

COUNCIL BILL NO. 1946

INTRODUCED BY: Shannon Gabriel

ORDINANCE NO. 1860

AN ORDINANCE

AN ORDINANCE OF THE CITY OF DUBOIS AMENDING CHAPTER 48 OF THE CODE OF ORDINANCES ESTABLISHING AND MAINTAINING A POLICE PENSION FUND TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM TO ADOPT THE PROVISIONS OF A DEFERRED RETIREMENT OPTION PLAN AS AGREED TO BY THE CITY OF DUBOIS AND THE POLICE OFFICERS AND TO ADOPT THE SAME IN ACCORDANCE WITH THE AGREEMENT REACHED JANUARY 1, 2019, RETROACTIVE TO THE DATE OF SAID AGREEMENT AND TO REINSTATE AND RE-ENACT IN ITS ENTIRETY ALL SECTIONS OF CHAPTER 48 NOT IN CONFLICT HEREWITH.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the City of DuBois in Council assembled, and it is hereby ordained and enacted by Authority of the same.

Section 1. Definitions. That Chapter 48, Article 1, Subsection 48-1 is hereby amended to add the following definitions.

- (a) **DROP** – The Deferred Retirement Option Plan is created as an optional form of benefit under the existing City of DuBois Police Retirement Plan.
- (b) **DROP Account** – An interest-bearing, ledger account in the pension trust fund established for a DROP participant.
- (c) **Member** – A full-time City of DuBois police officer covered by the Plan.
- (d) **Participant** – A Member who is eligible for normal retirement, having reached fifty years of age and attained twenty years of service, and who has elected to participate in the DROP program.
- (e) **Plan** – The City of DuBois Police Retirement Plan.

Section 2. DROP Provisions. That Chapter 48, Article 1, be and is hereby amended by the addition of the following as Section 48-14 entitled “**Drop Provisions**”.

(14-1) **Deferred Retirement Option Provision (DROP) Overview** – The Plan shall provide for a deferred retirement option provision, hereafter referred to as “DROP” for Participants who qualify for and apply for such option pursuant to this Article. In general, the DROP provides Participants who are eligible for Normal Retirement and meet the DROP Eligibility requirements in Section 2, the opportunity to continue working and still be entitled to their pension benefit. Such a Participant would “retire” from the Plan on the date of their choosing and would agree to finally separate from active service at a date no more than 48 months later. A calculation is made of the monthly Normal Retirement Benefit as of the DROP Participation Date. The DROP Participant is then considered retired for all pension plan purposes. The amount of each monthly benefit is credited to the Participant’s DROP Account, along with interest, while the Participant is still actively employed. When the Participant finally leaves employment, the value of the DROP account is distributed to the Participant (either a lump-sum or rollover) and the monthly benefits are paid directly to the Participant.

(14-2) Eligibility. Starting on January 1, 2019, Members of the City of DuBois Police Bargaining Unit who have not retired prior to the implementation of the DROP program, who have reached fifty years of age and completed 20 or more years of credited service with City of DuBois, or who will meet those requirements prior to participation in the DROP, will be eligible to participate in the DROP. A Member's maximum DROP participation period shall be 48 months.

Participation in the DROP does not guarantee the DROP Participant's employment by the City during the specified DROP period.

(14-3) Written Election. An eligible Member of the Plan electing to participate in the DROP program must complete and execute a "DROP Election Form" prepared by the City of DuBois, which shall evidence the Member's participation in the DROP program, and document the participant's rights and obligations under the DROP. The form must be signed and notarized by the Member and submitted to the City of DuBois at least 30 days prior to the Member's effective date of retirement. Such Election must detail a DROP Participant's rights and obligations under the DROP and include an agreement to forego: a) active Membership in the Plan; b) any growth in the salary base used for calculating the retirement benefit; and c) any additional benefit accrual for retirement purposes, including any length-of-service increments. The DROP Participant shall be required to provide any other information required by the Plan Administrator.

The DROP Election Form shall include an irrevocable notice to the City of DuBois by the Member that the Member shall terminate from employment with City of DuBois Police Department effective on a specific date no later than four years from the effective date of the DROP election. A Member's maximum DROP participation period shall be 48 months. A Member shall cease work as a City of DuBois Police Officer on the Member's resignation date, unless the City terminates or honorably discharges the Member prior to the resignation date. In addition, all retirement documents required by the City of DuBois Police Retirement Plan Administrator must be filed and presented to the City Council. Once the retirement application has been approved by the City, it shall become irrevocable.

After a Member enters the DROP Program, contributions to the pension plan by the Participant and the City will cease, and the amount of the monthly benefit will be frozen.

Members are hereby advised to consult a Tax Advisor, of their choice, prior to considering the DROP program, as there may be serious tax implications and/or consequences to participating in the DROP program.

(14-4) Limitation on Pension Accrual. After the effective date of the DROP election, the Participant shall no longer earn or accrue additional years of continuous service for pension purposes.

(14-5) Benefit Calculation. Upon receipt of a Participant's Election form to participate in DROP, the Employer shall calculate the Normal Retirement Benefit based on the Employee's years of Aggregate Service and Final Monthly Average Salary as of the Employee's DROP Participation Date. The monthly benefit shall be fixed at that time for the duration of the DROP participation and for the rest of the retiree's life thereafter. For all Plan purposes, continuous service of a Member participating in the DROP program shall remain as it existed on the effective date of the commencement of participation in the DROP program. Service thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the City of DuBois Police Retirement Plan. Earnings or increases in earnings after the effective date of commencement of participation in the DROP program shall not be recognized or used for the calculation or determination of any benefits payable by the Plan.

(14-6) Payments to DROP Account. A DROP Account shall be established as an interest-bearing ledger account in the pension trust fund in the name of the DROP Participant for purposes of accumulating DROP Retirement Benefits during DROP Participation. The account balance shall be accounted for separately but need not be physically segregated from other pension trust fund assets. Whether or not a DROP Account

is physically segregated from other trust fund assets shall be at the sole discretion of the Plan Administrator. Starting with the calendar month following the DROP Participation Date, the amount of the DROP Retirement Benefit shall be credited to the DROP Participant's DROP Account each month during the DROP Participation. Interest shall be credited to the DROP Account. The rate of interest shall be the actual rate of return on the DROP Account, but no less than zero percent (0%) and no more than four and one-half percent (4.5%) per year. This will be accomplished by use of a fixed rate of return, guaranteed investment vehicle with a rate of return between 0% and 4.5%, such as a certificate of deposit or other similar investment.

(14-7) Early Termination. A DROP Participant may change the DROP termination date to an earlier date and no penalty shall be imposed for early termination of DROP participation. Notice should be provided to the City at least 60 days prior to any such early termination, unless the reason for the early termination is due to a Total and Permanent Disability. Upon either early or regular termination of DROP participation the DROP Participant shall be separated from employment with the City and the retirement Plan shall pay the balance in the DROP Participant's DROP Account to the terminating Participant as provided in section 8 and the DROP Participant shall be ineligible to re-enroll in the DROP thereafter even if the former DROP Participant is re-employed by the City.

(14-8) Payout. Upon the termination date set forth in the DROP Election Form or on such date as the participant withdraws or is terminated from the DROP program, if earlier, the benefits payable to the participant or the participant's beneficiary, if applicable, shall be paid directly to the participant or beneficiary and shall no longer be credited to the DROP Account. Within 45 days following the actual termination of a participant's employment with City of DuBois, the accumulated balance in the DROP Account shall be paid to the participant or beneficiary where applicable in a single lump-sum payment. Such payment shall be made in cash, subject to any federal withholding as may be required, or at the participant's option, as a direct rollover to an Individual Retirement Account (IRA) or other qualified retirement account as permitted by law. If the participant selects the rollover option, he or she must also submit the appropriate paperwork from the IRA or other qualified retirement plan custodian within 20 days following termination or within the required election period, whichever is shorter. If the Participant, Participant's survivor or beneficiary fails to elect a method of payment within 180 days after the Participant's termination date, the City shall pay the balance as a lump sum.

Following termination of DROP participation, the subsequently paid benefits payable to the Participant, Participant's survivor or the Participant's beneficiary shall no longer be credited to the DROP Account but shall be distributed monthly pursuant to normal retirement benefit plan rules.

Following termination of DROP participation, the DROP Participant shall be ineligible to re-enroll in the DROP thereafter even if the former DROP Participant is re-employed by the Employer.

(14-9) Disability During DROP. If a participant becomes eligible for a disability pension benefit and terminates employment, the monthly normal retirement benefit to the DROP participant shall terminate.

(14-10) Death. A DROP participant's eligibility to participate in the DROP terminates if the DROP participant dies. The monthly benefit credited to the participant's DROP Account during the month of the participant's death shall be the final monthly benefit for DROP participation. If a participant dies before the DROP account balance is paid, the participant's beneficiary shall have the same rights as the participant to withdraw the DROP Account balance. Except for those benefits specifically payable as a result of death incurred in the course of performing a hazardous public duty under the Emergency and Law Enforcement Personnel Death Benefits (Act 51), the survivors of a DROP participant who dies shall not be eligible to receive retirement system death benefits payable in the event of the death of an active Member. The DROP participant's survivor shall be eligible to receive retirement system death benefits normally payable in the event of the death of a retired employee.

(14-11) Amendment. Any amendments to the DROP Ordinance shall be consistent with the provisions covering deferred retirement option plans set forth in any applicable collective bargaining agreement or state or federal law, and shall be binding upon all future participants and upon all participants who have balances in their DROP Accounts.

(14-12) Effective Date.

The effective date of the DROP program will be January 1, 2019.

(14-13) Expiration of DROP Provisions.

If at any time it is determined that the City has incurred actual costs in connection with the DROP benefit, this DROP Benefit provision shall automatically expire and be removed from the parties' Collective Bargaining Agreement, subject to the terms herein. If, the City determines that there has been a cost incurred due to the DROP benefit such that the City takes the position that the DROP benefit should immediately expire (sunset), the parties shall meet to discuss whether there is a way to mitigate the cost identified by the City. If, within three months of the City's notification to the Union, the parties are unable to mitigate the cost to the satisfaction of both the City and the Union, then both Parties agree to take the matter to a neutral arbitrator. The purpose of the arbitration shall be to mitigate as far as possible the cost identified by the City and the Parties agree to cooperate with one another and the neutral, in good faith, to find a solution to that issue. In the event that the result of this process is to discontinue the benefit, any police officer presently participating in the DROP shall be permitted to complete said participation up to the separation date identified in his or her DROP election paperwork. The participant's enrollment in the DROP will not be cut short even if an arbitrator determines that there is a cost sufficient to sunset the program. No new employee would, in that event, be permitted to enter the DROP.

(14-14) Severability.

The provisions of this Deferred Retirement Option Plan, shall be severable, and if any of its provisions shall be held to be unconstitutional or illegal, the validity of any of the remaining provisions of this Section shall not be affected thereby. It is hereby expressly declared as the intent of the City of DuBois that this Section has been adopted as if such unconstitutional or illegal provision or provisions had not been included herein.

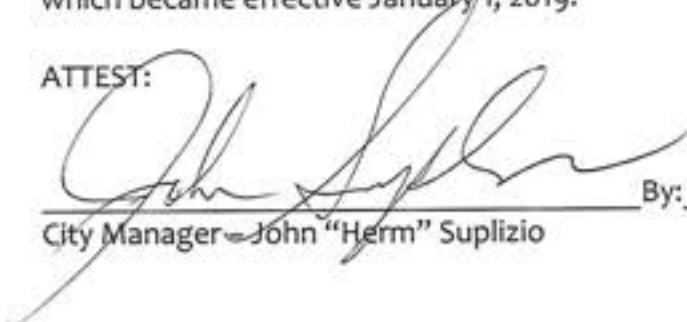
(14-15) DROP Legislation.

DROP benefits pursuant to this Article shall at all times comply with Act 205 of 1984, as amended by Act 44 of 2009 and any subsequent amendments.

Section 3. All other Ordinances or parts of Ordinance or Resolutions in conflict herewith be and the same are herewith repealed. All other provisions of Chapter 48 of the Code of Ordinances not in conflict herewith are hereby reaffirmed and re-ratified as if set forth at length herein.

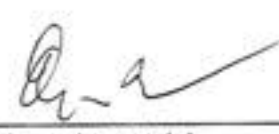
Section 4. The within Ordinance shall become effective upon final enactment hereof retroactive to January 1, 2019, in accordance with the terms of the negotiated Agreement which became effective January 1, 2019.

ATTEST:



City Manager John "Herm" Suplizio

By:



Edward L. Walsh
Mayor and President of Council

PASSED BY COUNCIL:

March 8, 2021

APPROVED: 