended from time to time and designated as the City of St. Marys Police Pension Plan.

PLAN ADMINISTRATOR — The individual appointed for the purpose of supervising and administering the provisions of the plan. In the event that no such appointment is made, the plan administrator shall be the Council.

PLAN YEAR — The twelve-month period beginning on January 1 and ending on December 31 of each year.

POLICY or CONTRACT — A retirement annuity or retirement income endowment policy (or a combination of both) or any other form of insurance contract or policy which shall be deemed appropriate in accordance with the provisions of applicable law.

RESTATEMENT DATE — January 1, 2002, the date upon which this amendment and restatement of the plan becomes effective.

RETIREMENT DATE — The first day of the month coincident with or next following the date on which the participant or new plan participant retires from employment or the first day of any month thereafter on which the payment of benefits pursuant to this plan shall commence.

SERVICE INCREMENT — For every complete year of service served before the participant or new plan participant attains the age of 65 (including any military service purchased pursuant to the terms of this plan) in excess of 20 years of aggregate service, a participant or new plan participant shall be entitled 1/40 of the normal retirement benefit to a maximum of \$500 per

month, provided that he has made the required employee contributions required by § 803, Subsection 1.³

SUPPLEMENTAL SERVICE INCREMENT — An additional monthly service increment in the amount of \$400 payable to any participant who on or after September 1, 2002, and before January 1, 2004, retires with 31 or more years of completed service. As required by Section 4303(6) of the Third Class City Code, 53 P.S. § 39303(6), only years of service completed by a participant prior to attaining the age of 65 shall count for eligibility purposes. Any participant eligible for this supplemental service increment shall, prior to receiving such monthly benefit, pay into the fund an amount equal to \$48 for each completed year of pensionable service in excess of 25. This benefit shall not be available to any member of the City's police bargaining unit unless and until it has been properly bargained for in accordance with the Policemen and Firemen Collective Bargaining Act, Act of June 24, 1968, P.L. 237, No. 111, as amended, 43 P.S. § 217.1-10 ("Act 111").

TOTAL AND PERMANENT DISABILITY — A condition of physical or mental impairment due to which a participant or new plan participant is unable to perform the usual and customary duties of employment, which is reasonably expected to continue to be permanent. A condition shall not be treated as a total and permanent disability unless such condition is a direct result of and occurs in the line of duty of employment.

§ 802. Participation in the Plan. [Ord. 152, 1/21/2002, Art. II]

1. Eligibility Requirements. Each employee who is employed as a regular, full-time permanent member of the police department of the employer shall participate herein as of the date on which such employee's employment first commences or recommences.
2. Notification of Plan Administrator. The Council shall furnish the plan administrator with written notification of the appointment of any new full-time permanent employee who is eligible for participation hereunder within 60 days of the date of such appointment. This notification shall not affect eligibility which shall be as of the commencement of full-time permanent employment pursuant to Subsection 1 of this section.
3. Designation of Beneficiary. Any new, full-time employee who becomes a participant hereunder shall provide a written notice which designates the beneficiary or beneficiaries to the plan administrator at the time participation commences. [The beneficiary shall receive a refund of accumulated contributions (§ 801 of this Part) if such refund is payable pursuant to § 806, Subsection 3, of this Part.] The participant's election of

³Editor's Note: In amending this section, Ord. 216 provided that the section would be effective January 1, 2006, for participants and new plan participants who are employed as an employee of the employer (as those terms are defined in the Plan) on or after January 1, 2006. It also provided that the amendments made by Ord. 216 shall have no effect on the pension entitlement of any employee who terminated employment as a police officer with the City of St. Marys before January 1, 2006.

any such beneficiary or beneficiaries, at any time provided the participant provides the plan administrator with written notice of the changed designation.

§ 803. Contributions. [Ord. 152, 1/21/2002, Art. III; as amended by Ord. 216, 1/16/2006]

1. Participant Contributions. Each participant shall, as a requirement of participation, pay regular contributions to the pension fund in an amount equal to 5% of the participant's basic monthly earnings. Each new plan participant shall, as a requirement of participation, pay regular contributions to the pension fund in an amount not to exceed 4% of the new plan participant's basic monthly earnings and an additional amount not to exceed 1% of the new plan participant's basic monthly earnings for survivor's benefits. Each participant and new plan participant shall pay \$5 per month until the contributor has reached age 65 for the service increment. Each participant or new plan participant shall complete the necessary forms to authorize the payment of participant or new plan participant contributions by way of payroll deduction.⁴
2. Reduction of Participant Contributions. Notwithstanding the preceding Subsection 1 of this section, if an actuarial study performed by the actuary (§ 801 of this Part) shows that the condition of the pension fund is such that payments into the pension fund by participants may be reduced below the minimum percentages prescribed in Subsection 1 of this section, or may be eliminated, and that if such payments are reduced or eliminated, contributions by the employer will not be required to keep the pension fund actuarially sound, the employer may, on an annual basis, by ordinance or resolution, reduce or eliminate payments into the pension fund by participants.
3. Payments of State Aid. Payments of general municipal pension system state aid, or any other amount of state aid received in accordance with the Act from the Commonwealth of Pennsylvania, which are received by the employer and deposited into the pension fund governed by this plan shall be used as follows:
 - A. To reduce the amortized unfunded liability, or after such liability has been funded.
 - B. To apply against the annual obligation of the employer for future service costs, or to the extent that the payment may be in excess of such obligation.

⁴Editor's Note: In amending this section, Ord. 216 provided that the section would be effective January 1, 2006, for participants and new plan participants who are employed as an employee of the employer (as those terms are defined in the Plan) on or after January 1, 2006. It also provided that the amendments made by Ord. 216 shall have no effect on the pension entitlement of any employee who terminated employment as a police officer with the City of St. Marys before January 1, 2006.

- C. To reduce participant contributions hereunder.
4. Employer Contributions. The remainder of the annual contributions required under the provisions of the Act, as determined by the actuary in accordance with the Act, shall become the obligation of the employer and shall be paid into the pension fund by annual appropriations.
 5. Gifts, Grants, Etc. Council is authorized to take by gift, grant, devise or otherwise any money or property, real or personal, for the benefit of the plan and cause the same to be held as a part of the pension fund. The care, management, investment and disposal of such amounts shall be vested in Council or its delegate as the plan administrator, subject to the direction of the donor and not inconsistent with applicable laws and the terms of the plan.

§ 804. Retirement Benefits. [Ord. 152, 1/21/2002, Art. IV; as amended by Ord. 206, 6/20/2005; and by Ord. 216, 1/16/2006]

1. Normal Retirement. Each participant or new plan participant shall be entitled to normal retirement benefits after retirement on or after the participant or new plan participant has attained normal retirement age.
2. Normal Retirement Benefit. Each participant or new plan participant who shall become entitled to a benefit pursuant to Subsection 1 of this section shall receive a benefit paid monthly in an amount equal to 50% of final monthly average salary. The normal retirement benefit shall be computed as the sum of:
 - A. Any pension benefits from pensions plans heretofore established by a private organization or association for the members of the police force but only to the extent that the Commonwealth of Pennsylvania or any of its municipalities shall have contributed to such pension plan monies raised by taxation; and
 - B. An amount from the plan to the extent necessary to make the total benefit paid in any given month equal to 50% of final monthly average salary.
3. Late Retirement. A participant or new plan participant may continue to work beyond the attainment of normal retirement age subject to the employer's rules and regulations regarding retirement age. If a participant or a new plan participant who has met the requirements of Subsection 1 of this section continues to work beyond normal retirement age, there shall be no retirement benefits paid until employment ceases and retirement begins. The retirement benefit of a participant or new plan participant who retires after attainment of normal retirement age shall be calculated in accordance with Subsection 2 of this section on the basis of the final monthly average salary as of such participant's or new plan participant's actual retirement date.

4. Service Increment Benefit. An additional amount of monthly retirement benefit will be payable to participants and new plan participants in the amount of 1/40 of the normal retirement benefit for each year of aggregate service in excess of 20 years of aggregate service completed before attainment of age 65, up to a maximum of \$500 a month. This benefit shall be subject to all provisions of 53 P.S. § 39303, including the manner of calculating service increments set forth in 53 P.S. § 39303(b)(1).⁵
5. Payment of Benefits. Retirement payments shall be payable as of the participant's or new plan participant's retirement date and the first day of each month thereafter during the participant's lifetime.
6. Cost-of-Living Increase. Participants or new plan participants who shall receive a retirement benefit pursuant to Subsection 2 of this section shall be entitled to receive an annual cost-of-living adjustment to the amount of benefit payable to such participant or new plan participant under Subsection 2 of this section without regard to any amount paid pursuant to Subsection 4 of this section, or § 801 of this Part. Such cost-of-living adjustment shall be determined in accord with Act 600 (as modified by Subsection 6E below) and shall not be in excess of any of the following limitations:
 - A. The percentage increase in the consumer price index from the year in which the participant was last employed as an employee of the employer.
 - B. The total retirement benefits payable under this plan shall not exceed 75% of the participant's or new plan participant's final monthly average salary.
 - C. The total cost-of-living increase shall not exceed 30% of the participant's or new plan participant's retirement benefit under this plan.
 - D. The cost-of-living increase shall not impair the actuarial soundness of the pension fund.
 - E. No cost-of-living increase shall be granted to a new plan participant to the extent it would cause the total benefit hereunder to exceed 1/2 of the current salary being paid patrolmen of the highest pay grade.
7. Assignment. The pension benefit payments prescribed herein shall not be subject to attachment, execution, levy, garnishment or other legal process and shall be payable only to the participant or new plan participant or designated beneficiary and shall not be subject to assignment or transfer.

⁵Editor's Note: In amending this section, Ord. 216 provided that the section would be effective January 1, 2006, for participants and new plan participants who are employed as an employee of the employer (as those terms are defined in the Plan) on or after January 1, 2006. It also provided that the amendments made by Ord. 216 shall have no effect on the pension entitlement of any employee who terminated employment as a police officer with the City of St. Marys before January 1, 2006.

8. Retired Participants. Any participant or new plan participant who shall have retired prior to the restatement date shall not have the benefit altered in any way by the provisions of this amended and restated plan, except where otherwise expressly provided herein. Such retired participants or new plan participants shall continue to have their benefits governed by the terms of the plan in effect on their date of retirement.

§ 805. Disability Benefit. [Ord. 152, 1/21/2002, Art. V]

1. Disability. A participant or new plan participant who shall incur a total and permanent disability shall be entitled to a disability benefit as of the disability date.
2. Disability Benefit.
 - A. The disability benefit payable to a participant or new plan participant who meets the requirement above is an immediate monthly benefit equal to 50% of his final monthly average salary as of the last day he was actively at work for the employer. The disability benefit of participants shall be offset, or reduced, for federal social security and state workmen's compensation received to the extent that the federal social security and state workmen's compensation exceeds 50% of his final monthly average salary. The disability benefit of a new plan participant shall be offset or reduced by any state workmen's compensation received by the new plan participant.
 - B. Any participant who has less than 10 years of service and is totally disabled due to injuries or mental incapacities not in the line of duty and is unable to perform the duties of police officer, shall be entitled to a pension of 25% of the participant's final monthly average salary. For death or injuries received after 10 years of service, the pension shall be 50% of the participant's final monthly average salary.
3. Payment of Disability Benefits.
 - A. Disability payments shall be made monthly as of the first day of each month, commencing as of the first day of the month immediately following or coincident with the participant's or new plan participant's disability date and continuing until the earliest of the death of the participant or new plan participant, or cessation of total and permanent disability.
 - B. A participant or new plan participant who shall fail to return within three months to employment as an employee of the employer upon cessation of total and permanent disability shall be deemed to have terminated employment as of the disability date, shall not be entitled to any refund of accumulated contributions pursuant to § 807, Subsection 2, of this Part, and shall not be entitled to any other benefits under the plan on account of any aggregate service.

4. Verification of Disability Benefits. Disability benefits awarded because of total and permanent disability shall be terminated:
 - A. If the employer shall determine, on the basis of a medical examination by a physician acceptable to the employer (and agreed to by the participant or new plan participant) that the participant or new plan participant has sufficiently recovered to return to employment. If the employer and the participant or new plan participant cannot agree on a physician they shall each select a physician who will then select a third physician who will make a final binding decision.
 - B. If the participant or new plan participant refuses to undergo a medical examination prior to attainment of normal retirement age, which may be ordered by the employer or the plan administrator, provided that the participant or new plan participant may not be required to undergo a medical examination more often than once every 12 months.
 - C. If the participant or new plan participant is employed in any capacity as a full-time or part-time police officer prior to attainment of normal retirement age.

§ 806. Death Benefits. [Ord. 152, 1/21/2002, Art. VI]

1. Death of Participant. Upon the occurrence of the death of a participant or new plan participant, there shall be benefits payable in accord with the following subsections of this section.
2. Survivor Benefit. If a participant or a new plan participant shall die after receipt of retirement benefits has commenced under this plan, the participant's spouse shall be entitled to 100% of the monthly pension and monthly incremental pension benefit (under § 804, Subsection 4, of this Part) which the retiree was receiving at the time of death and the new plan participant's spouse shall be entitled to receive 100% of the monthly pension and monthly incremental pension benefit (under § 801 of this Part) which the retiree was receiving at the time of his death. In the event of a member's death before retirement, the participant's or new plan participant's spouse shall be entitled to 100% of the amount of the benefit the member was eligible to receive on the date of death. Such a survivor benefit shall be paid in monthly installments. The survivor benefit shall be paid to the surviving spouse until the date of death of the surviving spouse. Upon the death of a participant's or new plan participant's surviving spouse, the survivor benefit shall be paid monthly in equal shares to the surviving children of the deceased participant or new plan participant until the death or attainment of age 18 of each child. The shares payable to the surviving children shall be adjusted as each child ceases to be eligible to receive a share of the benefit hereunder due to death or attainment of age 18.

3. **Death of Participant or New Plan Participant Prior to Retirement.** If a participant or new plan participant shall die before payment of a benefit has commenced and without eligibility for payment of a survivor benefit under Subsection 2 of this section, this Subsection 3 shall control. In the case of a participant, the beneficiary shall be eligible to receive a single sum payment in an amount equal to the accumulated contributions of the participant as of the date of death of the participant. In the case of a new plan participant, his or her estate shall be eligible to receive a single sum payment in an amount equal to the accumulated contributions of the new plan participant as of the date of death of the new plan participant. Upon receipt of such accumulated contributions, said participant, beneficiary, new plan participant or estate shall not be entitled to any further payments from the plan.

§ 807. Termination of Employment. [Ord. 152, 1/21/2002, Art. VII]

1. **Rights of Terminated employees.** A participant or new plan participant who shall cease to be an employee except as otherwise hereinbefore provided shall have all interest and rights under this plan limited to those contained in the following subsections of this section.
2. **Refund of Accumulated Contributions.** A participant or new plan participant whose employment with the employer shall terminate for any reason other than death or total and permanent disability prior to attainment of normal retirement age shall be entitled to receive a refund of accumulated of contributions. Upon receipt of such accumulated contributions, said participant, new plan participant, beneficiary or estate shall be entitled to no further payments or benefits from the plan.
3. **Deferred Vested Benefit.**
 - A. A participant who has completed at least 12 years of aggregate service shall be entitled to elect to receive a deferred vested benefit in lieu of a refund of accumulated contributions under Subsection 2 of this section. Such a deferred vested benefit shall be in an amount equal to the accrued benefit as of the date employment terminates and shall commence as of the first day of the month coincident with or next following the date on which normal retirement age would be attained if the participant continued in employment until such date. The participant shall be entitled to such a vested benefit by filing with the plan administrator within 90 days of the date he ceases to be a full-time employee a written notice of his intention to vest, and he shall fail to file such notice, he shall receive a refund of his accumulated contributions under Subsection 2 of this section.
 - B. A new plan participant, after having completed 12 years of full-time service, shall be entitled to meet his or her retirement benefits subject to the conditions stated below, and if he or she shall fail to satisfy

these conditions, he or she shall receive a refund of accumulated contributions under Subsection 2 of this section.

- (1) The new plan participant must file with the plan administrator a written notice of his or her intention to vest.
- (2) The new plan participant must include in the notice the date the member intends to terminate his or her service as a full-time police officer.
- (3) The termination date shall be at least 30 days later than the date of notice to vest.
- (4) The new plan participant must be in good standing with the police department on the date of notice to vest.
- (5) The administrator shall indicate on the notice to vest the final monthly average salary of the new plan participant as of the date of said notice to vest.

C. Upon reaching the date which would have been the new plan participant's retirement date had he or she continued his or her full-time employment with the police department, the new plan participant shall notify the administrator, in writing, that he or she desires to collect his or her pension. The amount of retirement benefits he or she is entitled to receive under this Subsection 3 shall be computed as follows:

- (1) The initial determination of the base retirement benefits shall be computed on the final monthly average salary indicated on the notice to vest.
- (2) The portion of the base retirement benefits due shall be determined by applying to the base amount the percentage that his or her years of service actually rendered bears to the years of service which would have been rendered had the member continued to be employed by the department until his or her normal retirement age.

§ 808. Administration. [Ord. 152, 1/21/2002, Art. VIII]

1. Plan Administrator. The plan administrator shall be the individual appointed by Council who shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this plan. The plan administrator may delegate authority to act on its behalf to any persons it deems appropriate. If a plan administrator is not appointed, Council shall be the plan administrator.

2. Authority and Duties of the Plan Administrator. The plan administrator shall have full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the plan. The interpretation or construction placed upon any term or provision of the plan by the plan administrator or any action of the plan administrator taken in good faith shall be final and conclusive upon all parties hereto, whether employees, participants, new plan participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the plan administrator is authorized:
 - A. To construe this plan.
 - B. To determine all questions affecting the eligibility of any employee to participate herein.
 - C. To compute the amount and source of any benefit payable hereunder to any participant, new plan participant or beneficiary.
 - D. To authorize any and all disbursements.
 - E. To prescribe any procedure to be followed by any participant, new plan participant and/or other person in filing any application or election.
 - F. To prepare and distribute, in such manner as may be required by law or as the plan administrator deems appropriate, information explaining the plan.
 - G. To require from the employer, any participant or any new plan participant such information as shall be necessary for the proper administration of the plan.
 - H. To appoint and retain any individual to assist in the administration of the plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws.
3. Costs. All reasonable expenses incident to the functioning of the plan including, but not limited to, fees of accountants, counsel, actuaries and other specialists and other costs of administering the plan, may be paid from the pension fund upon approval by Council to the extent permitted under applicable law and not otherwise paid by the employer.
4. Hold Harmless. No member of Council, the plan administrator, the enrolled actuary, plan counsel nor any other person involved in the administration of the plan shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this plan. To the extent permitted by law, the employer shall, and hereby does agree to indemnify and hold harmless the plan administrator and each successor and each of any heirs, executors and administrators, from any and all liability and expenses,

- including counsel fees, reasonably incurred in any action suit or proceeding to which he is or may be made a party by reason of being or having been the plan administrator, except in matters involving criminal liability, intentional or willful misconduct. If the employer purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.
5. **Approval of Benefits.** The plan administrator shall review and approve or deny any application for retirement benefits within 30 days following receipt thereof or within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.
 6. **Appeal Procedure.** Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the plan ("claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth.
 - A. Any claimant shall file a notice of the claim with the plan administrator which shall full describe the nature of the claim. The plan administrator shall review the claim and make an initial determination approving or denying the claim.
 - B. If the claim is denied in whole or in part, the plan administrator shall, within 90 days (or such other period as may be established by applicable law) from the time the application is received, mail notice of such denial to the claimant. Such ninety-day period may be extended by the plan administrator if special circumstances so require for up to 90 additional days by the plan administrator's delivering notice of such extension to the claimant within the first ninety-day period. Any notice hereunder shall be written in a manner calculated to be understood by the claimant and, if a notice of denial, shall set forth:
 - (1) The specific plan provisions on which the denial is based;
 - (2) A explanation of additional material or information, if any, necessary to perfect such claim and a statement of why such material or information is necessary; and
 - (3) An explanation of the review procedure.
 - C. Upon receipt of notice denying the claim, the claimant shall have the right to request a full and fair review by Council of the initial determination. Such request for review must be made by notice to Council within 60 days of receipt of such notice of denial. During such review, the claimant or a duly authorized representative shall have

the right to review any pertinent documents and to submit any issues or comments in writing. Council shall, within 60 days after receipt of the notice requesting such review, (or in special circumstances, such as where Council in its sole discretion holds a hearing, within 120 days of receipt of such notice) submit its decision in writing to the person or persons whose claim has been denied. The decision shall be final, conclusive and binding on all parties, shall be written in a manner calculated to be understood by the claimant and shall contain specific references to the pertinent plan provisions on which the decision is based.

- D. Any notice of claim questioning the amount of a benefit in pay status shall be filed within 90 days following the date of the first payment which would be adjusted if the claim is granted unless the plan administrator allows a later filing for good cause shown.
 - E. A claimant who does not submit a notice of a claim or a notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.
7. Police Pension Plan Committee. Council shall appoint a police pension plan committee to advise and consult with the plan administrator with regard to the affairs and operations of the plan, two of which shall be active police officers of the City. One of the police representatives shall have full voting rights and one police representative shall serve in an ad hoc capacity until such time as the home rule charter is amended to allow a second member of the police to be added with full voting rights. The committee shall consist of no more than five voting members appointed by Council. Each member of the committee shall serve in that capacity until the earlier of resignation, death, removal or otherwise. Each member may be remove at any time, with or without cause, by Council. Each member may resign by delivering written notice to Council and other members of the committee. Vacancies on the committee shall be filled by the Council.

§ 809. Applicable Provisions of the Internal Revenue Code. [Ord. 152, 1/21/2002, Art. IX]

- 1. Explanation. In recognition of the fact that the plan must comply in form, content and operation with certain provisions of he Code, and in spite of the limited applicability of such provisions to the normal operation of the plan, the following subsections of this section detail the limitations and parameters applicable to maintaining favorable tax treatment of funds contributed to the plan under federal law.
- 2. Definitions. The following words and phrases are hereby introduced and defined for purposes of this section only:

ACCRUED BENEFIT — A participant's retirement benefit exclusive of vesting.

ACTUARIAL EQUIVALENT — A form of benefit differing in time, period or manner of payment from a specific benefit provided under the plan, but having the same value when computed using the UP 1984 Table with interest computed at 7%. Effective January 1, 1995, for purposes of § 415 of the Code, effective the first limitation year beginning after December 31, 1994, the applicable mortality table shall be used for the mortality table. This applies to all benefits including benefits accrued before the first limitation year beginning after December 31, 1994. The applicable mortality table is the mortality table described in Revenue Ruling 95-6, 1995-1 C.B. 80.

ANNUAL ADDITIONS — The sum credited to a participant's account for any limitation year of (i) employer contributions, (ii) employee contributions, (iii) forfeitures, (iv) amounts allocated after March 31, 1984, to an individual medical account, as defined in Code § 415(1)(2) which is part of a pension or annuity plan maintained by the employer, and (v) amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to postretirement medical benefits allocated to the separate account of a key employee (as defined in Code § 419A(d)(3) under a welfare benefit plan [as defined under Code § 419(e)] maintained by the employer. Except, however, the percentage limitation referred to in Code § 415(c)(1)(B) shall not apply to: (i) any contribution for medical benefits [within the meaning of Code § 419A(f)(2)] after separation from service which is otherwise treated as an annual addition, or (ii) any amount otherwise treated as an annual addition under Code § 415(1)(1). Notwithstanding the foregoing, for limitation years beginning prior to January 1, 1987, only that portion of employee contributions equal to the lesser of employee contributions in excess of 6% of "415 Compensation" or 1/2 of employee contributions shall be considered an annual addition. For years beginning after December 31, 2001, annual additions shall be calculated in conformance with the Economic Growth and Tax Relief Reconciliation Act of 2001.

ANNUAL BENEFIT —

- A. The benefit payable under the terms of the plan (exclusive of any benefit not required to be considered for purposes of applying the limitations of Code § 415 to the plan) payable in the form of a straight life annuity with no ancillary benefits. If the benefit under the plan is payable in any other form, the annual benefit shall be adjusted to the equivalent of a straight life annuity using the greater of the interest rate assumption specified in the definition of actuarial equivalent or five percent.
- B. In addition to other applicable limitations set forth in the plan, and notwithstanding any other provision of the plan to the contrary, for

plan years beginning on or after January 1, 1996, the annual compensation of each employee who becomes a participant in the plan on or after such date shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the commissioner for increases in the cost of living in accordance with Code § 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

- C. For plan years beginning on or after January 1, 1996, and any reference in this plan to the limitation under Code § 401(a)(17) shall mean the § 401(a)(17) limit as adjusted by law.
- D. With respect only to an employee who becomes a participant in the plan on or after January 1, 1996, if compensation for any prior determination period is taken into account in determining such employee's benefits accruing in the current plan year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first plan year beginning on or after January 1, 1996, the OBRA '93 annual compensation limit is \$150,000.

EMPLOYEE — Any person who is employed by the employer, but excludes any person who is an independent contractor. "Employee" shall include leased employees within the meaning of Code §§ 4141(n)(2) and 414(o)(2) unless such leased employees are covered by a plan described in Code § 414(n)(5) and such leased employees do not constitute more than 20% of the recipient's non-highly-compensated work force.

415 COMPENSATION — With respect to any participant, such participant's wages as defined on Code § 3401(a) and all other payments of compensation by the employer (in the course of the employer's business) for a plan year for which the employer is required to furnish the participant with a written statement under Code §§ 6041(d), 6051(a)(3) and 6052. "415 Compensation" must be determined without regard to any rules under Code § 3401(a) that limit the remuneration included in wages 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)]. Effective for plan years beginning after December 31, 1997, the term compensation for Code § 415 purposes, in accordance with § 415(c)(3)(D) of the Code and Treasury Regulation § 1.415-2(d), shall include:

- A. An elective deferral [as defined in Code § 402(g)(3)]; and
- B. Any amount which is contributed or deferred by the employer at the election of the employee and which is includable in gross income of the employee by reason of Code § 125 or 457.

LEASED EMPLOYEE — Any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient [or for the recipient and related persons determined in accordance with Code § 414(n)(6)] on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control of the recipient. Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer. A leased employee shall not be considered an employee of the recipient:

- A. If such employee is covered by a money purchase pension plan providing:
 - (1) A nonintegrated employer contribution rate of at least 10% of compensation, as defined in Code § 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code § 125, 402(a)(8), 402(h) or 403(b)
 - (2) Immediate participation.
 - (3) Full and immediate vesting.
- B. If leased employees do not constitute more than 20% of the recipient's non-highly compensated work force.

LIMITATION YEAR — The plan year, for purposes of applying the limitations under the current section.

PARTICIPANT'S ACCOUNT — The account established and maintained by the administrator for each participant with respect to his total interest in the defined contribution plan maintained by the employer resulting from annual additions.

PLAN YEAR — The twelve-month period beginning on January 1 and ending on December 31 of each year.

REGULATION — The income tax regulations, as amended from time to time, as promulgated by the Secretary of the Treasury or his delegate.

- 3. Maximum Annual Benefit.

- A. Subject to the exceptions below, the maximum annual benefit payable to a participant under this plan in any limitation year shall equal \$90,000.
 - B. Notwithstanding anything in this section to the contrary, to the extent the plan was in existence on May 6, 1986, and had complied at all times with the requirements of Code § 415 (including any pertinent elections), the maximum annual benefit for any individual who was a participant as of the first day of the limitation year beginning after December 31, 1986, shall not be less than the current accrued benefit. "Current accrued benefit" shall mean a participant's accrued benefit under the plan, determined as if the participant had separated from service as of the close of the last limitation year beginning before January 1, 1987, when expressed as an annual benefit within the meaning of Code § 415(b)(2). In determining the amount of a participant's current accrued benefit, the following shall be disregarded:
 - (1) Any change in the terms and conditions of the plan after May 5, 1986; and
 - (2) Any adjustment for cost of living occurring after May 5, 1986.
 - C. The dollar limitation under Code § 415(b)(1)(A) stated in Subsection 3A of this section shall be adjusted annually as provided in Code § 415(d) pursuant to the regulations thereunder. The adjusted limitation is effective as of January 1 of each calendar year and is applicable to limitation years ending with or within that calendar year.
 - D. For the purpose of this section, all qualified defined benefit plans (whether terminated or not) ever maintained by the employer shall be treated as one defined benefit plan, and all qualified defined contribution plans (whether terminated or not) ever maintained by the employer shall be treated as one defined contribution plan.
 - E. For the purpose of this section, if this plan is a Code § 413(c) plan, all employers of a participant who maintain this plan will be considered to be a single employer, namely the employer.
4. Adjustments to Annual Benefit and Limitations.
- A. If the annual benefit begins before age 62, then the \$90,000 limitation shall be reduced so that it is the actuarial equivalent of the \$90,000 limitation beginning at age 62. The \$90,000 shall not be actuarial reduced, however, to less than: (i) \$75,000 if the annual benefit commences on or after age 55; or (ii) the amount which is the actuarial equivalent of the \$75,000 limitation at age 55 if the annual benefit commences prior to age 55. For purposes of adjusting the

\$90,000 limitation applicable prior to age 62 or the \$75,000 limitation applicable prior to age 55, the adjustment shall be made using the parameters specified in the definition of actuarial equivalent, except that the interest rate assumption shall be the greater of 5% or the rate specified in said definition and any mortality decrement shall be ignored to the extent that a forfeiture does not occur at death. In no event, however, shall the aforesaid dollar limitation be reduced to an amount less than that required by the Code. The above adjustment shall not apply with respect to disability or survivor benefits under the plan.

- B. If the annual benefit begins after age 65, the \$90,000 limitation shall be increased so that it is the actuarial equivalent of the \$90,000 limitation at age 65.
 - C. For purposes of adjusting the \$90,000 limitation applicable after age 65, the adjustment shall be made using the parameters specified in the definition of "actuarial equivalent," except that the interest rate assumption shall be the lesser of 5% or the rate specified in said definition, and the mortality decrement shall be ignored to the extent that a forfeiture does not occur at death.
 - D. For purposes of the annual benefit and Subsections 4A and B of this section, no adjustments under Code § 415(d) shall be taken into account before the limitation year for which such adjustment first takes effect.
 - E. For purposes of the annual benefit, no adjustment is required for qualified joint and survivor annuity benefits, preretirement death benefits, postretirement medical benefits or disability retirement benefits.
 - F. To the extent applicable, the above provisions and limitations shall be governed by Code § 415(b)(2)(F) and Code § 415(b)(2)(G).
5. Annual Benefit Not in Excess of \$10,000. Subject to the provisions of any applicable state law, this plan may pay an annual benefit to any participant in excess of his or her maximum annual benefit if the annual benefit derived from employer contributions under this plan and all other defined benefit plans maintained by the employer does not in the aggregate exceed \$10,000 for the limitation year or for any prior limitation year, and the employer has not at any time maintained a defined contribution plan in which the participant participated. For purposes of this subsection, if this plan provides for voluntary or mandatory employee contributions, such contributions will not be considered a separate defined contribution plan maintained by the employer.
6. Participation or Service Reductions. If a participant (other than a participant receiving disability benefits under the plan) has less than 10 years of

participation in the plan at the time he begins to receive benefits thereunder and is not receiving a disability retirement benefit, the limitations in Subsections 3 and 4 of this section shall be reduced by multiplying such limitations by a fraction, the numerator of which is the number of years of participation (or part thereof) in the plan, and the denominator of which is 10, provided, however, that said fraction shall in no event be less than 1/10. The limitations of Subsection 4 of this section shall be reduced in the same manner, except the preceding sentence shall be applied with respect to years of service rather than years of participation in the plan. Additionally, for plan years beginning after December 31, 1986, the reductions to the limitations described above in Subsections 3A and 4 of this section shall be applied separately with respect to each change in the benefit structure of the plan.

7. Multiple Plan Reduction.

A. If an employee is (or has been) a participant in one or more defined benefit plans and one or more defined contribution plans maintained by the employer, the sum of the defined benefit plan fraction and the defined contribution plan fraction for any limitation year may not exceed 1.0.

B. Defined Benefit Fraction.

(1) The defined benefit plan fraction for any limitation year is a fraction, the numerator of which is the sum of the participant's projected annual benefits under all the defined benefit plans (whether or not terminated) maintained by the employer, and the denominator of which is the lesser of 125% of the dollar limitation determined for the limitation year under Code §§ 415(b) and (d) or 140% of the highest average compensation, including any adjustments under Code § 415(b).

(2) Notwithstanding the above, if the participant was a participant as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction will not be less than 125% of the sum of the annual benefits under such plans which the participant had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plan after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Code § 415 (including any applicable elections) for all limitation years beginning before January 1, 1987.

C. Defined Contribution Fraction.

- (1) The defined contribution plan fraction for any limitation year is a fraction, the numerator of which is the sum of the annual additions to the participant's account under all the defined contribution plans (whether or not terminated) maintained by the employer for the current and all prior limitation years (including the annual additions attributable to the participant's nondeductible employee contributions to all defined benefit plans, whether or not terminated, maintained by the employer, and the annual additions attributable to all welfare benefit funds, as defined in Code § 419(e), and individual medical accounts, as defined in Code § 415(1)(2), maintained by the employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior limitation years of service with the employer (regardless of whether a defined contribution plan was maintained by the employer). The maximum aggregate amount in any limitation year is the lesser of 125% of the dollar limitation determined under Code § 415(b) and (d) in effect under Code § 415(c)(1)(A) or 35% of the participant's compensation for such year.
 - (2) If the employee was a participant as of the end of the first day of the first limitation year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed one under the terms of this plan. Under the adjustment, an amount equal to the product of (i) the excess of the sum of the fractions over one times (ii) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plan made after May 5, 1986, but using the Code § 415 limitation applicable to the first limitation year beginning on or after January 1, 1987. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions.
- D. If the sum of the defined benefit plan fraction and the defined contribution plan fraction shall exceed one in any limitation year for any participant in this plan, the administrator shall limit, to the extent necessary, the annual additions to such participant's account for such limitation year. If, after limiting the annual additions to such participant's account for the limitation year, the sum of the defined benefit plan fraction and the defined contribution plan fraction still exceed one, the administrator shall then adjust the numerator of the

defined benefit plan fraction so that the sum of both fractions shall not exceed one in any limitation year for such participant.

Note: The above multiple plan reduction provisions apply only for plan limitation years through 1999.

8. Incorporation of Code § 415 by Reference. Notwithstanding anything contained in this plan or 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 § 415 and the regulations thereunder (as such apply to governmental plans), the terms of which are specifically incorporated herein by reference. Thus, for the first 415 limitation year beginning after December 31, 1994, the applicable mortality table described in Rev. Ruling 95-6, 1995-1 C.B. 80 shall be utilized, and effective for plan years beginning after December 31, 1997, the term compensation for Code § 415 purposes, in accordance with § 415(c)(3)(D) of the Code and Treasury Regulation § 1.415-2(d), shall include:
 - A. An elective deferral [as defined in Code § 402(g)(3)]; and
 - B. Any amount which is contributed or deferred by the employer at the election of the employee and which is includable in gross income of the employee by reason of Code § 125 or 457
9. Required Distributions.
 - A. Notwithstanding any provision in this plan to the contrary, the distribution of a participant's benefits shall be made in accordance with the requirements and conditions and shall otherwise comply with Code § 401(a)(9) and the regulations thereunder [including Regulation § 1.401(a)(9)-2]:
 - (1) A participant's benefits shall be distributed to him not later than April 1 of the calendar year following the later of:
 - (a) The calendar year in which the participant attains age 70 1/2:
 - (b) The calendar year in which the participant retires.Alternatively, distributions to a participant must begin no later than the applicable April 1 as determined under the preceding subsection and must be made over a period not exceeding the life of the participant or the life expectancy of the participant in accordance with regulations.
 - (2) Distributions to a participant and his beneficiaries shall only be made in accordance with the incidental death benefit

requirements of Code § 401(a)(9)(G) and the regulations thereunder.

- B. Distributions made under Subsection 9A and B of this section shall be subject to the provisions of § 804 of this Part.
10. Qualified Domestic Relations Order Distribution. All rights and benefits, including elections, provided to a participant in this plan shall be subject to the rights afforded to any alternate payee pursuant to a domestic relations order as provided by applicable state law. In evaluating any such domestic relations order, Code § 414(p) may be used as a guide.
11. Direct Rollover.
- A. This subsection applies to distributions made on or after January 1, 1993. 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. For purposes of this subsection, the following definitions shall apply:
- (1) An 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 10 years or more; any distribution to the extent such distribution is required under Code § 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
 - (2) An eligible retirement plan is an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), or a qualified trust described in Code § 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
 - (3) A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse

and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code § 414(p), are distributees with regard to the interest of the spouse or former spouse.

- (4) A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.
12. Credit for Qualified Military Service. Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with § 414(u) of the Code.

§ 810. The Pension Fund. [Ord. 152, 1/21/2002, Art. X]

1. Operation of the Pension Fund.
 - A. Council is hereby authorized to hold and supervise the investment of the assets of the pension fund, subject to the provisions of the laws of the Commonwealth of Pennsylvania and of this plan and any amendment thereto.
 - B. The pension fund shall be used to pay benefits as provided in the plan and, to the extent not paid directly by the employer, to pay the expenses of administering the plan pursuant to authorization by the employer.
 - C. The employer intends the plan to be permanent and for the exclusive benefit of its employees. It expects to make the contributions to the pension fund required under the plan. The employer shall not be liable in any manner for any insufficiency in the pension fund; benefits are payable only from the pension fund, and only to the extent that there are monies available therein.
 - D. The pension fund will consist of all funds held by the employer under the plan, including contributions made pursuant to the provisions hereof and the investments, reinvestment and proceeds thereof. The pension fund shall be held, managed and administered pursuant to the terms of the plan. Except as otherwise expressly provided in the plan, the employer has exclusive authority and discretion to manage and control the pension fund assets. The employer may, however, appoint a trustee, custodian and/or investment manager, at its sole discretion.
2. Powers and Duties of Employer. With respect to the pension fund, the employer shall have the following powers, rights and duties, in addition to those vested in it elsewhere in the plan or by law, unless such duties are delegated.

- A. To retain in cash so much of the pension fund as it deems advisable and to deposit any cash so retained in any bank or similar financial institution (including any such institution which may be appointed to serve as trustee hereunder), and shall include the right to hold funds on a temporary basis in accounts or investments that do not bear interest.
- B. To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which are at the time legal investments for fiduciaries under the Pennsylvania Fiduciaries Investment Act, or the same may be subsequently modified or amended.
- C. To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate, to exchange such property, to grant options for the purchase or exchange thereof.
- D. To consent to and participate in any plan of reorganization, consolidation, merger, extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
- E. To exercise all conversion and subscription rights pertaining to property held in the fund.
- F. To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
- G. To place money at any time in a deposit bank deemed to be appropriate for the purposes of this plan no matter where situated, including in those cases where a bank has been appointed to serve as trustee hereunder, the savings department of its own commercial bank.
- H. In addition to the foregoing powers, the employer shall also have all of the powers, rights and privileges conferred upon trustees by the Pennsylvania Fiduciaries Investment Act, or as the same may be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the employer may deem necessary to administer the pension fund.
- I. To maintain and invest the assets of this plan on a collective and commingled basis with the assets of other pension plans maintained by the employer, provided that the assets of each respective plan shall be accounted for and administered separately.

- J. To invest the assets of the pension fund in any collective commingled trust fund maintained by a bank or trust company, including any bank or trust company, including any bank or trust company which may act as a trustee hereunder or to invest in a group contract or other funding arrangement. In this connection, the commingling of the assets of this plan with assets of other eligible, participating plans through such a medium is hereby specifically authorized. Any assets of the plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the plan, to the extent of the participation in such collective or commingled trust fund by the plan.
- K. To make any payment or distribution required or advisable to carry out the provisions of the plan, provided that if a trustee is appointed by the employer, such trustee shall make such distribution only at the direction of the employer.
- L. To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the plan.
- M. To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
- N. To pay, and to deduct from and charge against the pension fund, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the fund is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the pension fund, the income, property or transfer thereof, or in any matter or thing connected therewith.
- O. To appoint any persons or firms (including, but not limited to, accountants, investment advisors, counsel, actuaries, physicians, appraisers, consultants, professional plan administrators and other specialists), or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the management of the fund, to the extent not prohibited by applicable law, the employer shall be entitled to rely conclusively upon and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such persons or firms, provided such persons or firms were prudently chosen by the employer, taking into account the interests of the participants and beneficiaries and with due regard to the ability of the persons or firms to perform their assigned functions.

- P. To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the fund assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as define in that Act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the laws of more than one state; in such event, the employer shall follow the directions of such investment manager or managers with respect to the acquisition and disposition of fund assets, but shall not be liable for the acts nor omissions of such investment manager or managers, not shall it be under any obligation to review or otherwise manage any fund assets which are subject to the management of such investment manager or managers. If the employer appoints a trustee, the trustee shall not be permitted to retain such an investment manager except with the express written consent of the employer.
3. Common Investments. The employer shall not be required to make separate investments for individual participants or new plan participants or to maintain separate investments for each participant's or new plan participant's account, but may invest contributions and any profits or gains therefrom in common investments.
 4. Compensation and Expenses of Appointed Trustee. If a trustee is appointed, the trustee shall be entitled to such reasonable compensation as shall from time to time by agreed upon by the employer and the trustee, unless such compensation is prohibited by law. Such compensation, and all expenses reasonably incurred by the trustee in carrying out his functions, shall constitute a charge upon the employer or the pension fund, which may be executed at any time after 30 days written notice to the employer. The employer shall be under no obligation to pay such costs and expenses and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to reimburse themselves for the payment thereof, from the pension fund.
 5. Periodic Accounting. If a trustee is appointed, the pension fund shall be evaluated annually, or at more frequent intervals, by the trustee and a written accounting rendered as of each fiscal year end of the fund, and as of the effective date of any removal or resignation of the trustee, and such additional dates as requested by the employer, showing the condition of the fund and all receipts, disbursements and other transactions effected by the trustee during the period covered by the accounting, based on fair market values prevailing as of such date.
 6. Value of the Pension Fund. All determinations as to the value of the assets of the pension fund, and as to the amount of the liabilities thereof, shall be made by the employer or its appointed trustee, whose decisions shall be final and conclusive and binding on all parties hereto, the participants, new plan participants and beneficiaries and their estates. In making any such determination, the employer or trustee shall be entitled to seek and rely

upon the opinion of or any information furnished by brokers, appraisers and other experts, and shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

§ 811. Amendment and Termination of Pension Plan or Pension Fund. [Ord. 152, 1/21/2002, Art. XI]

1. Amendment of the Plan. To the extent permitted by law, the employer may amend this plan at any time or from time to time by an instrument in writing executed in the name of the employer under its municipal seal by officers duly authorized to execute such instrument and delivered to Council; provided, however: **[Amended by Ord. 288, 2/3/2014]**
 - A. That no amendment shall deprive any participant, new plan participant or any beneficiary of a deceased participant of any of the benefits to which he is entitled under this plan with respect to contributions previously made;
 - B. That no amendment shall provide for the use of funds or assets held under this plan other than for the benefit of employees, and no funds contributed to this plan or assets of this plan shall, except as provided in § 811, Subsection 5, of this chapter, ever revert to or be used or enjoyed by the employer; and
 - C. That no amendment to the plan which provides for a benefit modification shall be made unless the cost estimate described in § 812, Subsection 3, of this chapter has been prepared and presented to Council in accordance with the Act.
2. Termination of the Plan. The employer shall have the power to terminate this plan in its entirety at any time by an instrument in writing executed in the name of the employer.
3. Automatic Termination of Contributions. Subject to the provisions of the Act governing financially distressed municipalities, the liability of the employer to make contributions to the pension fund shall automatically terminate upon liquidation or dissolution of the employer, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of its creditors.
4. Distribution Upon Termination. All assets attributable to the terminated plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the employer which effects such termination.
5. Residual Assets. If all liabilities to vested participants and any others entitled to receive a benefit under the terms of the plan have been satisfied and there remain any residual assets in the pension fund, such residual

assets remaining shall be returned to the employer insofar as such return does not contravene any provision of law, and any remaining balance, in excess of employer contributions, shall be returned to the Commonwealth.

6. **Exclusive Benefit Rule.** In the event of the discontinuance and termination of the plan as provided herein, the employer shall dispose of the pension fund in accordance with the terms of the plan and applicable law; at no time prior to the satisfaction of all liabilities under the plan shall any part of the corpus or income of the pension fund, after deducting any administrative or other expenses properly chargeable to the pension fund, be used for or diverted to purposes other than for the exclusive benefit of the participants in the plan, their beneficiaries or their estates.
7. **Assignment.**
 - A. The pension benefit payment prescribed hereunder shall not be subject to attachment, execution, levy, garnishment or other legal process and shall be payable only to the participant, new plan participant or designated beneficiary and shall not be subject to assignment or transfer.
 - B. The above provision shall not apply to those domestic relation orders required to be enforced pursuant to the laws of the Commonwealth of Pennsylvania. All such orders shall be reviewed and approved by the plan administrator, using, where applicable, as guidance as to form and content Code § 414(p) and related Treasury Regulations.

§ 812. Provisions to Comply with the Municipal Pension Plan Funding Standard and Recovery Act of 1984. [Ord. 152, 1/21/2002, Art. XII]

1. **Actuarial Valuations.**
 - A. The plan's actuary shall perform an actuarial valuation at least biennially unless the employer is applying or has applied for supplemental state assistance pursuant to § 603 of the Act, whereupon actuarial valuation reports shall be made annually.
 - B. Such biennial actuarial valuation report shall be made as of the beginning of each plan year occurring in an odd-numbered calendar year, beginning with the year 1985.
 - C. Such actuarial valuation shall be prepared and certified by an approved actuary, as such term is defined in the Act.
 - D. The expenses attributable to the preparation of any actuarial valuation report or investigation required by the Act or any other expense which is permissible under the terms of the Act and which are directly associated with administering the plan shall be an allowable administrative expense payable from the assets of the

pension fund. Such allowable expenses shall include, but not be limited to, the following:

- (1) Investment costs associated with obtaining authorized investments and investment management fees.
- (2) Accounting expenses.
- (3) Premiums for insurance coverage on fund assets.
- (4) Reasonable and necessary counsel fees incurred for advice or to defend the fund.
- (5) Legitimate travel and education expenses for plan officials; provided, however, that the municipal officials of the employer, in their fiduciary role, shall monitor the services provided to the plan to ensure that the expenses are necessary, reasonable and benefit the plan; and, further provided, the plan administrator shall document all such expenses item by item, and where necessary, hour by hour.

2. Duties of Chief Administrative Officer.

- A. Such actuarial reports shall be prepared and filed under the supervision of the chief administrative officer.
 - B. The chief administrative officer of the plan shall determine the financial requirements of the plan on the basis of the most recent actuarial report and shall determine the minimum obligation of the employer with respect to funding the plan for any given plan year. The chief administrative officer shall submit the financial requirements of the plan and the minimum obligation of the employer to council annually and shall certify the accuracy of such calculations and their conformance with the Act.
3. Benefit Plan Modifications. Prior to the adoption of any benefit plan modification by the employer, the chief administrative officer of the plan shall provide to Council a cost estimate of the proposed, benefit plan modification. Such estimate shall be prepared by an approved actuary, which estimate shall disclose to Council the impact of the proposed benefit plan modification on the future financial requirements of the plan and the future minimum obligation of the employer with respect to the plan.

§ 813. Miscellaneous Provisions. [Ord. 152, 1/21/2002, Art. XIII]

1. Plan Not a Contract of Employment. No police officer of the employer not anyone else shall have any rights whatsoever against the employer or the plan administrator as a result of this plan except those expressly granted to

- them hereunder. Nothing herein shall be construed to give any police officer the right to remain on the police force of the employer.
2. Masculine/Feminine; Singular/Plural. For purposes of this plan, the masculine shall be read for the feminine and the singular shall be read for the plural, wherever the person or context shall plainly so require.
 3. Construction of Document. This plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be construed and enforced according to the laws of the Commonwealth of Pennsylvania, excepting such Commonwealth's choice of law rules.
 4. Headings. The headings of articles are included solely for convenience of reference, and if there by any conflict between such headings and the text of the plan, the text shall control.
 5. Severability of Provisions. In case any provisions of this plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this plan, and the plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted therein.
 6. Incapacity of Participant. If any participant or new plan participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder, the plan administrator, upon the receipt of satisfactory evidence that such participant is so incapacitated and that another person or institution is maintaining him, may provide for such payment of pension benefits hereunder to such person or institution so maintaining him, and any such payments so made shall be deemed for every purpose to have been made to such participant.
 7. Liability of Officers of the Plan Administrator and/or Employer. Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer of the employer shall be personally liable to any participant, new plan participant, beneficiary or other person under any provision of the plan.
 8. Assets of the Fund. Nothing contained herein shall be deemed to give any participant, new plan participant or beneficiary any interest in any specific property of the pension fund or any right except to receive such distributions as are expressly provided for under the plan.
 9. Pension Fund for Sole Benefit of Participants and New Plan Participants. The income and principal of the pension fund are for the sole use and benefit of the participants and new plan participants covered hereunder, and to the extent permitted by law, shall be free, clear and discharged from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any participant, new plan participant or beneficiary.

§ 814. Applicable Provisions of the Internal Revenue Code. [Ord. 212, 11/7/2005; as amended by Ord. No. 246, 12/15/2008]

1. Precedence. The requirements of this § 814 will take precedence over any inconsistent provisions of the Plan.
2. Definitions. The following definitions apply for purposes of this section only:

LEASED EMPLOYEE — Effective as of January 1, 1997, any person (other than an employee of the recipient) who, pursuant to an agreement between the recipient and any other person ("leasing organization"), has performed services for the recipient [or for the recipient and related persons determined in accordance with Code § 414(n)(6)] on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.

LIMITATION YEAR — The plan year.

3. Leased Employees and Independent Contractors. Leased employees and independent contractors are not eligible to participate in this Plan. Any person whom the Council does not regard as being an employee shall not be eligible to participate.
4. Limit on Compensation. Compensation is subject to the limitation under Code § 401(a)(17), which is \$230,000 for the plan year beginning in 2008. The limit is automatically adjusted periodically, without formal amendment, for changes in the law and cost-of-living adjustments under Code § 401(a)(17).
5. Maximum Annual Benefit.
 - A. General Rule. Except as otherwise provided, this Plan shall at all times comply with the provisions of Code § 415 and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If a benefit payable to a participant under this Plan would otherwise exceed the limit under Code § 415, the benefit will be reduced to the maximum permissible benefit.
 - B. Effective Date. If there is more than one permissible effective date for any required change in the Code § 415(b) provisions, then the change shall be effective as of the latest permissible effective date; however, any adjustment in the dollar limit under Code § 415(b)(1)(A), whether required or permissible, shall take effect automatically as of the earliest permissible effective date. The "applicable mortality table" in Rev. Rul. 2001-62 became effective as of December 31, 2002, and remained effective through December 31, 2007. The "applicable morality table" and applicable interest rate after December 31, 2007, is found in Rev. Rul. 2007-67.

- C. No Reduction in Accrued Benefits. Notwithstanding the above, no change in the limits under this section shall reduce the benefit of any participant.
 - D. Multiple Plans. If a participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code § 415(b) or (e), and if the aggregated benefits would otherwise exceed the limit under Code § 415(b) or (e), then benefits shall be reduced first under this Plan. [Historical Note: Code § 415(e) applied for limitation years beginning prior to 2000.]
 - E. Mandatory Contributions. Participant contributions are annual additions, and any benefit attributable to participant contributions is not included in the benefit subject to the limits of Code § 415(b) or (e). This subsection does not apply to contributions “picked-up” in accordance with Code § 414(h).
 - F. Permissive Service Credit. Effective as of January 1, 1998, if a participant makes a purchase of permissive service credit [within the meaning of Code § 415(n)] under the Plan, the benefit derived from the contributions made to purchase the service credit shall be treated as part of the benefit subject to the limitations under this section.
6. Limit on Annual Additions.
- A. Annual Additions. Except as otherwise provided, annual additions (which include participant contributions) under this Plan shall at all times comply with the provisions of Code § 415(c) and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If an annual addition would otherwise exceed the limit under Code § 415(c), the excess annual addition will be eliminated in accordance with methods permitted under Rev. Proc. 2008-50 (Rev. Proc. 2006-27 prior to 2009), or its successor.
 - B. Multiple Plans. If a participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code § 415(c), and if the annual additions would otherwise exceed the limit under Code § 415(c), annual additions will first be reduced under the other plan. If there is more than one other plan, annual additions will first be reduced under the plan with the greatest amount of annual additions.
 - C. Effective Date. The limits under which Code § 415(c) are adjusted periodically in accordance with changes in the law or cost-of-living adjustments without the need for a plan amendment. If there is more than one permissible effective date for any required change relating to Code § 415(c), then the change shall be effective as of the earliest permissible effective date.

- D. DROP Account. Deposits into the participant's DROP account shall be considered an annual addition subject to the limits set forth in Code § 415(c).
 - E. For the purposes of this section, "compensation" includes only those items specified in Treas. Reg. § I.415(c)-2(b)(1) or (2) and excludes all items listed in Treas. Reg. § I.415(c)-2(c), the terms of which are specifically incorporated herein by reference. Effective as of January 1, 2009, to the extent required by the Heroes Earnings Assistance Relief Tax Act of 2008 (HEART Act), differential wage payments shall be included in compensation. **[Added by Ord. 288, 2/3/2014]**
7. Direct Rollovers.
- A. Effective as of January 1, 1993, if a participant, a spousal beneficiary, or an alternate payee (who is a spouse or former spouse of a participant) is entitled (under other provisions of this Plan) to receive an "eligible rollover distribution" of at least \$200 the distributee may elect that the Plan Administrator transfer all or part (provided that the part is at least \$500 to any "eligible retirement plan" capable of accepting such a transfer.
 - B. For purposes of this section, the following definitions shall apply:
 - (1) ELIGIBLE ROLLOVER DISTRIBUTION — 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: (i) 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 10 years or more; (ii) any distribution to the extent such distribution is required under Code § 401(a)(9); (iii) 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); and (iv) effective as of January 1, 2002, any hardship distribution. Effective as of January 1, 2002, clause (iii) does not apply to any after-tax participant contributions that are paid to an individual retirement account or annuity described in Code § 408(a) or (b), or to a qualified defined contribution plan described in Code § 401(a) or 403(a) or effective as of January 1, 2007, any 403(b) annuity contract 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** — an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), or a qualified trust described in Code § 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse, prior to January 1, 2002, an eligible retirement plan was an individual retirement account or individual retirement annuity. Effective as of January 1, 2002, an "eligible retirement plan" includes an annuity contract described in Code § 403(b) and an eligible plan under Code § 457(b) 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. Effective January 1, 2008, a Roth IRA is an "eligible retirement plan."
 - (3) **DISTRIBUTE** — includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code § 414(p)(11), are distributees with regard to the interest of the spouse or former spouse.
 - (4) Effective as of January 1, 2002, an employee may, in accordance with Code § 457(e)(17), make a trustee-to trustee transfer from an eligible deferred compensation plan [as defined in Code § 457(b)] to this Plan for the purpose of purchasing service credit (to the extent that such purchases are permitted under the terms of the Plan) or repaying a cash-out of contributions refunded under the Plan.
8. **Minimum Required Distributions.** Notwithstanding any provision in this Plan to the contrary, the distribution of a participant's benefits shall be made in accordance with the requirements and conditions of and shall otherwise comply with Code § 401(a)(9). For purposes of complying with Code § 401(a)(9), life expectancies shall be determined in accordance with the 1987 proposed regulations prior to January 1, 2003, and with the final regulations [§ 1.401(a)(9)-1 through § 1.401(a)(9)-9] on or after January 1, 2003.
- A. **Distributions.**
- (1) Effective as of January 1, 1997, distribution of a participant's benefits shall begin not later than April 1 of the calendar year following the later of:
 - (a) The calendar year in which the participant attains age 70 1/2, or

- (b) The calendar year in which the participant retires.
 - (2) Distributions must be made over a period not exceeding the life of the participant or the joint lives of a participant and his beneficiary.
 - B. Distributions to participant and his beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code § 401(a)(9)(G) and the regulations thereunder.
 - C. This section does not authorize the payment of any benefit in any form not permitted under another provision of the Plan.
 - D. The terms of any annuity purchased with trust assets must comply with the requirements of Code § 401(a)(9) and the regulations thereunder. **[Added by Ord. 288, 2/3/2014]**
9. Qualified Domestic Relations Orders. All rights and benefits, including elections, provided to a participant in this Plan shall be subject to the rights afforded to any "alternate payee" under what is recognized pursuant to state law support provisions as a "qualified domestic relations order."
10. Vesting Upon Plan Termination. Upon the termination of this Plan, or complete discontinuance of contributions [within the meaning of pre-ERISA Code § 401(a)(7)] to this Plan, each employee, as of the date of such termination or discontinuance, shall become vested to the extent that the Plan is funded.
11. Consent for Lump-Sum Distributions. Effective January 1, 2006, notwithstanding any other provision of the Plan, any distribution to a participant made prior to the earlier of age 62 or normal retirement age of an amount in excess of \$1,000 that is an eligible rollover distribution as set forth in the Plan and the Code shall be made only upon consent of the participant.
12. Heroes Earnings Assistance and Tax Relief Tax Act of 2008 (HEART Act). Effective for deaths occurring after January 1, 2007, the Plan will provide retirement benefits and service credit to the extent that the Plan is required and mandated by the HEART Act to provide said benefits and/or service credit.
13. Non-Spouse Beneficiaries. Effective as of January 1, 2007, if a beneficiary who is not a surviving spouse is entitled to receive what would otherwise be an "eligible rollover distribution," the beneficiary may, in accordance with Code § 402(c)(11), make a trustee-to-trustee transfer of that amount to an IRA or individual retirement annuity (other than an endowment contract), provided that:
- A. The transfer is made not later than the end of the fourth year after the year of the participant's death; and

- B. The account or annuity to which the amount is transferred is treated as an inherited IRA or individual retirement annuity in accordance with Code § 408(d)(3)(C).

§ 815. Deferred Retirement Option Plan. [Ord. 228, 3/5/2007]

1. Definitions. As used in this section, the following terms shall have the meanings indicated:

DROP ACCOUNT — A separate account created to accept a Deferred Retirement Option Plan (DROP) participant's monthly pension benefits while participating in the DROP.

DROP PARTICIPANT — An active police officer of the City of St. Marys who is a participant in the plan and has elected to participate in the DROP.

2. Eligibility for Participation in the DROP. Effective January 1, 2004, participants who have not terminated employment prior to the implementation of the DROP may enter into the DROP on the first day of any month following the date that they have attained their normal retirement age.
3. Election to Participate in the DROP. A participant electing to participate in the DROP must complete and execute a DROP Option Form prepared by the employer, which shall evidence that the participant is a DROP participant. The DROP Option Form shall be signed by the DROP participant, notarized and submitted to the employer prior to the date on which the DROP participant wishes to enter the DROP (the "DROP entry date"). The DROP Option Form shall constitute an irrevocable notice to the employer by the DROP participant that the DROP participant shall resign and terminate active employment with the employer effective on the date specified on the DROP Option Form (the "resignation date"). In no event shall the resignation date be sooner than 12 months from the DROP entry date nor later than 24 months from the DROP entry date. A DROP participant's employment with the employer shall terminate on the resignation date, unless the DROP participant's employment with the employer has been terminated prior to the resignation date. As part of the election to participate in the DROP, the DROP participant shall execute all documents required by the Police Pension Board Administrator. Upon approval of the DROP Option Form and accompanying documents, the election to participate in the DROP shall be irrevocable.
4. Effect of DROP Participation on Accrued Benefit. Upon the participant's DROP entry date, the DROP participant's accrued benefit under the plan shall be finally determined, and the DROP participant shall accrue no aggregate service after the DROP entry date for the purpose of calculating any retirement benefits under the plan, and the DROP participant's final average monthly salary for all purposes of calculating retirement benefits

- under the plan shall be determined as of the day prior to his DROP entry date.
5. Cost-of-living Adjustments (COLAs) for DROP Participants. The retirement benefits payable to DROP participants after the DROP entry date shall increase only as a result of COLAs in effect on the DROP entry date or by applicable COLAs granted thereafter.
 6. Payments to the DROP Account. The monthly retirement benefit payable to the participant had the DROP participant elected to terminate employment as of the DROP entry date, shall, upon the DROP participant's entry into the DROP, be paid into a separate account established for the purpose of receiving the DROP participant's monthly pension benefit while a DROP participant ("the DROP account").
 7. Effect of DROP Participation on Non-pension Benefits. Upon a DROP participant's DROP entry date, the DROP participant shall continue to accrue all non-pension contractual benefits, with the exception of the right to have the employer buy-back accrued unused sick time or vacation time. Prior to the DROP entry date, a DROP participant may request payment for any accrued unused sick or vacation time which the employer would otherwise be obligated to buy-back upon the DROP participant's retirement. A DROP participant may utilize, leave time during the DROP participation period, but the employer shall not be obligated to buy-back any unused leave time at the end of the DROP participation period.
 8. Payout of DROP Account. Upon the DROP participant's resignation date, or the date the DROP participant's employment is terminated by the employer if prior to the resignation date, the employer shall cease paying the DROP participant's monthly retirement benefit into the DROP participant's DROP account and begin paying the DROP participant's monthly pension benefits to the participant or his designated beneficiary, as applicable. Within 30 days following the DROP participant's termination of employment with the employer, the balance of the DROP account shall be paid to the DROP participant in a single lump-sum payment or, at the DROP participant's request, in any fashion permitted by applicable law.
 9. Disability of DROP Participant During DROP Participation. If a DROP participant becomes temporarily incapacitated during participation in the DROP, that participant shall continue to participate in the DROP as if fully employed. The participant shall receive disability pay in the same amount as a disabled participant that is not participating in the DROP. In no event shall a participant on temporary disability have the ability to draw from his DROP account. Notwithstanding any other provisions of this section, if a DROP participant is disabled and does not return to work as of his resignation date, such resignation shall take precedence over all other provisions therein, and the DROP participant shall be required to resign. Nothing contained in this DROP plan shall be construed as conferring any legal rights upon any DROP participant or other person to a continuation of

employment, nor shall participation in the DROP supersede or limit in any way the right of the employer to honorably discharge a police officer based upon an inability to perform his or her full duties as a police officer.

10. Death During DROP Participation. If a DROP participant dies before his DROP account has been paid out, there shall be no further payments to the DROP account under Subsection 6 hereof, and the DROP participant's beneficiary shall have the same rights as the DROP participant to payment of the DROP account.

11. Forfeiture of Benefits. Notwithstanding a DROP participant's participation in the DROP, a DROP 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 and 1314, shall forfeit his right to receive a pension, including any amounts held in his DROP account. In such a case, the DROP participant shall only be entitled to receive a return of participant contributions, if any, made by the participant to the Pension Fund.
12. DROP Account Manager. The employer and the participants will mutually agree upon an investment manager to administer the DROP accounts. The employer shall not be responsible for any investment loss incurred in the DROP accounts or for the failure of an investment to earn a specific or expected return or to earn as much as any other opportunity, whether or not such other investment opportunity was offered or available to participants in the plan.
13. Costs of Maintaining DROP Plan. Any costs or fees associated with the management of DROP accounts shall be paid directly from the plan and not by the employer.
14. Amendment. Amendments to the DROP shall be consistent with the DROP provisions of any applicable collective bargaining agreement and shall be binding upon current and future DROP participants. Amendments to the DROP must be made by a written instrument, and the DROP cannot be amended by oral agreement or past practice.
15. Effective Date. The DROP shall be effective as of January 1, 2004, and implemented pursuant to the terms of the applicable collective bargaining agreement.
16. Construction. A participant's election to participate in the DROP shall in no way be construed so as to limit the employer's right to suspend or terminate a police officer for just cause or to grant the officer an honorable discharge based upon a physical or mental inability to perform his or her duties.

§ 816. Additions to Plan. [Added by Ord. 270, 11/7/2011]

The following provisions are added to the plan. Any prior provisions that are inconsistent with the provisions in this amendment are hereby superseded.

- A. The purpose of these plan amendments is to comply with the Pension Protection Act of 2006 (PPA) and the Heroes Earnings Assistance Relief Tax Act (HEART Act). Notwithstanding anything in this plan to the contrary, this plan shall be interpreted so as to comply with the applicable required provisions of the PPA and the HEART Act.

- B. For the purposes of Code § 415(b)(1)(A), effective as of January 1, 2008, the "applicable mortality table" and "applicable interest rate" are found in Rev. Rul. 2007-67. The "applicable mortality table" in Rev. Rul. 2001-62 was effective from December 31, 2002, through December 31, 2007.
- C. Section 415(c) Compensation. For the purposes of this section, "compensation" includes only those items specified in Treas. Reg. § 1.415(c)-2(b)1 or (2) and excludes all items listed in Treas. Reg. § 1.415(c)-2(c), the terms of which are specifically incorporated herein by reference. Effective as of January 1, 2009, to the extent required by the Heroes Earnings Assistance Relief Tax Act of 2008 (HEART Act), differential wage payments shall be included in compensation.
- D. Effective as of January 1, 2007, an "eligible rollover distribution" shall include any eligible rollover distribution (including distributions containing after-tax contributions) that is transferred in a direct trustee-to-trustee transfer to a 403(b) annuity contract or a qualified trust under Code § 401(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.
- E. Effective as of January 1, 2008, a Roth IRA is an "eligible retirement plan".
- F. Nonspousal Rollover. Effective January 1, 2007, if a beneficiary who is not a surviving spouse is entitled to receive what would otherwise be an "eligible rollover distribution," the beneficiary may, in accordance with Code § 402(c)(11), make a trustee-to-trustee transfer of that amount to an IRA or individual retirement annuity (other than an endowment contract), provided that:
- (1) The transfer is made not later than the end of the fourth year after the year of the participant's death; and
 - (2) The account or annuity to which the amount is transferred is treated as an inherited IRA or individual retirement annuity in accordance with Code § 408(d)(3)(C).
- G. HEART Act. Effective for participant deaths occurring while performing qualified military service [as defined in Code § 414(u)] on or after January 1, 2007, the plan will provide retirement benefits and service credit to the extent required by the HEART Act.