

**LOWER SAUCON TOWNSHIP
NORTHAMPTON COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2021-04

AMENDMENTS TO THE CODE OF THE TOWNSHIP OF LOWER SAUCON

AN ORDINANCE OF THE TOWNSHIP OF LOWER SAUCON, NORTHAMPTON COUNTY, PENNSYLVANIA, AMENDING AND REVISING THE CODE OF THE TOWNSHIP OF LOWER SAUCON BY REVISING: CHAPTER 38 (PENSIONS), ARTICLE II (UNIFORMED EMPLOYEE PENSION) TO AMEND CERTAIN PROVISIONS OF THE POLICE PENSION PLAN OR PROGRAM APPLICABLE TO THE POLICE EMPLOYEES OF LOWER SAUCON TOWNSHIP BY ADDING CERTAIN DEFERRED RETIREMENT OPTION PENSION PROVISIONS; AND REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT WITH THE PROVISIONS CONTAINED HEREIN

WHEREAS, Lower Saucon Township is a Township of the Second Class, Optional Plan of Government, located in Northampton County, Commonwealth of Pennsylvania; and

WHEREAS, the Township of Lower Saucon adopted Ordinance # 98-17 on May 20, 1998, enacting the Code of the Township of Lower Saucon (hereinafter referred to as the “Code”); and

WHEREAS, the Township and the Lower Saucon Police Officers Association have agreed to establish a Deferred Retirement Option Pension (“DROP”) benefit to be effective January 1, 2022, for eligible police employees who wish to participate in the DROP; and

WHEREAS, the Council of Lower Saucon Township desires to amend the Code of the Township of Lower Saucon to revise, update, and clarify certain provisions of Chapters 38 relating to the addition of a Deferred Retirement Option Pension (DROP) program for the Township’s Uniformed Employees, which provisions shall be in compliance with applicable state law including 53 P. S. Sec. 895.1101, et seq.; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Council of the Township of Lower Saucon, Northampton County, Commonwealth of Pennsylvania, that the provisions of the Code of the Township of Lower Saucon are hereby amended as follows:

Section 1. Amendment to Chapter 38 (Pensions), Article II (Uniformed Employee Pension).

Effective January 1, 2022 the Appendix set forth below shall be added to Lower Saucon Township Uniformed Employee Pension Plan as follows:

DEFERRED RETIREMENT OPTION PLAN

THIS APPENDIX IS EFFECTIVE AS OF JANUARY 1, 2022

A. Definitions

DROP – Deferred Retirement Option Plan

DROP Account – An account established for the purpose of accepting DROP participants' monthly pension checks which will remain in the Pension Trust Fund.

B. Eligibility

Effective January 1, 2022, members of Lower Saucon Township Police Department, who have not retired prior to the implementation of the DROP program, may enter into DROP on the first day of any month following the date on which the Officer reaches his normal retirement date. The length of DROP participation shall be a maximum of twenty-four (24) months.

C. Written Election

To participate in DROP, the Officer must select a date certain in the future ("Termination Date") on which he will cease employment. The Termination Date can be no sooner than twelve (12) months from the date DROP participation begins, and no later than twenty-four (24) months from the date DROP participation begins. Election to participate in DROP is irrevocable, and, therefore, once an Officer elects to participate in DROP, the Officer cannot thereafter, leave DROP and resume participation in the Township's Pension Plan. However, the Officer may cease employment, by providing written notification to the Township, at any time during DROP participation, but, in no event shall the Officer's employment continue after the identified Termination Date.

The Officer shall make the election to participate in DROP by using forms and procedures as prescribed by the Plan Trustee. Such election shall be made at least 31 days in advance of the Officer's effective date of participation in the DROP and no later than 365 days after first reaching superannuation. The documentation that must be executed before an Officer may participate in the DROP Program shall include a provision releasing the Township from any liability with regard to investment and other losses (subject to the guaranteed rate of return set forth herein). As a condition precedent to participation in DROP, the Officer must also acknowledge and agree to hold the Township harmless for any consequences flowing from the Officer's decision to participate in DROP, including, but not limited to any tax consequences or other financial or other implications of DROP participation.

In addition, all retirement documents required by the Police Pension Board Administrator must be filed and presented to the Township for acceptance and approval of retirement and payment of pension. Once a retirement application has been approved by Lower Saucon Township, it is irrevocable.

D. Limitation on Pension Accrual.

As of the effective date of DROP participation, the Officer shall no longer earn or accrue additional years of continuous service for pension purposes, and the Officer shall no longer make any required contributions to the Township's Police Pension Fund.

E. Benefit Calculation

For all Township Police Pension Fund purposes, continuous service of an Officer participating in DROP shall remain as it existed on the day prior to the effective date of commencement of participation in DROP (the "Effective Retirement Date"). Service thereafter shall not be recognized or used for the calculation or determination of any benefits payable by Lower Saucon Township Pension Fund. The Officer's pension benefit shall remain as it existed on the Effective Retirement Date. Earnings or increases in earnings thereafter shall not be recognized or used for the calculation or determination of any benefits payable by the Township Police Pension Fund. The pension benefit payable to the Officer shall increase only as a result of Cost of Living Adjustments in effect on the Effective Retirement Date or by applicable cost of living adjustments granted thereafter. Entry into the DROP shall be construed as "Retirement" for the purposes of leave sell back. At the time of entry into the DROP, the participant shall be permitted to sell back leave as if he or she had retired pursuant to the collective bargaining agreement and the calculation of leave into the pension shall be handled in accordance with the language of the Plan.

F. Payments to the DROP Account

The monthly retirement benefits that would have been payable had the Officer elected to cease employment and receive a normal retirement benefit instead of entering DROP, shall, upon the Officer commencing participation in DROP, will be held within an interest-bearing ledger account within the police plan's pension trust fund. Payments to the DROP account shall be made only while the member is a participant in the DROP program. The interest rate will be calculated on an annual basis and that annual rate will be credited monthly at the actual rate earned by the fund and shall not be less than 0% nor more than 4.5%. The DROP shall at all times comply with the annual benefit limitations of Code Section 415 and all regulations thereunder.

G. Accrual of Non-Pension Benefits

After an Officer elects to participate in the DROP program, all other contractual benefits shall continue to accrue with the exception of:

- a. Those provisions relating to the Township's Police Pension Plan;

- b. The buyback of any qualifying accrued, but unused leave time. An Officer may utilize leave time during the DROP period, but the Township shall not be required to buyback any such unused leave time at the end of the DROP period nor may an officer exhaust his leave time as part of his exit from the DROP;

H. Payout

Upon the Termination Date established by the Officer before entering DROP, or such date that the Officer terminates from employment before the Termination Date or on the date the Township separates the Officer from employment, the retirement benefits payable to the Officer or Officer's beneficiary, if applicable, shall be paid to the Officer or beneficiary and shall no longer be paid to the Officer's DROP account. Following termination of an Officer's employment pursuant to their participating in the DROP program, the balance in the Officer's DROP account shall be paid pursuant to one of the following options:

1. The balance of the Officer's DROP account, less withholding taxes, if any, remitted to the Internal Revenue Service, shall be paid within forty-five (45) days of receipt of the election form by the Plan to the Officer or the Officer's surviving beneficiary.
2. The balance in the Officer's DROP account shall be paid within forty-five (45) days of the receipt of the election form by the Plan directly to the custodian of an eligible retirement plan as defined by Internal Revenue Service Code Section 402(c)(8)(b), or in the case of an eligible rollover distribution to the surviving spouse of a deceased DROP participant, to 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).
3. If the Officer or the Officer's beneficiary fails to make an election within sixty (60) days following the date of termination of DROP participation, then the Township shall pay the lump sum as provided in No. 1, above.

The form of payment selected by the Officer or surviving beneficiary shall comply with the minimum distribution requirements of the Internal Revenue Code of 1986.

As a condition of participation in DROP, the Officer acknowledges that the Township plays no role nor has any responsibility in advising the Officer regarding the appropriate payout vehicle. Accordingly, any Officer participating in DROP assumes all financial consequences for his/her participation in DROP, including, but not limited to, the manner in which a permitted payout from the DROP account is made. The participating Officer agrees to hold the Township harmless for any tax or other financial consequences which flow directly or indirectly from the officer's participation in DROP. It is strongly suggested that Officers participating in DROP obtain appropriate financial advice and guidance.

I. Disability During DROP

If an Officer becomes temporarily disabled during his participation in DROP, any such time lost due to disability shall be counted towards the Officer's Termination Date. Upon return to duty, membership in DROP shall continue with the remaining time left until the Officer's Termination Date. If eligible, the Officer shall receive temporary disability pay in the same amount as disabled Police Officers that are not participating in DROP. In no event shall an Officer on temporary disability have the ability to draw from his DROP account. However, notwithstanding any other provision in this paragraph, if an Officer is disabled and has not returned to work as of the Termination Date identified prior to DROP participation, then such resignation shall take precedence over all other provisions herein, and said Officer shall be required to resign. Nothing contained in this Plan shall be construed as conferring any legal rights upon any Officer or other person to the continuation of employment nor shall participation in the DROP Program supersede or limit in any way the right of the Township to grant the Officer an honorable discharge based upon an inability to perform his or her full duties as a police officer.

If an Officer is determined to have sustained a permanent work-related injury in the course of employment, the Officer's participation in DROP shall immediately cease. In such case, the Officer shall have the same options for the payout of the Officer's DROP account and, thereafter, shall receive a normal monthly pension benefit payment in the same manner as an Officer who completed his full participation in DROP.

J. Death

If an Officer participating in DROP dies, the Officer's eligibility for the DROP shall terminate upon the date of death. If such death occurs before the DROP account balances are paid, the Officer's legal beneficiary shall have the same rights as the Officer to withdraw or roll over the account balance.

Except in the case of death benefits specifically payable as a result of death incurred in the course of performing hazardous public duty, the only death benefits to which a DROP Participant's survivor shall be entitled are those normally payable in the death of a retired Officer.

K. Forfeiture of Benefits

Notwithstanding an Officer's participation in DROP, an Officer 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 Account. In such a case, the Officer shall only be entitled to receive the contributions, if any, made by the Officer to the Township's Police Pension Fund, without interest.

L. Cost of Management for DROP Program

The Police Association and the Township agree that any costs or fees associated with the management of the DROP accounts shall be paid directly from the Police Pension Fund and not by the Township.

M. Post-Retirement Health Care

Any officer who enters the DROP and who, as a consequence, is considered retired by the terms of the Police Pension Plan shall be covered by any post-retirement health care (if applicable and assuming eligibility) at the time of their entry into the DROP program.

N. Amendment

Any amendments to this DROP enclosure shall be consistent with the provisions covering deferred retirement option plans set forth in any applicable collective bargaining agreement and shall be binding upon all future DROP participants and upon all DROP participants who have balances in their deferred retirement option accounts. The DROP plan may only be amended by a written instrument, not by any oral agreement or past practice.

O. Effective Date

The Effective Date of this Ordinance is as provided herein; however, the implementation of the DROP program will begin on January 1, 2022.

P. Construal of Provisions

An Officer's election to participate in the DROP program shall in no way be construed as a limitation on the Township's right to suspend or terminate an Officer or to grant the Officer an honorable discharge based upon a physical or mental inability to perform his or her duties.

Q. Severability

The provisions of this Ordinance 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 Ordinance shall not be affected thereby. It is hereby expressly declared as the intent of the Township that this Ordinance would have been adopted had such unconstitutional or illegal provision or provisions not been included herein.

In the event that the DROP provision is declared invalid or illegal by a court of competent jurisdiction or through an administrative determination of the Office of the Auditor General, the Police Association shall have the right to bargain in accordance with Act 111 over deletion of this benefit. It is expressly understood that this shall not involve bargaining over a replacement provision.

Section 2. Severability.

The provisions of this Ordinance are severable. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, illegal, or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council of Lower Saucon Township hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional, illegal, or otherwise invalid.

Section 3. Repealer

All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

Section 4. Effective Date.

The provisions of this Ordinance shall become effective ten (10) days after adoption.

ENACTED and **ORDAINED** this 1st day of December, 2021.

Attest

Lower Saucon Township

Leslie Huhn
Township Manager

Sandra B. Yerger
Council President