

BOROUGH OF DUNMORE
LACKAWANNA COUNTY, PENNSYLVANIA
ORDINANCE NO. 3 of 2024

**AN ORDINANCE OF THE BOROUGH OF DUNMORE, LACKAWANNA
COUNTY, PENNSYLVANIA AMENDING THE POLICE PENSION PLAN
TO INCLUDE AN ACT 44 RETIREMENT PROGRAM**

WHEREAS, the Borough of Dunmore did, by prior Ordinance(s) enact, and thereafter amend, a Police Pension Plan; and

WHEREAS, on September 18, 2009, Act 44 was approved by the Pennsylvania Legislature amending Title 53 as it relates to Municipal Police Pension Plans; and

WHEREAS, the Borough, through collective bargaining negotiations with the Dunmore Borough Police Officers Association, determined it is desirable and beneficial to establish an Act 44 Retirement Program for its police officers who meet certain eligibility requirements, and entered into a Collective Bargaining Agreement providing for such Act 44 Retirement Program; and,

WHEREAS, to implement the terms of the collectively bargained Act 44 Retirement Program, it is necessary for the Borough to adopt an Ordinance amending its Police Pension Plan; and

NOW, THEREFORE, BE IT ORDAINED THAT:

SECTION I – The prior Borough Ordinances regarding establishment of a Police Pension Plan are **AMENDED** to add a new section establishing and implementing an Act 44 Retirement Program:

1. **Title.** This Section shall be known as the “Borough of Dunmore Police Act 44 Retirement Program.”

2. **Definitions.** When used in this Section, the below words shall have the meaning indicated.

“**Borough**” – Borough of Dunmore, Lackawanna County, Pennsylvania.

“**ACT 44 (DROP) PROGRAM**” – The ACT 44 DEFERRED RETIREMENT OPTION PROGRAM (hereinafter, “DROP”) created pursuant to this Ordinance and the Collective Bargaining Agreement between the Dunmore Borough Police Officers Association and the Borough of Dunmore. The DROP PROGRAM has explicitly defined entry dates in 2024 and 2025, i.e., dates by which an eligible participant can elect to participate, which are the only dates on which a DROP participant can enter. This DROP program automatically sunsets at the close of business on December 31, 2026.

“**ACT 44 (DROP) PROGRAM Account**” – Separate ledger account created to accept ACT 44 PROGRAM participants’ monthly pension benefit while an ACT 44 PROGRAM participant, as well as any interest thereon.

“**Fund**” or “**Plan**” – the Police Pension Plan.

“**Participant**” – a Police Officer who meets the eligibility criteria for superannuation retirement and has executed the proper documents for participation in ACT 44 PROGRAM and has had such application approved by the Borough.

“**Police Officers**” - Police Officers of the Police Department.

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

A. Police Officers who have not retired prior to the implementation of the DROP PROGRAM but who have reached their superannuation date - which is the completion of 25 years of credited service and attaining the age of 55 - by the 31st day of July,

2024, the 30th day of June, 2025, or the 30th day of June, 2026, may enter into the DROP PROGRAM effective on the day after one of the three above-referenced dates, i.e., August 1, 2024, July 1, 2025 or July 1, 2026, so long as they have satisfied the two criteria for normal retirement of age 55 and 25 years of service, i.e., reached superannuation, by that date.

B. Police Officers who have reached their superannuation date by one of the three effective dates set forth in A., above (July 31, 2024, June 30, 2025 and June 30, 2026), and who wish to enter the DROP PROGRAM as of one of the three stated entry dates for same (August 1, 2024, July 1, 2025 or July 1, 2026), shall be required to elect in writing to enter the DROP PROGRAM at least seven (7) calendar days before their desired entry date. If a Police Officer who was eligible (i.e., reached his/her superannuation date on or before one of the dates for entry into the DROP PROGRAM provided in this Ordinance) did not elect, in the manner provided by this Ordinance, to enter the DROP PROGRAM by one of the three stated entry dates provided in this Ordinance, he/she shall have permanently forfeited his/her right to do so. Police Officers who have not reached their superannuation date by one of the three stated dates provided in this Ordinance for entry into the DROP PROGRAM shall not have any right to elect to enter the DROP PROGRAM, which shall automatically sunset December 31, 2026.

4. **Written Election.** Eligible Officers who wish to be Participants in the DROP PROGRAM must signify that intention in writing as follows:

A. A Police Officer electing to participate in the DROP PROGRAM must complete and execute an “DROP PROGRAM Participation Election Form” prepared by the Borough, which shall evidence the member’s election to participate in the DROP PROGRAM.

The form must be signed by the Police Officer and spouse, if any, be notarized and submitted at least seven (7) calendar days prior to the date on which the member wishes DROP PROGRAM participation to commence. The DROP PROGRAM Participation Election Form shall include an irrevocable notice to the Borough, by the Police Officer member, that the Police Officer shall separate from employment with the Police Department effective on a specific date (the "Separation Date") that is no more than eighteen (18) months from his/her effective DROP participation date set forth in his/her DROP PROGRAM Election Form. A Police Officer shall cease to work as and may no longer be employed as a Police Officer on the officer's separation date, unless the Borough properly terminates or honorably discharges the officer prior to the resignation date. A participant may resign from employment at any time while in DROP PROGRAM status, which shall terminate his/her participation in the DROP PROGRAM.

B. In addition to the above information, the DROP PROGRAM Participation Election Form shall also advise the employee of the following: (1) an explanation of the Participant's rights and obligations while in DROP PROGRAM; (2) that, as a condition of DROP PROGRAM participation, the Participant foregoes active participation in the Police Pension Plan and foregoes any recalculation of pension benefits to include salary increases occurring after DROP PROGRAM participation commences; and (3) that the DROP PROGRAM Participant's service while in the DROP PROGRAM will not count as pension service nor will it entitle a participant to any service increment benefits to which the Participant was not entitled prior to commencing DROP PROGRAM participation. A DROP PROGRAM Participant must also complete any and all retirement documents required by the Police Pension Plan Administrator, and such documents must be filed and presented to the Borough for approval of retirement and

payment of pension. Once a DROP PROGRAM Participation Election Form has been approved by the Borough, it is irrevocable. Likewise, once a DROP PROGRAM Participant enters the DROP PROGRAM, the Participant may not subsequently leave and then re-enter the DROP PROGRAM, even if the employee separates from employment and subsequently begins employment with the Borough again.

5. **Benefit Calculation.** For all Pension Plan purposes, continuous service of a Police Officer participating in the DROP PROGRAM shall remain as it existed on the effective date of 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 Borough of Dunmore Police Pension Plan. The average monthly compensation of the Police Officer for pension calculation purposes shall remain, as it existed on the effective date of commencement of participation in the DROP PROGRAM. Earnings or increases in earnings thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Pension Plan.
6. **Accumulation of the DROP PROGRAM Account.** The monthly retirement benefits that would have been payable had the Police Officer elected to cease employment and receive a normal retirement benefit, shall, upon the Police Officer commencing participation in DROP PROGRAM, accumulate to the benefit of that Officer and be accounted for on that Police Officer's DROP PROGRAM Account. The DROP PROGRAM monies shall be invested in the Police Pension Fund. Each Participant DROP Program account shall be credited annually with a rate of return of no less than zero percent (0%) and no more than four and a half percent (4.5%).

7. **Accrual of Non-Pension Benefits.** After a Police Officer elects to participate in the DROP PROGRAM, all other contractual benefits shall continue to accrue with the exception of those provisions relating to the Police Pension Plan.
8. **Payout.** Upon separation from employment, the DROP PROGRAM payout options available to the DROP PROGRAM Participant shall be as follows:
- A. The balance of the DROP PROGRAM Participant's account, less withholding taxes, if any, remitted to the Internal Revenue Service, shall be paid to the Participant or the Participant's surviving beneficiary.
 - B. The balance of the DROP PROGRAM Participant's account shall be paid directly to the custodian of an eligible retirement plan as defined by Internal Revenue Code Section 402(c)(8)(b), or in the case of an eligible rollover distribution to the surviving spouse of a deceased DROP PROGRAM Participant, an eligible retirement plan that is an individual retirement account or an individual retirement annuity as defined by Internal Revenue Code Section 402(c)(9).
 - C. If the DROP PROGRAM Participant or beneficiary fails to make an election within sixty days (60) following the date of termination of DROP PROGRAM participation, then the Chief Administrative Officer of the Pension Plan shall implement section (8)(A.) above.
9. **Service Connected Disability or Non Work Related Disability During DROP PROGRAM.** If a DROP PROGRAM Participant becomes temporarily incapacitated due to a service-connected or non-work-related injury during participation in the DROP PROGRAM, and is unable to return to full Police Duties within 90 days, that officer may be determined to be permanently disabled and, if so, will be honorably discharged from

service. A temporarily incapacitated Police Officer shall receive disability pay, if and as applicable, in the same amount as disabled Police Officers that are not participating in the DROP PROGRAM until he/she exits employment with the Borough on or before the last day of his/her 18-month DROP period. The Police Officer shall receive disability pay in the same amount as disabled Police Officers that are not participating in DROP PROGRAM. In no event shall a Police Officer on temporary disability have the ability to draw from his/her DROP PROGRAM account. However, notwithstanding any other provision in this paragraph, if a Police Officer is disabled and has not returned to work as of the date of his required separation, then such separation shall take precedence over all other provisions herein and said officer shall be required to terminate employment. Nothing contained in this Plan shall be construed as conferring any legal rights upon any Police Officer or other person to a continuation of employment nor shall participation in the DROP PROGRAM supersede or limit in any way the right of the Borough to honorably discharge a Police Officer based upon an inability to perform his or her full duties as a police officer. If a DROP PROGRAM Participant becomes eligible for a service-connected disability pension and his/her employment is terminated due to an inability to continue in service on grounds that render him/her eligible for a service-connected disability pension, the monthly normal retirement benefit of the DROP PROGRAM Participant shall be reclassified as being on account of a service-connected disability. In no event shall a DROP Participant's monthly retirement benefit be recalculated. The DROP Participant's monthly retirement benefit shall remain 50% as calculated at the time of entry into the DROP PROGRAM.

10. Death. If a DROP PROGRAM Participant dies, the Participant's eligibility for DROP PROGRAM shall terminate upon the date of death. In such case, if the DROP PROGRAM

account balances have not yet been paid out, the Participant's legal beneficiary shall have the same rights and options as the Participant to withdraw/roll over the account balance.

11. Forfeiture of Benefits. Notwithstanding a Police Officer's status as a DROP PROGRAM Participant, a current or former Participant who is convicted or pleads guilty to engaging in criminal misconduct which constitutes a "crime related to public office or public employment," as that phrase is defined in Pennsylvania's Pension Forfeiture Act, 43 P.S. §§ 1311-1314, shall forfeit his right to receive a pension, including any amounts currently deposited in the DROP PROGRAM Account. In such a case, the Participant shall only be entitled to receive the contributions, if any, made by the Participant to the Police Pension Fund, without interest.

12. Cost of Management for DROP PROGRAM. The Police Officers and the Borough agree that any costs or fees associated with the management of the DROP PROGRAM accounts shall be paid directly from the Pension Fund and not by Dunmore Borough.

13. Amendment. Any amendments to this DROP PROGRAM Ordinance shall be consistent with the provisions covering Individual Retirement option plans set forth in any applicable collective bargaining agreement and shall be binding upon all future DROP PROGRAM Participants and upon all DROP PROGRAM Participants who have balances in their Individual Retirement option accounts. The DROP PROGRAM may only be amended by a written instrument, not by any oral agreement or past practice.

14. Construal of Provisions. A Police Officer's election to participate in the DROP PROGRAM shall in no way be construed as a limitation on the Borough's right to suspend or to terminate a Police Officer for just cause or to grant the Police Officer an honorable discharge based upon a physical or mental inability to perform his/her duties.

15. Severability. The provisions of the DROP PROGRAM shall be severable: and if any of its provisions shall be held to be unconstitutional or illegal, the validity of any of the remaining provisions of the DROP PROGRAM shall not be affected thereby. It is hereby expressly declared as the intent of the Borough that the DROP PROGRAM would have been adopted had such unconstitutional or illegal provision or provisions not been included herein.

16. Effective Date. The Effective Date of the DROP PROGRAM shall be retroactive to July 1, 2024.

SECTION IV: All elected and appointed officials of Dunmore Borough are authorized to take all action necessary to ensure the implementation and effect the purpose hereof.

SECTION V: Any and all Ordinances and/or Resolutions, or parts thereof, conflicting herewith are repealed insofar as the matters herein are affected.

SECTION VI: The provisions of this Ordinance are severable, and if any clause, sentence, subsection or section hereof shall be adjudged by any court of competent jurisdiction to be illegal, invalid or unconstitutional, such judgment or decision shall not affect, impair or invalidate the remainder but shall be confined in its operation and application to the clause, sentence, subsection or section rendered. It is hereby declared the intent of the Dunmore Borough Council that this ordinance would have been adopted if such illegal, invalid, or unconstitutional clause, sentence, subsection, or section had not been included therein.


SECTION VII: This is effective immediately upon enactment according to law, and shall remain in effect hereafter until revised, amended, or revoked by action of the Dunmore Borough Council.

ENACTED AND ORDAINED AS AN ORDINANCE BY THE BOROUGH OF DUNMORE


THIS 8 TH DAY OF July, 2024.

ATTEST:

BOROUGH COUNCIL

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