

ORDINANCE NO. 1135

AN ORDINANCE OF THE BOROUGH OF DONORA ESTABLISHING A POLICE PENSION FUND, PROVIDING FOR A PENSION TRUST COMMITTEE, A PENSION TRUSTEE, AND PROVIDING FOR A PENSION TRUST INDENTURE.

BE IT ORDAINED AND ENACTED, by the Borough of Donora, in Council assembled as follows:

WHEREAS, the Act of 1956, May 29, P. L. (1955) 1804, 53 P. S. § 767 et seq., as amended, provides the authority for the establishment of a Police Pension Fund to be maintained by a charge against each member of the police force, by annual appropriations made by the Borough of Donora Treasurer from monies received from the taxes paid on premiums by foreign-casualty insurance companies for purposes of pension retirement for policemen, and by gifts, grants, devises or bequests granted to such pension fund pursuant to the provisions of such Act, the Borough of Donora hereby establishes a Police Pension Fund amending the previous Police Pension Fund as established by Ordinance Nos. 930 and 1126 which Ordinances are specifically superseded by the terms of this Ordinance.

ARTICLE I

ESTABLISHMENT OF POLICE PENSION FUND

Section 1. The Police Pension Fund shall be under the direction of the Council of the Borough of Donora and shall be applied under such regulations as the Council of the Borough of Donora may, by ordinance or resolution, prescribe for the benefit of such members of the Borough of Donora police force as shall receive honorable discharge therefrom, by reason of age and service, or disability, and may prescribe for the benefit of widows, and if no widow survives or if she survives and subsequently dies or remarries, then of child or children under the age of eighteen years, of members retired on pension. All such pensions as shall be allowed to those who are retired by reason of disabilities shall be in conformity with a uniform scale.

Section 2. The Borough of Donora Police Pension Fund is hereby authorized to take by gift, grant, devise, or bequest, any money or property, real, personal or mixed, in trust, for the benefit of such fund. The care, management, investment and disposal of trust funds or property shall be vested in the Trustee of the Police Pension Fund; and the said trust funds shall be governed thereby subject to such directions not inconsistent therewith as the donors of such funds and property may prescribe.

Section 3. The members assets and liabilities of the existing Borough of Donora Police Pension Fund shall be transferred to the fund established by this Ordinance. After such transfer, the Borough of Donora Police Pension Fund established by this Ordinance shall assume the liability of continuing the payment of pensions to members of the police force retired prior to such transfer in accordance with the laws and regulations under which such members, if any, were retired.

Section 4. No person participating in a police pension fund established pursuant to the provisions of this or prior Ordinances, who becomes entitled to receive a benefit therefrom, shall be deprived of his right to an equal proportionate share therein upon the basis upon which he first became entitled thereto.

## ARTICLE II

### DEFINITIONS

Section 1. "Anniversary Date" is the anniversary of the premium date of the first group of policies and contracts procured under this Agreement.

Section 2. "Policy" includes any form of life insurance policy requiring evidence of insurability at issue.

Section 3. "Contract" includes any form of annuity contract not requiring evidence of insurability at issue.

Section 4. "Retirement Age" For Police Officers Employed on or after December 21, 1965.

(a) 25 years of aggregate service in the Borough as a policeman at age 55 or,

(b) 25 years of service at age 50 if an actuarial study has been made and shows that the reduction to age 50 is feasible.

For Police Officers who were members of the Police Pension Fund prior to December 21, 1965.

(c) Either of the above, (a) or (b).

(d) 20 years of service at age 60.

Such participating employees as are retired shall be subject to service, from time to time, as a police reserve, in cases of riot, tumult, or preservation of the public peace until unfitted for such service, when they may be finally discharged by reason of age or disability.

Further, any member of the police force who has been employed as full time regular policeman for a period of at least six (6) months and who thereafter shall enter into the military service of the United States, shall have credited to his employment record for pension or retirement benefits all of the time spent by him in such military service, if such person returns or has heretofore returned to his employment within six months after his separation from the service.

Section 5. "Participating Employee" or "Participant" is an employee who has met the eligibility requirements to participate in the trust as herein provided, and who has not reached his normal retirement date, service and age.

Section 6. "Beneficiary" refers to the person, trust or other entity

designated by the participating employee to receive the death benefits under any policy or contract.

Section 7. "The Trust" includes all money, property, investments, policies, and contracts standing in the name of the Trustee in accordance with the terms of this instrument.

Section 8. "The Fund" is the cash accumulated by the Borough in accordance with the provisions of the Plan.

Section 9. Words used in this instrument in the singular shall include the plural, and the masculine shall include the feminine, where appropriate.

### ARTICLE III

#### PENSION TRUST COMMITTEE

Section 1. Appointment of Committee. The Plan and trust shall be administered by a Pension Trust Committee, which shall consist of five (5) persons, two (2) of whom shall be a police officer selected by the police officers of the Borough, two (2) of whom shall be a member of the Council of the Borough, to be selected by the Council of the Borough, and One (1) of whom shall be an individual acceptable to both the police officers and the members of the Council of the Borough and who shall be appointed by the President of Council of the Borough. All members of the Pension Trust Committee shall serve for a period of two (2) year terms unless they shall have been reappointed for a successive term or terms by the bodies empowered to make such selection. Notwithstanding the foregoing, each member shall serve until his successor is appointed and qualified as a member of such committee. The Trustee is fully authorized and empowered to act under the proper written authorization of such Pension Trust Committee concurred in by three (3) members of the Committee. The Pension Trust Committee shall coordinate its activities with the Trustee. The Pension Trust Committee, as presently appointed, shall remain to fill their unexpired terms.

Section 2. Powers and Duties of the Pension Trust Committee.

(a) The Committee shall keep such records as shall be necessary for the determination of the status of each Participant and presumptive share of each Participant in the trust fund as determined by the actuary.

(b) The Committee shall keep on file a copy of this Declaration and copies of all amendments thereto and a copy of the Agreement with the Trustee for the implementation of the Plan and copies of all amendments thereto. Said copies shall be available for examination by any Participant.

(c) The Committee shall have the authority and shall be charged with the performance of the duties set forth in this Declaration. Moreover, the Committee, by general rule or special decision, may determine any question arising under this Declaration for the determination of which the provisions of this Declaration are otherwise insufficient. The said Committee shall have full power and authority to construe the Plan and to decide any questions which may arise thereunder and the Trustee is fully authorized and empowered to act under the proper authorization of such Committee.

(d) A writing signed by two members of the Committee may take the place of action at a meeting of the Committee. The Committee may make its own rules for the time and place of meetings and for the transaction of the business of the Committee.

ARTICLE IV

PENSION TRUSTEE

Section 1. Appointment of Trustee. The Borough Secretary of Donora as duly appointed by the Council of the Borough of Donora, and his duly appointed successors in that Office, is hereby appointed Trustee of the Police Pension Fund.

Section 2. Authorization of Trustee Action. The Trustee is fully authorized and empowered to act under the proper written authorization of

the Pension Trust Committee concurred in by two members of the Committee. The Trustee may rely on any written instructions or representations concurred in by any two members of the Committee as being the instructions or representations of the Committee and as being the scope of the authority of the Committee.

Section 3. Duties of the Trustee. The Trustee shall receive the contributions to the Plan and, at the direction of the Pension Trust Committee, the Trustee shall purchase with such portions of the contributions as may be necessary for that purpose, such contracts or policies of life insurance on the lives of the participants from a legal reserve life insurance company or companies as the Pension Trust Committee shall direct. After the payment of required premiums on such policies or contracts, the remaining contributions from the Borough received by the Trustee shall be invested. However, cash which is shortly to be used for disbursements called for by the Plan need not be invested. The Trustee shall follow the investment directions received from the Pension Trust Committee hereinafter called the "Committee" or the investment directions received from an investment advisor appointed by the Committee. Investments must be such as are authorized by law for the investment of funds in the custody and control of trustees. No Person or corporation with whom the Trustee may deal shall be required to inquire into the Trustee's authority for any proposed sale, exchange, transfer, purpose, or other action as to the amount of premium or premiums to be paid on policies or contracts on the lives of such participants.

The Trustee, at the direction of the Committee, shall make such distributions from the investment account to a legal reserve life insurance company or companies at such time and in such amounts as the said Committee shall direct in writing. The Trustee shall be the legal owner of

any policy or policies of insurance, and shall secure such endorsements on such policies from the appropriate life insurance company or companies as the Committee may direct in writing. Any action of the Trustee hereunder shall be conclusively evidenced for all purposes by his signature.

## ARTICLE V

### POLICEMEN ENTITLED TO PARTICIPATE

Section 1. All persons employed as full time regular police officers of the Police Department of the Borough of Donora shall participate hereunder.

Section 2. Any new employee of the Police Department of the Borough of Donora, during his probationary period of service, shall not be entitled to participate in the insurance program under this Plan, and during this period, his contributions, as hereinafter provided, shall be held in a separate fund by the Borough until he is appointed to the regular force of the Borough. At the time such policeman is appointed to the regular police force of the Borough, such separate contributions made by him shall then be transferred to the regular fund in the hands of the Borough.

Section 3. When any newly appointed policeman is appointed to the regular force of the Borough of Donora, having completed his probationary period of service, he shall be covered with preliminary term insurance until the anniversary date as herein specified, at which time he shall participate in the regular full life insurance program of the Police Pension Plan.

Section 4. The Committee shall furnish the Trustee with a list showing all employees eligible to participate in the trust at the effective date of this Agreement and their dates of birth. In each succeeding year during the continuance of the trust the Committee shall, not less than sixty (60) days

prior to the anniversary date, furnish the Trustee with a similar list of all employees who will become eligible to participate in the trust on the next anniversary date, with instructions as to the amount of premium or premiums to be paid on policies or contracts on the lives of such participants.

## ARTICLE VI

### CONTRIBUTIONS

Section 1. Since positions covered by the fund are included in an agreement under the Federal Social Security Act, members shall pay into the fund, monthly an amount determined as follows:

(a) On compensation on which social security taxes are payable, at a rate calculated by subtracting from five per centum the product obtained by multiplying three per centum by such offset percentage in Article VII, Section 1, (b), and

(b) On compensation in excess of that on which social security taxes are payable, if any, five per centum. The remainder of the needed annual contributions, as determined by the actuary, shall become the obligation of the Borough, and shall be paid by it to the pension fund by annual appropriations.

Section 2. If an actuarial study shows that the condition of the Trust is such that payments into the Fund by members may be reduced below the minimum percentages hereinbefore prescribed or eliminated; and that if contributions by the Borough will not be required to keep the fund actuarially sound, the Borough may, on an annual basis, by ordinance or resolution, reduce or eliminate payments into the fund by members.

Section 3. The payments made by the State Treasurer to the Borough Treasurer from the moneys received from taxes paid upon premiums by foreign casualty insurance companies for purposes of pension retirement or disability benefits for policemen shall be used, as follows:

(a) To reduce the unfunded liability or; after such liability has been funded,



(b) To apply against the annual obligation of the Borough for future service cost; and to the extent that the payment may be in excess of such obligation,

(c) To reduce member contributions,

(d) Unless otherwise specifically provided, any other monies paid into the police pension fund shall be applied equally against the member and the municipal portions of the future service cost.

Section 4. The actuary shall be the legal reserve life insurance company selected by the Committee. It shall be the duty of the actuary to advise the Committee of the amount or amounts required to be deposited with the Trustee in order to provide not only the funds required for the payment of premiums on the lives of the Participants, but also the amounts required to be deposited with the Trustee for investment in order to fund the benefits of the Participants in accordance with the provisions of the Plan. The Trustee's annual statement shall be made available to the actuary by the Pension Trust Committee. The actuary shall make an annual report to the Pennsylvania Department of Community Affairs as required by Act No. 293 of 1972.

## ARTICLE VII

### PARTICIPANTS' BENEFITS

Section 1. Monthly pension or retirement benefits shall be one-half the monthly average salary of such member during the last sixty months of employment. Such pension or retirement benefits for any such month shall be computed as the sum of:

(a) Any pension benefits from pension plans heretofore established by a private organization or association for the members of the police force, but only to the extent that this Commonwealth or any of its municipalities shall have contributed to such pension plan monies raised by taxation.

(b) Seventy-five per centum of the primary benefits under Federal Social Security Laws for which the officer may be eligible because of age, and

(c) Benefits from the police pension fund established pursuant to this Plan and Trust to the extent necessary to bring the total benefits in any month up to one-half the aforesaid monthly average salary. In the case of the payment of pensions for permanent injuries incurred in service and to families of members in service, the amount and commencement of the payments shall be fixed by regulations of the Borough Council.

(d) A policeman retiring with a service incurred disability shall receive a pension of fifty (50) per cent of the monthly average salary of such member during the last sixty (60) months of employment.

(e) In case of death of a retired policeman, the widow of the member or if no widow survives or subsequently dies or remarries, then the child or children under the age of eighteen (18) years of age shall receive fifty (50) per cent of the Pension the member was receiving.

Section 2. The death benefit for each Participant under his life insurance policy shall be Twenty Thousand Dollars (\$20,000.00). If death is accidental the death benefit is Forty Thousand Dollars (\$40,000.00). After the retirement of a Participant a Ten Thousand (\$10,000.00) death benefit shall continue, the cost of which will be paid by the Borough.

Section 3. Any member of the police force who for any reason whatsoever shall be ineligible to receive a pension after having contributed any charges to a police pension fund established pursuant to the provisions of this Plan and Trust, or to a police pension fund existing on the effective date of this Plan and Trust supplanted by the police pension fund established pursuant to the provisions of this Plan and Trust, shall be entitled to a refund of all such monies paid by him into such funds plus all interest earned

by such monies while in the police pension fund as determined by regulations of the Committee immediately upon discontinuance of his employment with the police force. If such discontinuance is due to death, such monies shall be paid to his designated beneficiary or, in the absence thereof, to his estate, at the written direction of the Pension Trust Committee. Any such refund shall be paid by the Trustee out of the trust exclusive of any policy of life insurance on the life of the ineligible employee. The life insurance policy on the life of the ineligible employee may be taken as a paid up policy or may be surrendered for its cash value, for the benefit of the trust, as directed by the Committee. In the event any participating member of the police force of the Borough shall become ineligible to receive any portion of the funds held for investment by the Trustee hereunder, except for the refund of his contributions as hereinabove provided, all such invested funds shall remain in the hands of the Trustee for the benefit of the Trust.

Section 4. When any Participant shall become eligible to receive his monthly pension benefit, the Committee shall direct the Trustee to deliver to the appropriate insurance company or companies the policy or policies of insurance on the life of such Participant at such time and with such endorsements as the Committee may direct. The Committee shall also direct the Trustee to deliver the monthly pension benefit to such eligible participant. The Trustee shall have no responsibility for determining the amount of monthly pension benefit and shall act only as directed by the Pension Trust Committee.

#### ARTICLE VIII

#### ADMINISTRATION, EXPENSES, AMENDMENT AND MISCELLANEOUS PROVISIONS

Section 1. The Trust. For the implementation of the Plan set forth

in this Declaration, the Borough may enter into an appropriate trust agreement in such form and containing such provisions as, in the opinion of the Borough, shall be necessary or convenient for the accomplishment of the purposes of the Plan.

Section 2. Expenses. The expense of the administration of this Plan and Trust, including the compensation of an actuary and the custodian of the fund, exclusive of the payments of retirement allowance, shall be paid by the Borough by appropriations made by the Borough. In the event of the failure of the Borough to make payment, such expenses may be paid out of the Trust Fund and be reimbursed to the Trust at a later time by the Borough.

Section 3. Appointment of Investment Advisor. The Committee is hereby authorized and directed to appoint Managed Investments, Inc., as investment advisor, who will make all transactions at the direction of the Trustee, and render periodic statements as to the securities held and transactions made.

Section 4. Amendment or Termination. The Committee, by appropriate action may amend the Plan subject to the following restrictions:

(a) The Committee shall have the right to alter and amend the said Agreement with approval of Borough Council; provided, however, that in no event shall any such alterations or amendments in any manner adversely affect the rights of the Participants under the trust, or permit any part of the corpus or income of the trust to be used for, or diverted to, purposes other than the exclusive benefit of the Participants at any time prior to the satisfactions of all liabilities with respect to the Participants; nor shall the said Committee have the right to amend the trust in any manner which may increase the duties or responsibility of the Trustee without the consent of the Trustee.

(b) The Committee shall have the right to terminate the Trust at any time, with approval of Borough Council.

Section 5. Miscellaneous. The participants hereunder shall have no right to anticipate, to pledge, or in any manner to alienate their interests in the income arising from or in the principal of the trust fund, and their interests shall not be liable for their debts, contracts, or engagements, or subject to execution, attachment, or sequestration, or other legal process. The adoption of this Declaration and of the plan embodied therein shall not give any Participant any right to continued employment.

ORDAINED AND ENACTED this 5<sup>th</sup> day of JULY,  
1973.

BOROUGH OF DONORA

ATTEST:

Thomas E Petrus  
Borough Secretary

By Andrew J. Shuhra  
President of Council

EXAMINED AND APPROVED by me this 5<sup>th</sup> day of  
JULY, 1973.

ATTEST:

Thomas E Petrus  
Borough Secretary

Albert P. d'Albano  
Mayor