

COUNCIL BILL NO. 1872

INTRODUCED BY: Edward Walsh

ORDINANCE NO. 1776

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT AND REGULATION OF A PENSION PLAN FOR THE NON-UNIFORMED EMPLOYEES OF THE CITY OF DUBOIS

BE IT ORDAINED AND ENACTED by the Council of the City of DuBois, Clearfield County, Pennsylvania, and IT IS HEREBY ORDAINED AND ENACTED AS FOLLOWS:

ARTICLE I

ESTABLISHMENT OF PLAN

A Pension Plan is hereby established for the City's Non-Uniformed Employees and Elected Officials. Such Plan shall be under the direction of the Council of the City of DuBois and shall be applied under such regulations as the Council may prescribe. The effective date of this Ordinance shall be January 1, 2012; however, the plan established hereunder shall be deemed a continuation of the previous non-uniformed pension plan, as maintained and administered by PMRS, for state aid purposes.

ARTICLE II

DEFINITIONS OF TERMS

- 2. Council means the governing body of the City of DuBois acting in the capacity of administrator of the Non-Uniformed Pension Plan established pursuant to this Ordinance.
- 2.2 Committee means the persons which may be appointed to serve in an advisory capacity to the Council in the administration of the Plan.
- 2.3 Contribution means the monies paid by the Employer to the Plan and/or the payroll deductions made monthly from the salaries of the Participants and paid to the Plan; except that "contributions" in Article 4.7 shall mean total contributions paid by the Participant and accumulated during the period of employment and participation in this Plan.
- 2.4 Employer means the City of DuBois.
- 2.5 Future Service Liability means the value of any Participant's benefits which shall accrue by virtue of that Participant's service rendered subsequent to the enactment of this Ordinance.
- 2.6 Participant means every person duly appointed from time to time by the Employer as a full-time Non-Uniformed Employee working not less than thirty-five (35) hours per week at a definite salary, subject to reasonable vacation and sick leave, to be included in the Plan upon date of hire. The term Participant shall also include elected officials, but such membership shall be optional. Any current full-time employee or elected official who did not become a Participant of the plan upon date of hire, or election, shall be entitled to receive pension credit for any prior service to the City provided that such Participant deposits the required amount of member's contributions for the applicable period of time, together with interest at a rate of 6% compounded annually from date of service to date of deposit.

Any current part-time employee hired by the Employer prior to January 1, 2012 may elect to join the Plan at any time and be eligible for the same benefits as a full-time employee. However, any part-time employee hired on or after January 1, 2012 shall not be eligible to participate in this Plan and shall not receive any benefit from this Plan.
- 2.7 Plan means the Non-Uniformed Pension Plan established pursuant to this Ordinance.
- 2.8 Salary means the amount of compensation received by a Participant in each and every month, including base pay, overtime pay, longevity pay, shift differential, and any other such increments. The term salary shall include regular payments made for vacation time, sick time, compensatory time, personal days and bereavement leave. The term salary shall also include lump sum payments for any unused days for any of the foregoing listed benefits which were earned during the highest five (5) consecutive years of employment, as well as any severance payments, made at the time of termination or retirement, provided that Participant contributions are deducted from any such payments at the rate in effect at that time.
- 2.9 Service means total aggregate service, not necessarily continuous, with the Employer.

- 2.10 Termination means the cessation of service by the Participant for any reason including disability, resignation, and employee termination. Death shall not be considered a termination within the meaning of this Ordinance. Voluntary leaves of absence without pay shall not be considered a termination for the purposes of this Ordinance; but no period of such leave shall be computed in the total service for pension benefit purposes. Leaves of absence with pay shall not be considered a termination within the meaning of this Ordinance (provided that the municipality is able to certify to the Department of the Auditor General that such Participant on a leave of absence with pay is within the definition of a Participant as set forth herein); but such leaves may be computed in the total service for pension benefit purposes.
2. Unfunded Liability means the present value of any Participant's benefits accrued prior to the enactment of this Ordinance by virtue of that Participant's prior service.

ARTICLE III

ADMINISTRATION

3. The Council shall administer the Plan by such regulations as shall from time to time be necessary for the effective maintenance of the Plan; provided that no regulation shall be contrary to the statutes of the Commonwealth of Pennsylvania and/or applicable federal regulations.
- 3.2 The Council shall appoint a Committee which shall act as an advisory body to the Council in the administration of the Plan according to the regulations established pursuant to this Article.
- 3.3 The Committee shall consist of two Administration Participants, two Participants of the Plan representing the Union, two retired individuals representing the Retirees, and one Council member.
- All such persons so designated shall serve at the pleasure of the Council. Any member may resign upon written notice to the Council and the Committee. Any vacancies in the Committee arising from resignation, death, or removal shall be filled by the Council by the procedure set out herein for the member of the Committee whose resignation, death or removal has created the vacancy.
- The Committee shall meet no less than annually, and shall serve without compensation for their services.
- 3.4 The Committee shall act by such procedure as the Committee shall establish; provided that all decisions shall be by majority vote. The Committee may authorize one of its members to execute any document or documents on behalf of the Committee, may adopt by-laws and regulations as it deems necessary for the conduct of its affairs, and may appoint such accountants, counsel, specialists or such other personnel as it may deem desirable for the proper administration of the Plan; provided that all such executions of documents, adoptions of by-laws and regulations, and appointments shall be approved by the Council.
- 3.5 The Committee shall keep a record of all its proceedings and acts which shall relate to the Plan, and shall keep all such books of accounts, records and other data as shall be necessary for the proper administration of the Plan. All actions of the Committee shall be communicated to the Council.
- 3.6 All such reasonable expenses incurred in the administration of the Plan including, but not limited to, fees for the services of specialists including actuaries, accountants, consultants, and legal counsel shall be approved by the Council and all may be paid from the Plan; provided that no such payment shall be contrary to the statutes of the Commonwealth of Pennsylvania.
- 3.7 No member of the Council or the Committee established pursuant to this Article shall incur any liability for any action or failure to act, excepting only liability for its own gross negligence or willful misconduct. The Employer shall indemnify each member of the Council and the Committee against any and all claims, loss, damages, expense, and liability arising from any action or failure to act, except for such that is the result of gross negligence or willful misconduct of such member.

ARTICLE IV

RETIREMENT REQUIREMENTS AND BENEFITS

4. Eligibility for Normal Retirement
- A Participant in the Plan may retire from active employment on the first day of the month following the attainment of age sixty (60); provided that the Participant has completed twelve (12) or more years of service with the Employer.

4.2 Normal Retirement Benefit

A Participant who shall complete the age and service requirements as set forth in this Article shall receive a pension for life in the amount equal to two and one-half percent (2.50%) multiplied by years of credited service with a maximum benefit of ninety percent (90%), times the Participant's average monthly salary over the Participant's highest five(5) consecutive years of employment.

Subject further to those limitations imposed by the statutes of the Commonwealth of Pennsylvania, no offset or reduction from the benefit here provided for shall be made for any social security retirement benefits, workmen's compensation, or other benefits to which the Participant is also entitled.

The benefit herein provided shall be payable solely from the assets of the Plan.

4.3 Early Retirement Benefit

A Participant who has been involuntarily terminated after eight (8) years of credited service or who has separated voluntarily after twenty (20) years of credited service may retire early. Benefits will be actuarially reduced for each year or partial year thereof that early retirement takes place prior to age sixty (60).

4.4 Disability Benefit

A member who has ten (10) or more years of credited service may, upon application or on application of one acting in the member's behalf, or upon application of a responsible official of the municipality, be retired by the City on a disability allowance if the physician designated by the City, after medical examination of the member shall certify to the City that the individual is unable to engage in any gainful employment and that said member ought to be retired. When the disability of a member is determined to be service-connected, no minimum period of service shall be required for eligibility.

A disability annuity payable from the total disability reserve account which, together with the municipal annuity and the member's annuity, if any, shall be sufficient to produce a retirement allowance of thirty percent (30%) of the member's final salary. Where the disability of the member is determined to be service-connected, the disability allowance shall equal fifty percent (50%) of the member's final salary. The disability annuity shall be reduced by the amount of any payments for which the member shall be eligible under the Act of June 2, 1915 (P.L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act" or the Act of June 21, 1939 (P.L. 566, No. 284), known as "The Pennsylvania Occupational Disease Act."

Any member with eight (8) or more years of credited service entitled to retire for disability may, in lieu of such retirement, elect to retire not voluntarily under the provisions of Section 4.3.

Should a disability annuitant die before the total disability retirement allowance received equals the amount of the member's accumulated deductions at the time of disability retirement, the City shall pay to the named beneficiary (if living, or if the named beneficiary predeceased the annuitant, or no beneficiary was named, then to the annuitant's estate) an amount equal to the difference between such total retirement allowance received and the annuitant's accumulated deductions. If such difference is less than one hundred dollars (\$100) and no letters have been taken out on the estate within six (6) months after the disability annuitant's death, such difference may be paid to the undertaker or to any person or municipality who or which shall have paid the claim of the undertaker.

4.5 Death Benefit

A member who is entitled to a retirement allowance because of attaining sixty (60) years of age or a member who is entitled to a voluntary early retirement allowance because of completing twenty (20) years of credited service may file a written application for retirement requesting that such retirement become effective at the time of death.

When applying for retirement, the member may elect one of the options provided in Article 4.8 and nominate a beneficiary. The application shall be held by the City until (1) the member files a later application for a retirement allowance, or (2) the death of the member while in municipal service.

If a member entitled to a retirement allowance dies while in municipal service, benefits become effective as if the member had retired on the day immediately preceding death. The beneficiary receives the annuity option elected before the member's death. If an option was not filed with the City, it shall be considered that the member elected Option 1 as was provided by PMRS. In such event, payment under Option 1 shall be made to the beneficiary designated in the nomination of beneficiary form on file with the City.

4.6 Vested Benefit

A vested deferred monthly benefit shall be provided for any Participant whose termination date occurs prior to the Participant's normal retirement date; provided that the Participant shall have completed a minimum of twelve (12) years of service with the Employer and shall have notified the Employer of such intention to vest within ninety (90) days of the Participant's date of termination. This benefit shall be computed in the same manner as set forth in this Article.

Such vested deferred monthly benefit shall be paid to the Participant upon attainment of that Participant's normal retirement age as set forth in this Article.

The surviving spouse of a Participant who dies before his or her pension has vested shall be entitled to receive repayment of all money which the Participant invested in the pension fund, including the Participant's contributions and any excess interest previously awarded to the Participant, plus interest or other increases in value of the Participant's investment in the pension fund, unless the Participant has designated another beneficiary for this purpose.

4.7 Termination

If for any reason a Participant shall terminate service with the Employer prior to becoming vested, that Participant shall be entitled to a refund of that Participant's contributions plus interest at a rate of six percent (6%) per annum. Such interest shall be uniform for all Participants.

If a Participant shall subsequently return to service and return to the Plan the contributions plus interest which were refunded to the Participant upon termination, together with interest at a rate of 6% compounded annually from date of service to date of deposit, the Participant shall be entitled to credit for the prior years of service to the extent of the return of contributions.

Nothing in this Article shall be construed to allow credit for service not actually given to the Employer, except as specifically provided for in Article VI.

4.8 Actuarial Equivalent Benefits

Options on Superannuation, Early Retirement or Vesting: At the time a member elects to receive a retirement benefit allowance, the benefit may be payable throughout the member's life, in which case the benefit is known as a Single Life Annuity. The member may alternatively elect at the time of retirement to receive the equivalent actuarial value in a lesser allowance, payable throughout life with provisions that:

- a. Option 1. If the member dies before receiving in payments the present value of the retirement allowance as it was at the time of retirement, the balance, if less than five thousand dollars (\$5,000), shall be paid in a lump sum to the designated beneficiary if living, or if the named beneficiary predeceased the member or if no beneficiary was named, then to the member's estate. If the balance is five thousand dollars (\$5,000) or more, the beneficiary may elect, by application duly acknowledged and filed with the City to receive payment of such balance according to any one of the following provisions:
 - in a lump-sum payment, or
 - in an annuity having a present value equal to the balance payable, or
 - iii. in a lump-sum payment and an annuity. Such annuity shall be of equivalent actuarial value to the balance payable less the amount of the lump-sum payment specified by the beneficiary.
- b. Option 2. Upon the annuitant's death, the retirement allowance shall be continued throughout the life of and paid to the survivor annuitant, if then living.
- c. Option 3. Upon the annuitant's death, one-half of the retirement allowance shall be continued throughout the life of and paid to the survivor annuitant, if then living.
- d. Option 4. A member may elect to receive, in one payment at the time of retirement, the full amount of the member's accumulated deductions (not to include excess investment monies) standing to his credit in the member's account. In so electing this option, the member forfeits the portion of the annuity paid for from the accumulated contributions, but shall continue to be entitled to an annuity comprised of the municipal contribution and any excess investment monies so credited to the account. Any member electing this option shall be entitled to receive his remaining annuity calculated in accordance with any of the other options provided for in this section.

Should a member who has elected a Single Life Annuity die before receiving in annuity payments the full amount of the total accumulated deductions standing to their credit in the member account on the effective date of retirement, the balance shall be paid to the designated beneficiary.

4.9 Non-Alienation of Benefits and Vesting

No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge. Nor shall any such benefits be in any manner liable for or subject to garnishment, attachment, execution, levy or other legal process.

Further, all benefits granted herein shall vest in the Participant upon completion of the requirements for eligibility, and that Participant's benefits shall continue in the amount and in the form in which that Participant first became entitled to them.

4.10 Cost of Living Adjustment

An annual cost of living adjustment may be provided to a retired Participant effective the first January following at least one year from the initial date of retirement. The amount of such increase is subject to the limitations as noted hereinafter,

- a. Such increment shall not exceed the percentage increase in the Consumer Price Index as published by the Social Security Administration each year.
- b. In no case may the Participant's total pension benefits exceed ninety percent (90%) of the retired Participant's salary for computing retirement benefits.
- c. The retired Participant's total cost of living adjustments shall not exceed thirty percent (30%) of the retiree's original pension benefit.

Effective January 1, 2012, a cost of living adjustment shall be provided to all retirees and/or survivors who are receiving benefits as of December 31, 2011. The amount of the adjustment shall be equal to three and six-tenths percent (3.6%).

ARTICLE V

CONTRIBUTIONS

5 Contributions of the Employer

Contributions to the Plan by the Employer shall be in an amount determined by the annual Minimum Municipal Obligation (MMO) calculation, prepared in accordance with Act 205 of 1984, which is certified to the governing body of the City by September 30th and included in the City budget for the following year.

5.2 Contributions of Participants

Participants shall contribute three and one-half percent (3.5%) of their total compensation to the funding of the Plan. Such mandatory member contributions made since January 1, 1987 shall be picked up by the City and shall be treated as the employer's contributions in determining tax treatment under the United States Internal Revenue Code for Federal tax purposes. For all other purposes, such pick-up contributions shall be treated as contributions made by the member. If a member terminates prior to becoming eligible for any benefit or the member elects not to receive a benefit, that individual shall be entitled to all accumulated contributions, interest and any excess investment monies allocated to the member's account.

Any future changes in the contribution requirement for Participants may be enacted by an ordinance or resolution.

5.3 Allocation of Commonwealth Funds

Any payments made by the State Treasurer to the Employer from the monies received from the taxes paid on the premiums of foreign casualty insurance companies for purposes of retirement or disability benefit pensions for municipal employees shall be used as follows:

- a. to reduce the unfunded liability, or after such liability is funded;
- b. to apply against the annual obligation of the Employer for future service cost, or to the extent that the payments may be in excess of such obligations;
- c. to reduce or eliminate the contributions paid by the Participants.

5.4 Allocation of Assets of Existing Pension Plans

Any assets of any existing pension plans for the full-time, Non-Uniformed Employees of the City are hereby transferred to the Plan established pursuant to this Ordinance, and shall be applied against the unfunded liability.

5.5 Gifts, Bequests, and Grants

All other monies and property received by the Plan, including gifts, bequests, devices, and grants shall be applied equally against the Participant and the Employer portions of the future service cost unless otherwise specifically provided.

ARTICLE VI**CREDIT FOR MILITARY SERVICE****6. Credit for Military Service**

Any Participant in the Plan with at least six (6) months of service with the Employer who thereafter shall enter the military service of the United States of America shall have credited to the Participant's employment record for pension benefit purposes all of the time spent by the Participant in such military service; provided that the Participant returns to service with the Employer within six (6) months after said Participant's separation from such military service.

6.2 Purchase of Non-Intervening Military Service

A service credit may be purchased for each year of military service or fraction thereof, not to exceed five years, by any Participant of the Plan provided the Participant has completed five (5) years of service to the municipality subsequent to such military service. The amount due for the purchase of credit for military service, other than intervening military service, shall be computed by applying the average normal cost rate for the City's Non-Uniformed Pension Plan, as certified by the Public Employee Retirement Commission, but not to exceed ten per centum, to the member's average annual rate of compensation over the first three years of municipal service and multiplying the result by the number of years and fractional part of a year of creditable non-intervening military service being purchased together with interest at the rate of six per centum (6%) compounded annually from the date of initial entry of municipal service to the date of payment.

6.2 Purchase of Non-Intervening Military Service (continued)

Any Participant of the Plan shall be eligible to receive service credit for intervening or non-intervening military service as provided herein provided that the member is not entitled to receive, eligible to receive now or in the future, or is receiving retirement benefits for such service under a retirement system administered and wholly or partially paid for by any other governmental agency with the exception of a member eligible to receive or receiving military retirement pay earned by a combination of active duty and non-active duty with a reserve or national guard component of the armed forces which retirement pay is payable only upon the attainment of a specified age and period of service under 10 U. S. C. Ch. 67 (relating to retired pay for non-regular services).

ARTICLE VII**PROCEDURE**

Matters or procedure not covered in this ordinance shall be as set forth in Act 205 of 1984, as may, from time to time, be amended.

Should any change or mistake in records result in any member, beneficiary or survivor annuitant receiving from the Plan more or less than the individual would have been entitled to receive had the records been correct, regardless of the intentional or unintentional nature of the error and upon the discovery of such error, the Plan will correct the error and so far as practicable adjust the payments which may be made for and to such person in such a manner that the actuarial equivalent of the benefit to which the individual was correctly entitled shall be paid.

ARTICLE VIII**TERMINATION OF THE PLAN**

Upon termination of the Plan, the assets shall be distributed as follows:

- a. Sufficient funds shall be maintained to provide the pension benefits prescribed in Article IV for all Participants who have retired prior to the termination of the Plan, or who are eligible to retire at the time of the termination of the Plan.

- b. Sufficient funds shall be maintained to provide vested pension benefits prescribed in Article IV for all Participants who are eligible for such benefits.
- c. Any funds representing contributions from the remaining Participants shall be returned to such Participants with interest at a rate of six percent (6%) per annum.
- d. Of the remaining funds, those which can be identified as contributions of the Employer, or contributions other than those identified as unused Commonwealth allocations, shall be distributed as the Council sees fit; provided that such distribution is made on a uniform basis.
- e. All funds in excess of the funds described in paragraphs a., b., c., and d. above shall be returned to the Commonwealth as unused funds pursuant to the act of May 12, 1943 P.L. 259 No. 120, as amended, 72 P. S. 2263.1, et. seq.

ARTICLE IX

PARTICIPANT'S RIGHTS AND MUNICIPALITY'S RIGHT TO TERMINATE

Neither the establishment of the Plan hereby created, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Employer, or any officer or employee thereof, or the Council except as herein provided.

Under no circumstance shall the Plan hereby created constitute a contract for continuing employment for any Participant or in any manner obligate the Employer to continue or to discontinue the services of an employee.

This Plan has been established and shall be maintained by the Employer in accordance with the laws of the Commonwealth of Pennsylvania. The Plan shall continue for such period as may be required by such laws; provided that the Employer may, by its own action, discontinue this Plan should such laws provide, and the Employer reserves the right to take such action in its sole and absolute discretion. Upon termination, the Employer shall have no liability hereunder other than that imposed by law.

ARTICLE X

INVESTMENTS

All investments by the Council of the assets of this Plan shall comply with any applicable state statutes, rules and regulations with respect to municipal investments for non-uniformed pension funds and with such regulations as the Council shall establish for the purpose of investing such funds.

ARTICLE XI

AMENDMENTS

The Council reserves the right to amend, at any time in whole or in part, any or all of the provisions of the Plan; provided that no such amendment shall authorize or permit any part of the Plan to be used or diverted to purposes other than for the exclusive benefit of the Participants, their beneficiaries, or their estates. Nor shall any amendment divest a Participant of benefits vested by the provisions of Article IV. All such amendments shall comply with the applicable statutes of the Commonwealth of Pennsylvania.

ARTICLE XII

CONSTRUCTION OF PLAN

This Plan shall be constructed according to the laws of the Commonwealth of Pennsylvania, and all provisions hereof shall be administered according to the laws of such Commonwealth.

Wherever any words are used herein in the masculine gender, they shall be construed as though they were also used in the feminine gender in all cases where they would so apply; and wherever any words used herein are in the singular form, they shall be construed as though they were also used in the plural form in all cases where they would so apply.

Headings of Articles and paragraphs of this instrument are inserted for convenience of reference. They constitute no part of this Plan and are not to be considered in the construction thereof.

ARTICLE XIII**SEVERABILITY**

The provisions of this Ordinance shall be severable, and if any Article, paragraph, clause, sentence, or words of this Ordinance hereby adopted are declared for any reason invalid, unlawful, or unconstitutional, it is the intent of the City that it would have passed all other Articles, paragraphs, clauses, sentences, or words of this Ordinance independent of the elimination herefrom of any such portion as may be declared invalid, unlawful, or unconstitutional.


ARTICLE XIV**REPEALER**

This Ordinance repeals all other Ordinances and/or Resolutions prior to the date of its enactment which documents established, maintained, governed, or regulated a pension plan for the full-time, Non-Uniformed Employees of the City of DuBois, it being further provided that the provisions of this Ordinance are intended to be a continuation of those existing in Ordinance No. 1543, as amended, to the extent they are consistent herewith.

ENACTED AND ORDAINED into an Ordinance at the regular meeting of the Council of the City of DuBois this 27th day of February, 2012.

ATTEST:

CITY OF DUBOIS


John "Herm" Suplizio
City Manager


Gary D. Gilbert
Mayor & President of Council

PASSED BY COUNCIL:

02/27/12

Approved:



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