

# Chapter 1

## Administration and Government

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**Part 1****Preliminary Provisions****§1-101. Short Title.**

The short title of this Code of Ordinances prepared and published for the Borough of Akron shall be the "Borough of Akron Code of Ordinances."

*(Ord. 00037, 10/8/2007)*

**§1-102. Citation of Code of Ordinances.**

The Borough of Akron Code of Ordinances may be cited by Section number. The approved short form is "Code." Thus, "Code, §27-101" refers to §101 of Chapter 27 of this Code of Ordinances.

*(Ord. 00037, 10/8/2007)*

**§1-103. Arrangement of Code.**

1. This Code is divided into Chapters which are subdivided as follows:
  - A. Subchapters, identified by capital letters, beginning with a Chapter title and number.
  - B. Parts, identified by Arabic numerals, beginning with a Part title and number.
  - C. Subparts, identified by Arabic numerals, beginning with a title.
2. The Sections of the Code are subdivided as follows:
  - A. Subsections, identified by Arabic numerals.
  - B. Paragraphs, identified by capital letters.
  - C. Subparagraphs, identified by Arabic numerals enclosed within parentheses.
  - D. Clauses, identified by lower case letters enclosed within parentheses.
  - E. Subclauses, identified by Arabic numerals followed by a parenthesis.
  - F. Items, identified by identified by lower case letters followed by a parenthesis.
  - G. Subitems, identified by small Roman numerals.

*(Ord. 00037, 10/8/2007)*

**§1-104. Headings.**

Chapter, Subchapter, Part, Subpart, Section, Subsection, Paragraph, Subparagraph, Clause, and Subclause headings contained in the Code may not be deemed to govern, limit, modify or affect the scope, meaning or intent of the Code. The headings of Sections, Subsections or other divisions of this Code are intended as mere captions to indicate the contents of the Section, Subsection or other division and shall not be deemed to be taken as titles of such Section, Subsection or other division, nor as any part of said Section, Subsection or other division unless expressly so provided.

(Ord. 00037, 10/8/2007)

### **§1-105. Tenses, Gender and Number.**

Except as may be otherwise stated in any provision of this Code, the present tense includes the past and future tenses, and the future the present; the masculine gender includes the feminine and neuter, the feminine includes the masculine and neuter, and the neuter includes the masculine and feminine; and the singular includes the plural, and the plural the singular.

(Ord. 00037, 10/8/2007)

### **§1-106. Construction.**

1. All previous definitions and constructions specifically set forth elsewhere in the Code are preserved. Where any word or words lack a definition or a specific methodology of interpretation is not otherwise given, the provisions of the Statutory Construction, 1 Pa.C.S.A. §1501 *et seq.*, shall be applied in construing this Code.

2. *Effect of Repeal or Expiration of Code Section.*

A. The repeal of a Code Section or ordinance, or its expiration by virtue of any provision contained therein, shall not affect any right accrued or any offense committed, any penalty or punishment incurred, or any proceeding commenced before the repeal took effect or the ordinance expired.

B. When any ordinance repealing a former Code Section, ordinance, clause or provision shall itself be repealed, such repeal shall not be construed to revive such former Code Section, ordinance, clause or provision, unless it shall be expressly so provided.

3. *Saving Clause.* The provisions of this Code, so far as they are the same as those ordinances and regulations in force immediately prior to the adoption of this Code, are intended as a continuation of such ordinances, resolutions and regulations and not as a new enactment. The provisions of this Code shall not affect any suit or prosecution pending or to be instituted to enforce any of the prior ordinances or regulations. Except as specifically stated in this Code or in the ordinance adopting this consolidation, codification and revision of ordinances and regulations of the Borough of Akron, it is the intention of the Borough Council that no ordinance or regulation of the Borough be amended, revised or repealed by implication.

4. *Resolutions.* The provisions of this Code of Ordinances may contain resolutions, that is, actions of the Borough Council of the Borough of Akron (in written form and designated "resolution") which did not require prior public notice in accordance with the provisions of the Borough Code, 53 P.S. §45101 *et seq.*, at the time of their passage by the Borough Council. Such "resolutions" are included herein for ease of reference and the Borough Council does not intend by their inclusion herein to require prior public notice before amending, revising or repealing such resolution or resolutions as may have been included herein in the future. It is the intention of the Borough Council that such actions of the Borough Council that may be included in this Code and specifically cited and designated as a resolution shall not become an ordinance (requiring prior public notice before amendment, revision or repeal) by the simple fact of inclusion in this Code.

(Ord. 00037, 10/8/2007)

**§1-107. Normal Numbering.**

1. *Chapters.* Chapters are numbered sequentially in Arabic throughout this Code.
2. *Parts.* Parts are numbered sequentially in Arabic throughout this Code.
3. Whenever other divisions are necessary, Chapters shall be divided into Subchapters, Parts into Subparts and designated with the Chapter or Part number followed by a capital letter. For instance, Chapter 1 may be divided into Subchapters 1A and 1B.
4. *Sections.* Sections are numbered sequentially throughout a Chapter and a Part such that the first number or numbers is the Chapter number, followed by a hyphen, followed by the Part number, followed by the Section number within the Part. For example, "§1-101" designates Chapter 1, Part 1, Section 1. Similarly, "§27-305" designates Chapter 27, Part 3, Section 5.
5. *Internal Divisions of Sections.* Whenever internal divisions are necessary, Sections shall be divided into Subsections, Subsections into Paragraphs, Paragraphs into Subparagraphs, Subparagraphs into Clauses, and Clauses into Subclauses, and Subclauses into Items, designated as follows:
  1. Subsection.
    - A. Paragraph.
      - (1) Subparagraph.
        - (a) Clause.
          - 1) Subclause.
            - a) Item.
              - i. Subitem

(Ord. 00037, 10/8/2007)

**§1-108. Special Numbering Problems.**

1. *Addition of New Units Between Existing Units.* If it becomes necessary to introduce a new Chapter, Part or Section between existing Chapters, Parts or Sections, the new Chapter, Part or Section shall be designated by the addition of a capital letter suffix to the preceding Chapter, Part or Section number. Thus, a Chapter introduced between Chapters 5 and 6 would be Chapter 5A and Sections in that Chapter would be numbered, for instance, "§5A-101." If it becomes necessary to introduce a Part between existing Parts 5 and 6 the new Part would be Part 5A and Sections in that Part would be numbered, for instance, "§5-5A01." A new Section introduced between existing Sections 5 and 6 would be "§5-105A." When a number of new Parts or Sections have been introduced the Chapter or Part shall be renumbered.
2. If it becomes necessary to introduce a Subsection between Subsections, for instance, Subsections .5 and .6, the new Subsection would be numbered Subsection .5-A.
3. If it becomes necessary to introduce a unit smaller than a Subsection between existing unites, the entire Subsection shall be revised and renumbered.
4. *Vacated Numbers.* Whenever a number is vacated by a revocation or repeal, the remaining elements in the overall unit shall retain their old numbers until the overall unit is completely revised. Prior to revision, the vacated number may be marked:

“[Reserved].”

(Ord. 00037, 10/8/2007)

### §1-109. Amending Code.

1. All ordinances passed subsequent to the adoption of this Code which amend, repeal or in any way affect this Code shall be numbered in accordance with the numbering system of this Code and printed for inclusion herein. In the case of repealed Chapters, Parts, Sections, Paragraphs, Clauses or other part or provision hereof, by subsequent ordinance, such repealed portions may be excluded from this Code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code and subsequent ordinances omitted are readopted as a new Code by the Borough Council.

2. Amendment to any provision of this Code shall be made by specific reference to the Chapter, Part, Section and/or Subsection number of this Code in the following language:

A. *Amendment or Revision.* “Chapter \_\_\_, Part \_\_\_, Section \_\_\_, Subsection \_\_\_, is hereby amended (revised) to read as follows . . .” The amended or revised provisions may then be set out in full as desired.

B. *Addition.* “Chapter \_\_\_, Part \_\_\_, Section \_\_\_, Subsection \_\_\_, is hereby amended by the addition of the following . . .” The new provision shall then be set out in full as desired.

C. *Repeal.* “Chapter \_\_\_, Part \_\_\_, Section \_\_\_, Subsection \_\_\_, is hereby repealed in its entirety.”

3. It is the intention of the Borough Council that the numbering scheme of this Code be adhered to in enacting future ordinances. In the event that any ordinance or other enactment be adopted which does not conform to the numbering system of this Code, it is the intention of the Borough Council that such enactment be renumbered in the process of supplementing, revising or updating this Code to conform to the numbering scheme of this Code. The Borough Council hereby acknowledges and confirms that the numbering scheme herein is for ease of reference and that the renumbering of any enactment when added to this Code shall not in any manner affect the validity of said enactment.

(Ord. 00037, 10/8/2007)

### §1-110. Altering Code.

It shall be unlawful for any person to change or amend by addition or deletion any part or portion of this Code, or to insert or delete pages or portions thereof, or to alter or tamper with such Code in any manner whatsoever, except by ordinance or resolution or other official act of the Borough Council.

(Ord. 00037, 10/8/2007)

### §1-111. Penalties.

1. *Penalty Where No Penalty Provided.* Whenever in this Code or in any ordinance of the Borough any act is prohibited or is declared to be unlawful, or whenever in this



Code or other ordinance the doing of any act is declared to be unlawful, and no specific penalty is provided therefor:

A. *Violations of Health, Safety and Welfare Provisions.* For violations of ordinances adopting building, housing, property maintenance, health, fire or public safety codes; and for ordinances regulating water services, water pollution, air pollution and noise, the following penalty shall be provided:

(1) Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof, shall be sentenced to a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

B. *Other Violations.* All other penalties, except for penalties in Chapter 15, "Motor Vehicles and Traffic" (based on the Vehicle Code, 75 Pa.C.S.A. §101 *et seq.*), penalties and ordinances adopted under the authority of the Municipalities Planning Code, 53 P.S. §10101 *et seq.*, earned income tax ordinances adopted under the Local Tax Enabling Act, 53 P.S. §6913, ordinances adopted under authority of the Sewage Facilities Act, 35 P.S. §750.1 *et seq.*, and ordinances adopted under authority of the Storm Water Management Act, 32 P.S. §680.1 *et seq.*, should provide, generally:

(1) Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof, shall be sentenced to a fine of not more than \$600 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

2. The imposition of a penalty under the provisions of this Code shall not prevent the revocation of any permit or license or the taking of other punitive or remedial action where called for or permitted under the laws of the Commonwealth of Pennsylvania and the United States of America. In addition, the Borough may institute injunctive, mandamus or any other appropriate action or proceeding at law or in equity for the enforcement of this Code. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus, or other appropriate forms of remedy or relief.

(Ord. 00037, 10/8/2007)



**Part 2****Appointed Officials****A. Borough Manager****§1-201. Office Created.**

The office of Borough Manager is hereby created by the Borough of Akron, subject to the right of the Borough, by ordinance, at any time to abolish such office.

(*Ord. 244, 8/7/1972, §1*)

**§1-202. Term.**

The Borough Manager shall serve at the discretion of Council. The Personnel Committee of Council shall review the performance of the Borough Manager periodically.

(*Ord. 244, 8/7/1972, §2; as amended by Ord. 369, 11/13/1989, §1*)

**§1-203. Residence.**

The Borough Manager shall be a resident of the Borough of Akron or live within an adjoining municipality, so to be available on short notice in the event of an emergency.

(*Ord. 244, 8/7/1972, §3; as amended by Ord. 120897B, 12/8/1997, §A*)

**§1-204. Bond.**

Before entering upon his duties, the Borough Manager shall give a bond to the Borough in such sum, form and manner as shall be fixed from time to time by resolution of Borough Council. The premium for said bond shall be paid for by the Borough of Akron.

(*Ord. 244, 8/7/1972, §4*)

**§1-205. Compensation.**

The Borough Manager shall receive such compensation as shall be fixed from time to time by resolution of the Borough Council, approved by the Mayor.

(*Ord. 244, 8/7/1972, §5*)

**§1-206. Chief Administrative Officer.**

The Borough Manager shall be the chief administrative officer of the Borough of Akron. He shall be responsible to the Council as a whole for the proper and efficient administration of such affairs of the Borough as shall be vested in him.

(*Ord. 244, 8/7/1972, §6*)

**§1-207. Specific Duties.**

The specific duties of the Borough Manager shall be as follows:

- A. Supervise all employees, except members of the Police Department while

acting as policemen. Members of Borough Council shall deal through the Borough Manager with respect to any matter affecting any Borough employee except policemen in their duties as such.

B. Supervise the installation, construction, care, replacement and maintenance of all property of the Borough, buildings, streets, parks, equipment, and all other public works.

C. Supervise the operation of all utilities (specifically at this time water and sewer).

D. Supervise all matters pertaining to permits of all types.

E. Submit to the Borough Council in person at each of its regular, monthly meetings a monthly report which shall include the number of hours worked.

F. Assist committee chairmen and other members of Council, when necessary. [*Ord. 120897B*]

(*Ord. 244, 8/7/1972, §7; as amended by Ord. 369, 11/13/1989, §2; and by Ord. 120897B, 12/8/1997, §B*)

#### **§1-208. Delegation.**

The Mayor is hereby authorized to delegate to the Borough Manager, subject to recall by written notification at any time, any of his nonlegislative and nonjudicial powers and duties.

(*Ord. 244, 8/7/1972, §8; as amended by Ord. 120897B, 12/8/1997, §C*)

#### **§1-209. Substitute.**

In case of illness or other absence, the Borough Manager shall designate a qualified member or members of the staff who shall perform the duties of the Borough Manager, during the Borough Manager's absence. Such a designation shall not exceed 2 weeks in time, without the approval of Borough Council. Such a designation shall be in writing, in advance, of a specific need, so that the Borough is covered in the event of sudden illness or injury to the Borough Manager. In the event of any unexpected absence, appropriate notification to the office and to subordinates is expected in a timely fashion.

(*Ord. 244, 8/7/1972, §9; as amended by Ord. 120897B, 12/8/1997, §D*)

#### **§1-210. Purchases.**

The Borough Manager is hereby authorized to purchase, within the limits of and contemplated by the approved budget, but pursuant to any controls in the Borough Code, 53 P.S. §45101 *et seq.*

(*Ord. 244, 8/7/1972, §10*)

**B. Permit Officer****§1-211. Establishment.**

The position of Borough Permit Officer is hereby established.

(*Ord. 158, 3/2/1964, §1*)

**§1-212. Duties.**

The Borough Permit Officer shall be responsible for performance of all administrative work as may be required by Chapter 17 of the Code of Ordinances of the Borough of Akron known as the "Stormwater Management Ordinance," Chapter 22 of the Code of Ordinances of the Borough of Akron known as the "Akron Borough Subdivision and Land Development Ordinance," and Chapter 27 of the Borough of Akron Code of Ordinances known as the "Akron Borough Zoning Ordinance." Council shall have the right, from time to time, to appoint by motion one or more assistant Borough Permit Officer(s) who may serve in the place of the Borough Permit Officer when the Borough Permit Officer is not available.

(*Ord. 158, 3/2/1964, §2; as amended by Ord. 00078, 4/14/2014*)

**§1-213. Term.**

The Borough Permit Officer shall serve at the pleasure of Borough Council.

(*Ord. 158, 3/2/1964, §3*)

**§1-214. Compensation.**

The Borough Permit Officer shall be paid for inspections and examinations required in order to assure compliance with the ordinances to insure that applications are being made by all who are required by the provisions thereof to make application, and for all his other duties in such sums as shall be set by resolution of Council from time to time.

(*Ord. 158, 3/2/1964, §4*)

**§1-215. Bond.**

The Borough Permit Officer shall be bonded in such form as shall be approved by Borough Council.

(*Ord. 158, 3/2/1964, §5*)

**§1-216. Costs.**

The Borough Permit Officer shall be reimbursed for all costs of stationery, forms, postage, telephone toll charges and telephone for this purpose. However, no bills shall be incurred for stationery or forms and no separate telephone shall be installed without prior approval by resolution of the Council of the Borough of Akron.

(*Ord. 158, 3/2/1964, §6*)

**§1-217. Uniform Form.**

In order to enable ordinances above set forth to be administered with the least possible confusion to residents, a uniform form for all applications shall be established

by the Solicitor and Borough Permit Officer and approved by resolution of Council for applications for initial consideration under all such ordinances. Separate forms are necessary for appeals, variances, exceptions, etc.

*(Ord. 158, 3/2/1964, §7)*

**C. Independent Auditor****§1-221. Independent Auditor.**

1. The offices of elected Borough Auditors are abolished on the effective date of this Part 1C.

2. Hereafter, Council may by resolution, from time to time, appoint an independent auditor who shall be a certified public accountant registered in the Commonwealth of Pennsylvania, a firm of certified public accountants so registered, or a competent public accountant, or a competent firm of public accountants to serve as independent auditor to undertake independent examinations of the accounting records of the Borough for the fiscal year of appointment and perform such other duties in the exercise of powers as conferred pursuant to §1005(7) the Borough Code, 53 P.S. §46005(7).

3. Notwithstanding the appointment of the independent auditor above and the abolishment of the offices of Borough Auditors, those Auditors now in office shall continue to hold their office during the term for which elected, but said elected Auditors shall not audit, settle or adjust the accounts audited by such independent auditor, but shall perform the other duties of their office.

4. This Part 1C shall generally take effect the day of adoption, thereby allowing the appointment (by resolution) of auditors to audit the Borough's accounts for the calendar year of 2008 and thereafter in a timely fashion, but the abolishment of the elected Auditors positions, pursuant to the terms of this Part 1C, shall only occur on January 1, 2009.

*(Ord. 00044, 11/10/2008)*





**Part 3****Police Department****A. Creation****§1-301. Prior Department Continued and Confirmed.**

The Police Department of the Borough of Akron as heretofore established is hereby continued and confirmed.

*(Ord. 139, 11/6/1961, §1)*

**§1-302. Department Re-established.**

In the event of a legal determination that a Police Department has not heretofore been legally established, the Borough Council hereby declares as its legislative intent that this Part shall establish a Police Department consisting of the present incumbent as Chief of Police and such other classifications of police officers as may be from time to time determined by Council by resolution.

*(Ord. 139, 11/6/1961, §2)*

**§1-303. Additional Officers.**

Council shall from time to time designate by resolution additional and/or part time police officers and patrolmen, their term of office, and their pay.

*(Ord. 139, 11/6/1961, §3)*

**§1-304. Special Policemen.**

Nothing herein contained shall affect the authority of the Mayor to appoint special policemen during emergencies.

*(Ord. 139, 11/6/1961, §4)*



**Part 4****Boards and Commissions****A. Planning Commission****§1-401. Creation of Commission.**

A department of the Borough of Akron is hereby created, to be known as the Department of Borough Planning, which shall be in charge of the Borough Planning Commission. The said Borough Planning Commission shall be constituted as provided by law and shall perform all the duties and may exercise all the powers conferred upon Borough Planning Commission by law.

*(Ord. 113, 10/6/1958)*



**Part 5****Volunteer Firemen's Relief****§1-501. Recognition of Akron Volunteer Fire Company of Akron.**

That the Akron Volunteer Fire Company of Akron be recognized by the Borough Council as the Fire Company to whose Relief Association the 2 per centum tax paid upon premiums by foreign fire insurance companies shall be paid by the Borough Treasurer.

*(Ord. 28, 3/2/1931, §1)*

**§1-502. President and Secretary of Council and Mayor to Certify to Attorney General.**

That the President and Secretary of Council and the Mayor be authorized to issue a certificate to the Auditor General of Pennsylvania, attesting to the fact that the Relief Association of the Akron Volunteer Fire Company of Akron is recognized as the Association to receive the said money.

*(Ord. 28, 3/2/1931, §2; as amended by Ord. 00037, 10/8/2007)*



**Part 6****Pensions****A. Police Pension****§1-601. Established.**

The Borough of Akron does hereby adopt a Police Pension Plan to become effective October 4, 1982.

(*Ord. 314, 10/4/1982, §1*)

**§1-602. Title.**

The plan adopted is hereby designated to be and shall be known as “Pension Plan for Police Officers of Akron Borough” (hereinafter known merely as “Police Pension Fund”). It shall comply with all statutes and regulations.

(*Ord. 314, 10/4/1982, §2*)

**§1-603. Secretary to File Additional Records.**

The Borough Secretary is hereby directed to file any additional records with the Auditor General's Department of the Commonwealth of Pennsylvania as may be necessary to insure the approval of the Police Pension Fund.

(*Ord. 314, 10/4/1982, §3*)

**§1-604. Contributions by Borough.**

Should the Police Pension Fund hereinafter at any time or from time to time require contributions from the Borough, the proper officers of the Borough shall appropriate such amounts, at such times and in such manner as required or authorized by this Part or by law.

(*Ord. 314, 10/4/1982, §4*)

**§1-605. Expenses of Administration.**

The expenses of administering this Part and the Police Pension Fund including, but limited to, the compensation of an actuary and the custodian of the fund, may be paid from either the fund or the general appropriation of the Borough, as Council may, by resolution, direct.

(*Ord. 314, 10/4/1982, §5; as amended by Ord. 368, 11/13/1989, §1*)

**§1-606. Funds from State Tax on Foreign Casualty Insurance Company Premiums.**

All funds heretofore or hereafter paid to the Treasurer of this Borough by the Commonwealth for police pension purposes from proceeds of the State tax on foreign casualty insurance company premiums or otherwise shall be deposited in a special bank account or fund specifically designated for this purpose.

(*Ord. 314, 10/4/1982, §6*)

**§1-607. Order of Use of State Tax on Premiums of Foreign Casualty Insurance Companies.**

Such payments by the State Treasurer to the Borough Treasurer from the monies received from taxes paid upon the premiums of foreign casualty insurance companies for purposes of pension retirement shall be used in the following order:

- A. To reduce the unfunded liability, if any.
- B. To apply against the annual obligations of the Borough for future service costs, or to the extent that the payment may be in excess of such obligations.
- C. To reduce member contributions.

(*Ord. 314, 10/4/1982, §7*)

**§1-608. Use of Police Pension Fund.**

Police Pension Fund shall be used to provide the required benefits under this Part and under law for such full time (40 hours per week normal service) members of the police force of the Borough as shall receive honorable discharge therefrom by reason of age and service as provided by this Part and by law.

(*Ord. 314, 10/4/1982, §8; as amended by Ord. 00009, 12/10/2001, Art. I*)

**§1-609. Exclusion of Probationary Members of Police Force.**

Members of the police force enjoying a probationary status shall not be included in the Police Pension Fund.

(*Ord. 314, 10/4/1982, §9*)

**§1-610. Retirement.**

Each policeman who has been in the employment of the Borough as a police officer for 25 years in the aggregate, and who has attained the age of 55 years, may retire (and in the event that they have attained the age of 63 years, shall retire within 5 days after attaining the age of 63 years) and shall, upon his actual retirement from his employment from Akron Borough, be entitled to receive or vest, as the case may be, the pension or retirement benefits as herein provided. If the Borough later desires to lower the age of retirement and/or reduce the number of years of service necessary, and the law of the Commonwealth so allows, then the same may be accomplished by resolution.

(*Ord. 314, 10/4/1982, §10; as amended by Ord. 338A, 5/13/1985, §1*)

**§1-611. Military Service.**

Any member of the police force employed by Akron Borough who has been a regular appointed policeman of Akron Borough for a period of at least 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 time spent by him in such military service, if such person returns or has heretofore returned to his employment within 6 months after his separation from service. Nevertheless, such returning person shall, within 3 months of the date of return to service, pay into the fund, in order to receive the benefit of such credit, such amount of money as he would have contributed to said fund had he been employed in the Borough during his military service.



(*Ord. 314, 10/4/1982, §11*)

**§1-612. Benefit Computation.**

Benefits shall be computed at one-half the monthly average salary of such member during the last 36 months of employment.

(*Ord. 314, 10/4/1982, §12*)

**§1-613. Member Contributions.**

A contribution to the Police Pension Fund shall be required from members of the police force in the amount of 5 percent of their annual base salary, set by Council at budget approval time. Such contribution shall be paid in equal proportionate amounts at each pay day. Notwithstanding the foregoing, if an actuarial study shows that the conditions of the Police Pension Fund of the Borough is such that payments into the Police Pension Fund by members may be reduced below the percentage herein prescribed, or eliminated, and that if such payments are reduced or eliminated, contributions by the Borough will not be required to keep the Police Pension Fund actuarially sound, the Borough Council may then, on an annual basis, by resolution, reduce or eliminate payments into the Police Pension Fund by members.

(*Ord. 314, 10/4/1982, §13*)

**§1-614. Compensation.**

“Compensation” or “member salary” for purposes of computing a member’s (or survivor’s) monthly retirement, survivorship benefits, disability benefits or death benefits, shall be limited to annual base salary, computed pursuant to the annual “pay scale” for 2,080 hours, as set forth in the applicable years of the “Akron Borough and Akron Borough Police Officers’ Association Contract” for its members (and the hourly rate of pay for the Chief of Police multiplied by 2,080 hours) but shall also include in the calculation, all longevity pay, holiday pay, and overtime pay. It shall exclude payments for accrued but unused sick leave, accrued but unused annual vacation leave, and any other lump sum payments.

(*Ord. 314, 10/4/1982, §14; as amended by Ord. 00017, 3/10/2003, §1; and by Ord. 00085, 2/9/2015, §1*)

**§1-615. Ineligibility.**

If for any reason whatsoever any member of the fund shall be ineligible to receive a pension, or withdraws from the pension system, such member shall be entitled to a refund, pursuant to the Act, being the amount of such member's contribution only (unless said member is properly vested pursuant to other provisions of this Part), with simple interest at 5 percent per year. If such ineligibility is due to death, such money shall be paid to the designated beneficiary or, in the absence thereof, to the estate of the deceased policeman.

(*Ord. 314, 10/4/1982, §15*)

**§1-616. Surviving Spouse, Children.**

1. The surviving spouse of a member of the police force or a member who retires on a pension who dies or if no spouse survives or if he or she survives and subsequently

dies, then the child or children under the age of 18 years or, if attending college, under or attaining the age of 23 years, of a member of the police force or a member who retires on pension who dies shall during her lifetime in the case of a surviving spouse or until reaching the age of 18 years or, if attending college, under or attaining the age of 23 years, in the case of a child or children, be entitled to receive a pension calculated at 50 percent of the pension the member was receiving or would have been receiving had he been retired at the time of his death. [*Ord. 00038*]

2. The surviving spouse of a member of the police force who dies before his or her pension has vested, or if no spouse survives, or if he or she survives and subsequently dies, the child or children under the age of 18 years, or if attending college under the age of 23 years, of the member of the police force shall be entitled to receive payment of all money which the member invested in the pension fund plus interest or other increases in value of the member's investment in the pension fund, unless the member has designated another beneficiary for this purpose. [*Ord. 00033*]

3. Pension for families of members killed in service shall be calculated at 100 percent of the member's salary at time of death. However, this benefit shall not be an obligation of or payable by this pension plan, but instead shall be payable directly by the Commonwealth of Pennsylvania, pursuant to the terms and conditions of Act 51 of 2009. [*Ord. 00055*]

4. For purposes of this Part, the phrase "attending college" shall mean the eligible children are registered at an accredited institution of higher learning and are carrying a minimum course load of 7 credit hours per semester.

5. Insofar as these amendments affect the benefits available to surviving spouses, the amendments shall apply to surviving spouses whose spouse died on or before April 17, 2002, and who were not remarried as of that date.

(*Ord. 314, 10/4/1982, §16; as amended by Ord. 00017, 3/10/2003, §2; by Ord. 00033, 12/12/2005, §1; by Ord. 00038, 11/12/2007, §2; and by Ord. 00055, 3/14/2011*)

#### **§1-617. Length of Service.**

No length of service increment is authorized by this Part. If the Borough later determines the said length of service increment should be granted, then it may be provided by resolution.

(*Ord. 314, 10/4/1982, §17*)

#### **§1-618. Cost of Living.**

No cost of living increase shall be provided by this Part. If the Borough determines that such cost of living increase in benefits should be later granted, it may be provided for by resolution.

(*Ord. 314, 10/4/1982, §18*)

#### **§1-619. Federal Program Employees**

No benefits shall be provided to any member of the police force that is employed in the Borough under a Federal program and no credit shall be given for service during such time for Federal program employees subsequently employed by the Borough.

(*Ord. 314, 10/4/1982, §19*)

**§1-620. Disability Payments.**

Any member of the police force who suffers a permanent injury incurred in service shall receive a pension calculated at a rate of 50 per centum of the member's salary at the time the disability was incurred, provided that any member who receives benefits for the same injuries under the Social Security Act, 49 Stat. 620, 42 U.S.C. §301 *et seq.*, shall have his or her disability benefit offset or reduced by the amount of such benefit. (*Ord. 314, 10/4/1982, §20; as amended by Ord. 00009, 12/10/2001, Art. II; and by Ord. 00017, 3/10/2003, §2*)

**§1-621. Payments Not Subject to Attachment.**

The pension payments, hereinafter provided for, shall not be subject to attachment, execution, levy, garnishment, or other legal process, and shall be payable only to the member or his designated beneficiary and shall not be subject to assignment or transfer.

(*Ord. 314, 10/4/1982, §22*)

**§1-622. Borough May Accept Gifts.**

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

(*Ord. 314, 10/4/1982, §23*)

**§1-623. Budget Committee.**

The Budget Committee of the Borough shall include within the budget for each year such amounts as shall be required as contributions from Borough for administration costs or other costs to the Police Pension Fund.

(*Ord. 314, 10/4/1982, §24*)

**§1-624. Optional Benefits.**

The Borough has elected not to grant any of the optional benefits under the Act, unless specifically set forth herein. Any and all benefits or options not specifically granted and set forth in this Part, which are discretionary under the Act, shall be deemed denied to members of the Police Pension Fund. The enumeration of options excluded in this Part shall not in any manner imply, warrant, suggest or import the inclusion of options not specifically excluded. This election by the Borough at this time shall not prevent the Borough in the future, by resolution, from granting any additional benefit or benefits it deems appropriate under the law.

(*Ord. 314, 10/4/1982, §25*)

**§1-625. Books and Records.**

The books and records of the Police Pension Fund shall be open for inspection by any interested parties, and the accounts shall be audited as the Council shall direct.

(*Ord. 314, 10/4/1982, §26*)

**§1-626. Hearing Before Council.**

Any officer or member of the policed force aggrieved by any ruling or action regarding Police Pension Fund and his relation thereto shall have a right to a hearing before the Council upon his written request therefor. Such request shall contain in clear language the objection being presented and said Council shall require the attendance of any witnesses on behalf of the objecting party by subpoena.

(*Ord. 314, 10/4/1982, §27*)

**§1-627. Amendment by Subsequent Statute.**

Any statute which may be hereinafter enacted by the Commonwealth of Pennsylvania or any other proper regulation which may be properly promulgated hereinafter by said Commonwealth which shall affect this Part shall be considered as an amendment to this Part and all actions taken hereunder shall be subject thereto; except that no optional benefits shall be considered as granted.

(*Ord. 314, 10/4/1982, §28*)

**§1-628. Implementation Authorized.**

All officers of the Borough be and are hereby directed and authorized to do and perform all acts and things necessary to place said Police Pension Fund into effect as of its effective date.

(*Ord. 314, 10/4/1982, §29*)

**§1-629. Funds Collected under Prior Plans.**

All funds collected pursuant to former *Ord. 254* and the resolutions adopted thereof, shall be hereby considered as funds of this Police Pension Fund and shall be immediately so designated and shall be administered by the terms of this Part. Any officer or survivor receiving benefits under *Ord. 254* or any resolutions adopted thereunder, or any officer vested pursuant to the same, shall continue to be solely governed by the terms of *Ord. 254*.

(*Ord. 314, 10/4/1982, §30*)

**§1-630. Retirement Age.**

All police officers shall retire within 5 days after reaching the age of 63 years and those officers that have reached the age of 63 years may begin, immediately, after their separation from service, to receive any benefits to which they would be entitled under this Part.

(*Ord. 314, 10/4/1982, §31; as amended by Ord. 338A, 5/13/1985, §1*)

**§1-631. Early Retirement Benefit.**

The early retirement benefit shall be provided to a member of the police force with 20 or more years of service who terminates employment prior to the completion of superannuation retirement age and service requirements and who files a written application for an early retirement benefit with the governing body of the municipality.

The early retirement benefit shall become effective as of the date the application is filed with the governing body or the date designated on the application, whichever is later, and shall be the actuarial equivalent of a partial superannuation retirement benefit calculated as follows:

A. A partial superannuation retirement benefit shall be determined by applying the percentage that the member's years of service bears to the years of service that the member would have rendered had the member continued to be employed until his superannuation retirement date to the gross pension amount calculated using the monthly average salary during the appropriate period prior to his termination of employment.

B. The actuarial equivalent of the partial superannuation retirement benefit shall be determined by actuarially reducing the partial superannuation retirement benefit to reflect that it will commence on the effective date of the early retirement rather than on the date on which the member would have completed superannuation age and service requirements. The actuarial reduction shall be calculated using the actuarial assumptions reported in the last actuarial valuation report filed with the Public Employee Retirement Commission under the Act of December 18, 1984, P.L. 1005, No. 205, known as the "Municipal Pension Plan Funding Standard and Recovery Act."

(*Ord. 314*, 10/4/1982, §32; as amended by *Ord. 00038*, 11/12/2007, §3)

#### **§1-632. Administration.**

The administration, management, operation application of the Police Pension Fund, including the care, management, investment and disposal of any money or property received by the Borough in trust for the benefit of the Fund shall be vested in the Council, subject to such regulations as the Council may, by resolution, from time to time prescribe.

(*Ord. 314*, 10/4/1982, §33)

#### **§1-633. Pension Committee.**

In lieu of administering the Police Pension Fund, the Council may, by resolution, vest the general administration and management thereof in a Pension Committee, which shall consist of such number of resident individuals appointed by resolution of the Council. The powers and duties of the Pension Committee shall be subject to such regulations as the Council may from time to time prescribe by resolution.

(*Ord. 314*, 10/4/1982, §34; as amended by *Ord. 00009*, 12/10/2001, Art. IV)

#### **§1-634. Trustee.**

The Council, or any Pension Committee appointed by Council, pursuant to this Part, is authorized to appoint a Trustee or Trustees and to enter into one or more trust agreements with said Trustee or Trustees for such term or terms as the Council or Pension Committee desires, to invest and reinvest the Fund and to make payments out of the Fund in accordance with the provisions of this Part, the trust agreement, and the Act. The Trustee may be a natural person or persons or a corporation, or the Council. All investments of Police Pension Fund monies shall be in such investments as are authorized by law or regulation only.

(*Ord. 314, 10/4/1982, §35*)

**B. Nonuniformed Pension Plan****§1-641. Definitions.**

The following terms wherever used or referred to in this Part shall have the following meaning, except in those instances where the context indicates otherwise:

*Anniversary date* - the first day of each year, including the year in which this Plan is effective.

*Borough* - the Borough of Akron, Lancaster County, Pennsylvania.

*Committee* - a Committee of Council members and Borough residents appointed by the Borough Council President, which shall have the responsibility to administer the terms and conditions of the Plan and this Part.

*Employee* - a full time employee of the Borough of Akron except members of the police force. A "full-time employee" is an employee who customarily works an average of at least 35 hours in a week and 40 such weeks in a year.

*Gross wages* - all compensation of an employee while they are a participant, including base wages, overtime and bonuses only, and excluding, among other things, workman's compensation, unemployment compensation, disability benefits, and the like.

*Normal retirement date* - the first day of the month coincident with, or following the attainment of participant's 60<sup>th</sup> birthday, or the first day coincident with or following the completion of 6 years of participation, whichever is later.

*Participant* - any employee as defined herein.

*Past service* - those years or months which a participant worked as an employee in service to the Borough prior to the effective date of this Part.

*Plan* - the Akron Borough Nonuniformed Pension Plan.

*Service to the Borough* - full-time employment by the Borough, including leaves of absence granted by Council and absences due to illness, disability and vacation leaves, provided the employee returns to the employ of the Borough within the time his employment rights are protected by law.

(Ord. 00010, 12/10/2001, Art. I)

**§1-642. Establishment of Plan and Title.**

There is hereby established the "Akron Borough Nonuniformed Pension Plan," hereinafter referred to as the "plan."

(Ord. 00010, 12/10/2001, Art. II, §1)

**§1-643. Effective Date and Plan Year.**

The effective date of the plan is January 1, 2001. The plan year is the period of 12 consecutive months beginning on a January 1 and ending on the next December 31.

(Ord. 00010, 12/10/2001, Art. II, §2)

**§1-644. Membership in Plan.**

All present full time employees of the Borough, except police officers, employed on

January 1, 2000, are eligible for membership and shall become members of the plan. All future full-time employees, except police officers, are eligible for membership and shall become members of the plan on the date they commence employment as a Borough employee.

(*Ord. 00010*, 12/10/2001, Art. II, §3)

**§1-645. Conditions for Re-entering Plan.**

Except as provided in §1-646, any employee who leaves the service of the Borough before retirement under this plan must qualify as a member upon reentering its service as if he/she had not previously been an employee.

(*Ord. 00010*, 12/10/2001, Art. II, §4)

**§1-646. Funding of the Plan.**

The plan shall be financed by periodic payments made by the Borough, as are set from time to time by resolution of the Council. The Committee shall invest and reinvest the principal and income of the fund and keep the fund invested, without distinction between principal and income, in such lawful securities, annuities, or other investments as the Committee shall deem advisable. Contributions shall be made at such time as Council shall provide, but no later than September of the year following the year in which the contribution is earned.

(*Ord. 00010*, 12/10/2001, Art. II, §5)

**§1-647 Excess Contributions.**

At the end of each year, the Borough shall reconcile the total amount of State aid allocated and municipal contributions made to the Nonuniformed Pension Plan with the plan's defined contribution costs for that year. Any excess contributions will be transferred to the Akron Borough Police Pension Plan as soon as possible.

(*Ord. 00010*, 12/10/2001, Art. II, §6; as amended by *Ord. 00018*, 3/10/2003, §6; and by *Ord. 00039*, 11/12/2007, §2)

**§1-648. Credit for Prior Service.**

Participants who were employees on the effective date of the plan shall receive vesting, contribution, or other credit for past service to the Borough prior to January 1, 2001.

(*Ord. 00010*, 12/10/2001, Art. II, §7)

**§1-649. Vesting.**

A participant shall have a vested interest in the contributions made on his behalf by the Borough according to years of qualified participation in the plan, according to the following schedule:

Full Years of Participation	Percentage of Vested Interest in Contributions
0 through 1	None
1	20



Full Years of Participation	Percentage of Vested Interest in Contributions
2	40
3	60
4	80
5	100

(Ord. 00010, 12/10/2001, Art. II, §8)

#### **§1-650. Retirement Benefits.**

Upon retirement, a participant shall receive as retirement benefits an amount equal to the total of all employer contributions to the plan together with all earnings thereon, as shown in the participant's account balance at the time of retirement, adjusted according to the vesting schedule set forth in §1-649; provided, however, that no retirement benefits need be paid until actual retirement.

(Ord. 00010, 12/10/2001, Art. II, §9)

#### **§1-651. Death Benefits.**

1. If a participant dies while an employee of the Borough, his beneficiaries shall be entitled to receive the full amount of employer contributions, together with all earnings thereon, as shown in the participant's account balance at the time of death, as adjusted according to the vesting schedule set forth in §1-649.

2. If a former employee whose participation has ceased under §1-653 dies, his beneficiaries shall be entitled to receive whatever benefits said former employee would be entitled to receive under §1-654.

3. Each participant may designate in writing a beneficiary or beneficiaries for any death benefits at the time he enters the plan. In the absence of the designation of beneficiary, any death benefits payable shall be paid to the participant's estate.

(Ord. 00010, 12/10/2001, Art. II, §10)

#### **§1-652. Disability Benefits.**

If a participant becomes totally disabled, he shall be entitled to receive the same benefits payable under §1-651 as if he had died while an employee of the Borough. A participant shall be deemed totally disabled for the purpose of this section only after he has been unable to perform any work for the Borough for a period of 35 consecutive weeks, and only if he submits to the Borough a certificate of disability from the Social Security Administration.

(Ord. 00010, 12/10/2001, Art. II, §11)

#### **§1-653. Termination of Participation in Plan.**

Cessation of a participant's employment with the Borough prior to the normal retirement date for reason other than death or total disability shall terminate the participant's membership in the plan, subject, however, to the participant's vested interest. Forfeitures of any amount contributed by the Borough shall be used to reduce the Borough's current year contribution requirements in the year of the forfeiture, and

shall not increase the interest of the remaining members of the Akron Borough Nonuniformed Pension Plan. Any excess contributions for the year resulting from forfeitures shall be handled in accordance with §1-647.

(*Ord. 00010*, 12/10/2001, Art. II, §12; as amended by *Ord. 00018*, 3/10/2003, §2; and by *Ord. 00039*, 11/12/2007, §2)

#### **§1-654. Benefits to Former Employees.**

Former employees whose participation in the plan has ceased pursuant to §1-653 hereof, shall be entitled to receive, upon 90 days advance written notice given by such former employee or its authorized representative to the Borough Secretary, a total of all vested employer contributions to the plan, together with all earnings thereon as shown on the participant's account balance at the time immediately prior to receipt of funds from the plan. Following said 90-day notice, the Borough shall, as soon as can be reasonably accomplished thereafter, provide for the aforesaid distribution.”

(*Ord. 00010*, 12/10/2001, Art. II, §13; as amended by *Ord. 00018*, 3/10/2003, §3)

#### **§1-655. Continuation in Service after Normal Retirement Date.**

A participant, eligible to retire at 60 years of age, may continue in the employ of the Borough after his normal retirement date. No benefits hereunder shall be received until actual retirement. The employer shall continue to make contributions until the time of actual retirement.

(*Ord. 00010*, 12/10/2001, Art. II, §14)

#### **§1-656. Rights of Borough to Discontinue or Amend.**

It is the expectation of the Borough that it will continue the plan indefinitely and make the required payments of its contributions hereunder, but the continuance of the plan is not assumed as a contractual obligation of the Borough and the right is reserved by the Borough at any time to reduce or discontinue its contributions hereunder.

(*Ord. 00010*, 12/10/2001, Art. II, §15)

#### **§1-657. Distribution upon Termination.**

Upon termination of the plan or upon complete discontinuance of contributions by the Borough, the plan funds shall be distributed as follows:

A. First, all retirement, death, and disability benefits then payable shall be paid to participants entitled thereto.

B. Second, benefits shall be paid to all participants under §1-650 as though they had retired with their then percentage vested benefits immediately prior to termination of the plan.

C. Third, all remaining funds shall be paid into the Borough General Fund.

(*Ord. 00010*, 12/10/2001, Art. II, §16)

#### **§1-658. Intent and Interpretation.**

The plan is created for the exclusive benefit of the employees of the Borough and shall be interpreted in a manner consistent with their being employees' trusts.

(*Ord. 00010*, 12/10/2001, Art. III, §1)

**§1-659. Construction.**

The plan is not to be construed as creating or changing any contract of employment between the Borough and its employees and the Borough retains the right to deal with its employees and to terminate their employment at any time to the same extent as though these plans had not been created. Nothing in these plans shall be construed as limiting the right of the employer to change the compensation, salary, or remuneration of any employee at any time.

(*Ord. 00010*, 12/10/2001, Art. III, §2)

**§1-660. Administration Costs.**

The costs and expenses of administering this plan shall be born solely by the Borough, and shall not be charged against plan finances.

(*Ord. 00010*, 12/10/2001, Art. III, §3)



**C. Deferred Compensation Plan****§1-671. Establishment.**

There is hereby established a deferred compensation plan to be known as the "Akron Borough Nonuniformed Employees Deferred Compensation Plan," which shall be made available to all full-time nonuniformed employees of the Borough. This plan will set forth the obligations of the Borough and the rights and privileges of the participants with respect to his or her deferred compensation.

*(Ord. 06-12-95B, 6/12/1995, §1)*

**§1-672. Participation Voluntary.**

Eligible individuals may voluntarily elect to defer any portion of their future unearned compensation by entering into a participation (joinder) agreement, subject to the minimum and maximum amounts, as specified in this agreement.

*(Ord. 06-12-95B, 6/12/1995, §2)*

**§1-673. Effective Date.**

This plan shall become operative on July 1, 1995, Individuals who desire to participate in the plan during the remainder of the 1995 calendar year shall elect to do so on or before the last pay period of 1995.

*(Ord. 06-12-95B, 6/12/1995, §3)*

**§1-674. Ownership of Contracts.**

It is the intention of said plan that the remittances made to any carrier for the purchase of said contracts not to be considered as current income to the participants for Federal income tax purposes. Therefore, the Borough shall have all ownership rights to such contracts which shall not be held in any way as collateral security for the purposes of fulfilling the obligations of the Borough, but shall be held as a general, unrestricted asset.

*(Ord. 06-12-95B, 6/12/1995, §4)*

**§1-675. Revocation of Plan.**

This plan is revocable at the discretion of Borough Council by adopting a revocation ordinance and no person shall have a vested right to the continuation of the plan at any time.

*(Ord. 06-12-95B, 6/12/1995, §5)*

**§1-676. Administrative Agreement Authorized.**

Borough Council hereby authorizes the execution of the deferred compensation administrative agreement set forth between the Borough of Akron and the Aetna Life Insurance and Annuity Company. Hereafter the Borough is authorized to enter into other agreements from time to time, as the Borough Council shall (by Resolution) see fit.

*(Ord. 06-12-95B, 6/12/1995, §6)*

**§1-677. Deferred Compensation Plan Committee.**

The Borough hereby authorizes the chairman of the Personnel Committee and the Borough Secretary as the two members of the Deferred Compensation Plan Committee and to act on behalf of the Borough Council with respect to the purchase of contracts and to formulate rules and procedures necessary to carry out the terms of the plan.

*(Ord. 06-12-95B, 6/12/1995, §7)*

**§1-678. Adoption.**

The Borough hereby adopts the Deferred Compensation Plan pursuant to §457 of the Internal Revenue Code of 1986, as amended.

*(Ord. 06-12-95B, 6/12/1995, §8)*