

**NEW SEWICKLEY TOWNSHIP  
ALLEGHENY COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 236**

AN ORDINANCE OF NEW SEWICKLEY TOWNSHIP RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE OF A POLICE EMPLOYEES PENSION ANNUITY, INSURANCE AND BENEFIT FUND OR FUNDS, TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM APPLICABLE TO THE POLICE EMPLOYEES OF SAID TOWNSHIP

WHEREAS, New Sewickley Township, (the "Township") has previously enacted an Ordinance establishing the New Sewickley Township Police Pension Plan (the "Plan"); and

WHEREAS, the Township retains the right to amend the Plan; and

WHEREAS, the Township now desires to amend and restate the Plan provisions associated with the Internal Revenue Code.

NOW, THEREFORE, New Sewickley Township hereby adopts this ordinance, and it is hereby ORDAINED AND ENACTED by authority of the same:

That effective January 1, 2023 the Plan now known as the New Sewickley Township Police Pension Plan is hereby amended to delete Article IX in its entirety by substituting the below amendment in its place:

**ARTICLE IX  
APPLICABLE PROVISIONS OF THE INTERNAL REVENUE CODE**

- 9.01 Intent to Comply with Internal Revenue Code: The Employer intends that this Plan shall meet all the pertinent requirements established for a governmental plan (as defined in Internal Revenue Code §414(d)) under Internal Revenue Code §401(a), as amended, and the Plan shall be interpreted, wherever possible, to comply with the terms of said Code and all formal regulations and rulings pertinent to the Plan and trust agreement.
- 9.02 Definitions: The following definitions apply for purposes of this Article only:
- (a) "Leased Employee" shall mean any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person ("leasing organization") has performed services for the recipient (or for the recipient and related persons determined in accordance with Code Section 414(n)(6)) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.

- (b) "Limitation Year" shall mean the Plan Year.
- 9.03 Limitation Compensation: Compensation is subject to the limitation under Code Section 401(a)(17), which is \$330,000 for the Plan Year and Limitation Year beginning in 2023.
- 9.04 Leased Employees and Independent Contractors: Leased Employees and independent contractors are not eligible to participate in this Plan. Any person whom the Employer does not regard as being an Employee shall not be eligible to participate.
- 9.05 Limit on Accrued Benefit:
- (a) General Rule. Except as otherwise provided, this Plan shall at all times comply with the provisions of Code Section 415 and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If a benefit payable to a Participant under this Plan would otherwise exceed the limit under Code Section 415, the benefit will be reduced to the maximum permissible benefit.
  - (b) Effective Date. If there is more than one permitted effective date for any change, the change shall be effective as of the latest permissible effective date; however, any adjustment in the dollar limit under Code Section 415(b)(1)(A), whether required or permissible, shall take effect automatically as of the earliest permissible effective date. Effective as of January 1, 2008 the "applicable mortality table" and "applicable interest rate" are found in Rev. Rul. 2007-67. The "applicable mortality table" in Rev. Rul. 2001-62 was effective from December 31, 2002 through December 31, 2007. The "applicable mortality table" and "applicable interest rate" shall be automatically adjusted for changes in the law and IRS announcements.
  - (c) No Reduction in Accrued Benefits. Notwithstanding the above, no change in the limits under this Article shall reduce the benefit of any Participant.
  - (d) Multiple Plans. If a Participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code Section 415(b), and if the aggregated benefits would otherwise exceed the limit under Code Section 415(b), then benefits shall be reduced first under this Plan.
  - (e) Mandatory Contributions. Participant Contributions are annual additions, and any benefit attributable to Participant Contributions is not included in the benefit subject to the limits of Code Section 415(b). This subsection does not apply to contributions "picked-up" in accordance with Code Section 414(h).
  - (f) Permissive Service Credit. Effective as of January 1, 1998, if a Participant makes a purchase of permissive service credit (within the meaning of Code Section

415(n)) under the Plan, the benefit derived from the contributions made to purchase the service credit shall be treated as part of the benefit subject to the limitations under this section.

9.06 Limit on Annual Additions:

- (a) Annual Additions - Except as otherwise provided, annual additions (which include Participant Contributions) under this Plan shall at all times comply with the provisions of Code Section 415(c) and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If an annual addition would otherwise exceed the limit under Code Section 415(c), the excess annual addition will be eliminated in accordance with methods permitted under Rev. Proc. 2008-50 (Rev. Proc. 2006-27 prior to 2009) or its successor.
- (b) Multiple Plans - If a Participant also participates in one or more other plans that are required to be aggregated with this Plan for purposes of determining the limits under Code Section 415(c), and if the annual additions would otherwise exceed the limit under Code Section 415(c), annual additions will first be reduced under the other plan. If there is more than one other plan, annual additions will first be reduced under the plan with the greatest amount of annual additions.
- (c) Effective Date – The limits under which Code Section 415(c) are adjusted periodically in accordance with changes in the law or cost of living adjustments without the need for a plan amendment. If there is more than one permissible effective date for any required change relating to Code Section 415(c), then the change shall be effective as of the earliest permissible effective date.
- (d) 415(c) Compensation - For the purposes of this Section, "compensation" includes only those items specified in Treas. Reg. §1.415(c)-2(b)1 or (2) and excludes all items listed in Treas. Reg. §1.415(c)-2(c), the terms of which are specifically incorporated herein by reference. Effective as of January 1, 2009, to the extent required by the Heroes Earnings Assistance Tax Relief Tax Act of 2008 (HEART Act), differential wage payments shall be included in Compensation for the purposes of applying the limits on annual additions under IRC Section 415(c). This provision shall be applied to all similarly situated individuals in a reasonable equivalent manner.

9.07 Direct Rollovers:

- (a) If a Participant, a spousal beneficiary, or an alternate payee (who is a spouse or former spouse of a Participant) is entitled (under other provisions of this Plan) to receive an "eligible rollover distribution" of at least two hundred (\$200) dollars, the distributee may elect that the Plan Administrator transfer all or part (provided

that the part is at least five hundred (\$500) dollars) to any “eligible retirement plan” capable of accepting such a transfer.

(b) For purposes of this section, the following definitions shall apply:

- (1) An “eligible rollover distribution” is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), and (iv) effective as of January 1, 2002, any hardship distribution. Effective as of January 1, 2002 clause (iii) does not apply to any after-tax Participant contributions that are paid to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a), or effective as of January 1, 2007, any 403(b) annuity contract that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
- (2) An “eligible retirement plan” is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse, prior to January 1, 2002, an eligible retirement plan was an individual retirement account or individual retirement annuity. Effective as of January 1, 2002, an “eligible retirement plan” includes an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. Effective as of January 1, 2008 a Roth IRA is an “eligible retirement plan”.
- (3) A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or

former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p)(11), are distributees with regard to the interest of the spouse or former spouse.

9.08 Minimum Required Distributions: Notwithstanding any provision in this Plan to the contrary, the distribution of a Participant's benefits shall be made in accordance with the requirements of Code Section 401(a)(9). For purposes of complying with Code Section 401(a)(9), life expectancies were determined in accordance with the 1987 proposed regulations prior to January 1, 2003 and with the final regulations (§1.401(a)(9)-1 through §1.401(a)(9)-9) on or after January 1, 2003.

(a) Distribution of a Participant's benefits shall begin not later than April 1<sup>st</sup> of the calendar year following the later of:

- (1) the calendar year in which the Participant attains age seventy-three (73) or such later age and date as may be set forth in law (and as per IRS regulations), or
- (2) the calendar year in which the Participant retires.

Distributions must be made over a period not exceeding the life of the Participant or the joint lives of a Participant and his Beneficiary.

(b) Distributions to a Participant and his Beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code Section 401(a)(9)(G) and the regulations thereunder. If a Participant receives a joint and survivor annuity and the beneficiary is not the Participant's spouse, life expectancy shall be determined using the Uniform Lifetime Table of Treasury regulation §1.401(a)(9)-9.

(c) This section does not authorize the payment of any benefit in any form not permitted under another provision of the Plan.

(d) Per Secure Act 2, the surviving spouse may elect to be treated as the deceased Participant for purposes of the required minimum distribution rules.

9.09 Approved Domestic Relations Orders: The Plan may approve and recognize a DRO so long as the DRO follows the Plan and State law.

9.10 Credit for Qualified Military Service: Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance Code Sections 401(a)(37) and 414(u).

- 9.11 Vesting Upon Plan Termination: Upon the termination of this Plan, or complete discontinuance of contributions (within the meaning of pre-ERISA Code Section 401(a)(7)) to this Plan, each Employee (who is not already 100% vested) as of the date of such termination or discontinuance shall become vested to the extent that the Plan is funded.
- 9.12 Mandatory Lump Sum Distributions: Effective as of January 1, 2006, unless the Participant consents to the distribution, any lump-sum distribution in excess of \$1000 made to a Participant prior to the Participant's attainment of Normal Retirement Age shall be rolled over by the Plan Administrator into an Individual Retirement Account established by the Plan Administrator for that purpose.
- 9.13 Non-Spousal Rollover: Effective January 1, 2007, if a Beneficiary who is not a surviving spouse is entitled to receive what would otherwise be an "eligible rollover distribution", the Beneficiary may, in accordance with Code Section 402(c)(11), make a trustee-to-trustee transfer of that amount to an IRA or individual retirement annuity (other than an endowment contract); provided that:
- (a) the transfer is made not later than the end of the fourth year after the year of the Participant's death; and
  - (b) the account or annuity to which the amount is transferred is treated as an inherited IRA or individual retirement annuity in accordance with Code Section 408(d)(3)(C).
- 9.14 Full Vesting at Normal Retirement Age: A Participant's Normal Retirement Benefit shall be 100% vested upon attainment of his Normal Retirement Age.
- 9.15 Forfeitures: Forfeitures shall not be used to increase the benefits of any Participant in this Plan but may be used to reduce Employer contributions to the Plan.
- 9.16 Exclusive Benefit: The Plan is maintained for the exclusive benefit of its Participants and Beneficiaries.
- 9.17 No Reversion to Employer: At no time shall it be possible for the Plan assets to be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and their Beneficiaries, except that contributions made by the Employer may be returned to the Employer if:
- (a) The contribution was made due to a mistake of fact and the contribution is returned within one year of the mistaken payment of the contribution; or
  - (b) The Plan is terminated.



9.18 Windsor Case: Effective June 23, 2013, the terms spouse, husband, wife, widow, and widower shall include individuals married to persons of the same sex if the individuals are legally married under state law. Also, where the term widow appears, it shall be read to include widower.

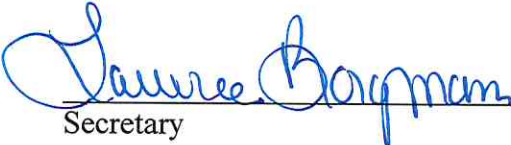
9.19 Secure Act 2: Effective January 1, 2023 the Plan is hereby amended to add this Section 9.19, Secure Act 2, as follows: All the applicable Secure Act 2 IRC 401(a) mandatory provisions that apply to governmental plans are added to the Plan pursuant to all conditions and limitations. This Section is intended as good faith compliance with the Secure Act 2 and is to be construed in accordance with such Act. This Article shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the Secure Act 2. As such, the surviving spouse may elect to be treated as the deceased Participant for the purposes of the required minimum distribution rules.

In addition, the cash out limit is increased to \$7,000, pursuant to limitations and conditions of law.

ORDAINED AND ENACTED this 27<sup>th</sup> day of December 2023.

ATTEST:

NEW SEWICKLEY TOWNSHIP  
BOARD OF SUPERVISORS

  
Secretary

  
Chairman of the Board of Supervisors