



**The Mayor and Commissioners  
of the Town of Elkton**

**Ordinance 4-2022**

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BY: Mayor and Commissioners  
Introduction: August 17, 2022  
Adoption: September 7, 2022

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AN ORDINANCE CONCERNING

Code of the Town of Elkton

Title 2

Chapter 2.28

Police Pension Plan

**FOR THE PURPOSE** of amending the Code of the Town of Elkton, Title 2, Chapter 2.28, the Elkton Police Pension Plan to clarify certain aspects of military service credit, including the manner in which pre-employment military is calculated.

WHEREAS, Article XI-E, Constitution of the State of Maryland; Section 4-103(b) (3), Subtitle 1, Title 4, Division II, Local Government Article, Annotated Code of Maryland, and the Charter and Code of the Town of Elkton provide the authority under which the Mayor and Commissioners may adopt, repeal, and/or amend the ordinances of the Town of Elkton; and

**WHEREAS**, the Mayor and Commissioners adopted Chapter 2.28 — Police Pension Plan by Ordinance 7 — 2010, effective September 7, 2010, amending this chapter from time to time thereafter.

**NOW, THEREFORE**, the Mayor and Commissioners of the Town of Elkton hereby ordain that:

Section 1: The Code of the Town of Elkton, Title 2, Chapter 2.28, Elkton Police Pension Plan, shall be repealed; and

Section 2: The Code of the Town of Elkton, Title 2, Chapter 2.28, Elkton Police Pension Plan, shall be amended and re-enacted as follows:

## **Chapter 2.28**

### **POLICE PENSION PLAN**

**Sections:**

- 2.28.010 Police Pension Plan
- 2.28.020 Short title
- 2.28.030 Qualifying under Internal Revenue Code
- 2.28.040 Applicability
- 2.28.050 Transfer from Money Purchase Pension Plan
- 2.28.060 Construction of terms
- 2.28.070 Definitions
- 2.28.080 Participation requirements
- 2.28.090 Reemployment
- 2.28.100 Enrollment
- 2.28.110 Credit for service with Town
- 2.28.120 Leave of absence
- 2.28.130 Fractional credit for service
- 2.28.140 Service from other employers
- 2.28.150 Pre-employment military service
- 2.28.160 Transfers of credited service to other plans
- 2.28.170 Payment of contributions
- 2.28.180 Disposition of forfeitures
- 2.28.190 Actuarial examination
- 2.28.200 Pick-up contributions
- 2.28.210 Normal retirement
- 2.28.220 Early retirement
- 2.28.230 Deferred retirement
- 2.28.240 Disability benefits
- 2.28.250 Other terminations of employment
- 2.28.260 Maximum limitations on benefits
- 2.28.270 Post termination changes
- 2.28.280 Cost of living adjustments
- 2.28.285 Deferred Retirement Option Program
- 2.28.290 Death benefits
- 2.28.300 Limitations on death benefits
- 2.28.310 Method of payment
- 2.28.320 Optional forms of benefits
- 2.28.330 General provisions applicable to options
- 2.28.340 Eligible rollover distributions
- 2.28.350 Distributions to non-spouse Beneficiaries
- 2.28.360 Designation of Beneficiaries
- 2.28.370 Location of Participants and Beneficiaries
- 2.28.380 Investment of funds
- 2.28.390 Prohibition against diversion of funds
- 2.28.400 Prohibition against assignment of benefits
- 2.28.410 Administrative authority
- 2.28.420 Town Administration
- 2.28.430 Retirement Plan Committee
- 2.28.440 Mutual exclusion of responsibility
- 2.28.450 Uniformity of discretionary acts

2.28.460 Fiduciary standards  
2.28.470 Litigation  
2.28.480 Payment of administration expenses  
2.28.490 Review procedure  
2.28.500 Right to amend  
2.28.510 Right to terminate  
2.28.520 Automatic termination of contributions  
2.28.530 Allocation and distribution  
2.28.540 Priorities for allocation of trust assets  
2.28.550 Alternative to immediate distribution of the Trust  
2.28.560 Modification of allocation provisions  
2.28.570 Plan combinations and transfers  
2.28.580 Limitations on liability of Town  
2.28.590 Construction

**2.28.010 Police Pension Plan.**

The Town of Elkton, Maryland establishes a pension plan for certain sworn police officers of the Town of Elkton by the adoption of this chapter 2.28 of Title 2 entitled “Police Pension Plan,” as amended from time to time.

**2.28.020. Short title.**

This Plan may be referred to as the “Town of Elkton Police Pension Plan.”

**2.28.030 Qualifying under Internal Revenue Code.**

A. *Qualification of Plan under Internal Revenue Code.* The Plan is intended to be a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code that will qualify under Section 401(a) of the Internal Revenue Code, and the Trust established under the Plan is intended to be exempt from tax under Section 501(a) of the Internal Revenue Code.

B. *Qualification of Pick-Up Contributions under Internal Revenue Code.* The Town also intends that, effective for the pay period beginning July 1, 2010, the contributions made by Plan Participants pursuant to subsection A.(1) of Section 2.28.200 through payroll deductions will be characterized as “pick-up” contributions, as described in Section 414(h)(2) of the Internal Revenue Code.

**2.28.040 Applicability.**

The provisions of the Plan shall apply only to an individual who meets the definition of Covered Employee set forth herein and whose employment with the Town terminates on or after the Effective Date.

**2.28.050 Transfer from Money Purchase Pension Plan.**

Prior to the Effective Date, Covered Employees participated in the Town of Elkton, Maryland Money Purchase Pension Plan, a defined contribution plan. By the adoption of this chapter 2.28, the Mayor and Commissioners of the Town of Elkton authorize the transfer of account balances attributable to contributions made by the Town from the Town of Elkton, Maryland Money Purchase Pension Plan to this Plan for Covered Employees who are eligible to participate in this Plan and who consent to the transfer.

#### **2.28.060 Construction of terms.**

For all purposes of the Plan, where the context admits, the singular shall include the plural, and the plural shall include the singular, and references to persons shall include individuals, receivers, trustees, guardians, fiduciaries, corporations, partnerships, associations, estates and trusts. Headings of sections, subsections and paragraphs are inserted only for convenience of reference and are not to be considered in the construction of the Plan.

#### **2.28.070 Definitions.**

The following terms, as used herein, unless a different meaning is clearly implied by the context, shall have the following meanings:

“Accrued Benefit” means

1. The benefit to which a Participant is entitled, pursuant to the provisions of Sections 2.28.210 through 2.28.300, expressed as the normal form of monthly benefit commencing at Early Retirement Date or Normal Retirement Date or the Actuarial Equivalent thereof
2. The Accrued Benefit as of any date preceding the Participant's Early Retirement Date or Normal Retirement Date shall be the greater of (a) the sum of the Participant's Transferred Benefit plus his or her Employee Contributions Benefit or (b) 2.0% multiplied by the Participant's Average Compensation and multiplied by his or her Years of Service.
3. In no event, however, shall the Accrued Benefit exceed the maximum limitation determined, as of the date of computation, pursuant to Section 2.28.260.
4. The portion of the Participant's Accrued Benefit attributable to the transfers made pursuant to subsection B. of Section 2.28.110 and to the contributions made pursuant to Section 2.28.200 shall be equal to the Actuarial Equivalent of the Participant's Employee Contributions Benefit plus his or her Transferred Benefit, expressed as the normal form of monthly benefit commencing at Early Retirement Date or Normal Retirement Date. (Ordinance 2-2020; effective June 16, 2020)

“Actuarial Equivalent” means

1. A form of benefit differing in time, period or manner of payment from a specific benefit provided under the Plan but having the same value when computed based upon the RP2000 mortality table (projected to 2020 at scale AA 80% male, 20% female) and a 5% per annum interest rate.
2. The foregoing factors, to the extent applicable, shall be utilized (whether or not there is a specific reference to this definition) whenever in the administration of the Plan a calculation of actuarial equivalence is to be made.

“Average Compensation” means the average monthly rate of a Participant's Compensation, equal to 1/36th of the total amount of a Participant's monthly Compensation for the 36 consecutive full calendar months of the Participant's employment which produce the highest average.

“Beneficiary” means any person entitled to death benefits in accordance with the provisions of Sections 2.28.360 and 2.28.370.

“Benefit Commencement Date” means the day on which the sole payment is made or the first day of the period for which the first in a series of payments constituting the distribution of an Accrued Benefit is made.

“Cash-out” means a distribution in settlement of a benefit otherwise payable under the Plan, and which is equal to the Participant's Employee Contributions Benefit plus his or her Transferred Benefit.

“C/L Increase” means an automatic increase (without necessity of Plan amendment) in a dollar value set forth or described in the Plan, for the purpose of reflecting increases in the cost of living to the extent prescribed in or pursuant to regulations under Section 415(d) of the Internal Revenue Code, but only to the extent permitted by the operative Internal Revenue Code or regulatory provision specifically governing the dollar value in question.

“Committee” means the Retirement Plan Committee designated in accordance with the provisions of Section 2.28.430 to administer and operate the Plan.

“Compensation” for an employee whose regular work schedule is 80 hours per pay period means the monthly equivalent of the Participant's base annual salary rate or wages in effect on the first day of the month. Compensation for an employee whose regular work schedule is 84 hours per pay period means 105% of the monthly equivalent of the Participant's base annual salary rate or wages in effect on the first day of the month. Compensation is determined without regard to:

1. Overtime, bonuses, shift differentials, additional holiday pay, shoes allowances, field training allowances, plain clothes allowances and other extra remuneration;
2. Amounts in excess of 1/12th of the applicable dollar limit in effect as of the first day of the Plan Year under Section 401(a) (17) of the Internal Revenue Code and regulations promulgated thereunder, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with Section 401(a)(17)(b) of the Internal Revenue Code.
3. Contributions, credits or benefits under this Plan or under any other retirement, deferred compensation, fringe benefit or employee welfare benefit plan; or
4. Direct reimbursement for expenses; provided, however, that Compensation shall include any amount that would have qualified as Compensation but for the fact that it constitutes salary reduction under any plan described in Section 414(h)(2) or 125 of the Internal Revenue Code.

Effective July 1, 2009, “Compensation” shall include differential wage payments.

“Coordinator” means the Town's Director of Human Resources to whom certain administrative duties may be delegated by the Committee pursuant to subsection D (2) of Section 2.28.420.

“Covered Employee” means any employee who is hired by the Town with the intent to serve as a “sworn police officer”. The term “Covered Employee” includes an employee during the period that begins on his or her date of hire and ends on the date he or she becomes a sworn police officer.

“Differential Wage Payments” mean differential wage payments as defined in Section 3401(h) of the Internal Revenue Code. A differential wage payment generally refers to the Town's payment to an employee called to Military Service for more than thirty (30) days that represents all or a portion of the compensation the employee would have received from the Town if the employee were performing services.

“Early Retirement Date” means a date selected by the Participant that is no earlier than the first day of the month on or following the date on which the Participant completes 20 Years of Service and is no later than the first day of the month before the date on which the Participant reaches his or her Normal Retirement Age. (Ord. 2-2020; effective June 16, 2020)

“Effective Date” means the Effective Date of the Plan, which shall be July 1, 2010.

“Employee” means any person employed by the Town and includes a person receiving differential wage payments on or after July 1, 2009.

“Employee Contributions Benefit” means the sum of the following amounts (net of all previous distributions):

1. The contributions made by the Participant through salary reduction and “picked up” by the Town, as described in Section 2.28.200; plus
2. Interest on the amounts described in (1) above computed on June 30 of each year as follows and compounded annually:
  - a. 1.5% of the amount contributed during the current Plan Year.
  - b. 3.0% of any amount contributed or transferred prior to the current Plan Year.

“Employment Commencement Date” means the date on which the Employee first performs an hour of service for the Town as a Covered Employee.

“Internal Revenue Code” means the Internal Revenue Code of 1986, or any provision or section thereof herein specifically referred to, as such Internal Revenue Code, provision or section may from time to time be amended or replaced.

“Leave of Absence” means an authorized absence from active service, under conditions described in Section 2.28.120, which does not constitute a termination of employment, and during which the Employee completes no service as a Covered Employee.

“Maryland Employer” means the State of Maryland and any municipality or political subdivision within the State of Maryland.

“Military Service,” for purposes of determining service credit during unpaid Leave of Absence for Military Service under subsection F of Section 2.28.120, means service in the uniformed services within the meaning of the Uniformed Services Employment and Reemployment Rights Act of 1994. Military Service, for purposes of determining service credit for pre-employment military service under Section 2.28.150, means active military duty in the Armed Forces of the United States, including training and call-ups to active Federal duty with the National Guard or Military Reserve.

“Normal Retirement Age” means: The earlier of:

1. The date on which the Participant completes 25 Years of Service; or
2. The date on which the Participant attains the age of 60 and completes 10 Years of Service. A Participant’s right to his or her Accrued Benefit will be fully vested and non-forfeitable on attainment of Normal Retirement Age.

“Normal Retirement Date” means: The first day of the month on or following the date on which the Participant reaches his or her Normal Retirement Age.

(Ord. 4-2022 eff. September 27, 2022)

“Participant” means any Employee who is currently benefiting under the Plan, and, where appropriate according to the context of the Plan, any former Employee who is or may become (or whose beneficiaries may become) eligible to receive a benefit under the Plan. Effective July 1, 2007, “Participant” shall include any Employee on a Leave of Absence for Military Service.

“Period of Severance” means the continuous period beginning with an Employee's Termination Date and ending with the Employee's Reemployment Commencement Date, if any.

“Per-Pay Compensation” means, for an employee whose regular work schedule is 80 hours per pay period, one-twenty-sixth (1/26th) of the salary listed in the pay scale in effect for the Participant's grade and step in effect for that pay period. Per-pay Compensation means, for an employee whose regular work schedule is 84 hours per pay period, 105% of one-twenty-sixth (1/26th) of the salary listed in the pay scale in effect for the Participant's grade and step in effect for that pay period. Per-pay Compensation is determined without regard to:

1. Overtime, bonuses, shift differentials, additional holiday pay, shoes allowances, field training allowances, plain clothes allowances and other extra remuneration;
2. Amounts in excess of 1/12th of the applicable dollar limit in effect as of the first day of the Plan Year under Section 401(a)(17) of the Internal Revenue Code and regulations promulgated thereunder, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with Section 401(a)(17)(b) of the Internal Revenue Code.
3. Contributions, credits or benefits under this Plan or under any other retirement, deferred compensation, fringe benefit or employee welfare benefit plan; or
4. Direct reimbursement for expenses; provided, however, that Compensation shall include any amount that would have qualified as Compensation but for the fact that it constitutes salary reduction under any plan described in Section 414(h)(2) or 125 of the Internal Revenue Code.

“Plan” means the Town of Elkton Police Pension Plan set forth herein and as amended from time to time.

“Plan Administrator” means the Committee designated in accordance with the provisions of Section 2.28.430 to administer and operate the Plan.

“Plan Year” means the 12 month period ending on the last day of the month of June.

“Reemployment Commencement Date” means the date on which an Employee first performs an hour of service after a Period of Severance.

“Termination Date” means the date of the first to occur of:

1. A termination of employment by reason of resignation, discharge, mutual agreement, total and permanent disability, retirement or death;
2. The date on which a Leave of Absence expires without a return to active employment; or
3. The date on which an Employee ceases to be a Covered Employee.

“Town” means the Town of Elkton, a municipal corporation existing under the laws of the State of Maryland.

“Transferred Benefit” means the amount transferred to this Plan from the Participant's account under The Town of Elkton, Maryland Money Purchase Plan plus interest from the date transferred at the rate of 3% per annum. The Participant will have a one-time opportunity to elect the transfer. This Plan will accept the transfer from The Town of Elkton, Maryland Money Purchase Plan only if the Participant elects to transfer the Participant's account balance attributable to contributions made by the Town under the Town of Elkton, Maryland Money Purchase Plan to this Plan.

“Trust” means the trust fund established pursuant to the Plan, maintained in accordance with the terms of the trust agreement, as from time to time amended, between the Town and the Trustees, which trust agreement constitutes a part of the Plan; where appropriate according to the context, the term Trust shall also refer to the trust agreement.

“Trustees” means, collectively, the trustee or trustees named in the Trust and such successor and/or additional Trustees as may be named pursuant to the terms of the Trust.

“Year of Service” means a year that is counted for purposes of calculating a Participant's eligibility for normal retirement under Section 2.28.210 or early retirement under Section 2.28.220 of the Plan. The rules for calculating a Participant's Years of Service are set forth in Sections 2.28.110 through 2.28.150 with reference to the continuous period beginning with the Employee's Employment Commencement Date or Reemployment Commencement Date and ending with the Employee's Termination Date, excluding any period during which the Employee is not a Covered Employee. (Ordinance 2-2020; effective June 16, 2020)

#### **2.28.080 Participation requirements.**

A. *Generally.* A Covered Employee's participation in this Plan, and the agreement to make contributions hereunder, as described in Section 2.28.200, is mandatory as a condition of employment with the Town. Every individual who becomes a Covered Employee on or after July 1, 2010 shall become a Participant on the date he or she first performs service as a Covered Employee.

B. *Election by Chief of Police not to participate.* Notwithstanding Subsection A. above, an individual who becomes the Chief of Police after July 1, 2010 may elect not to participate in the Plan as of the date he or she first performs an hour of service as the Chief of Police. Such election shall be irrevocable and shall be made no later than 10 days before the effective date of the individual's appointment as the Chief of Police.

#### **2.28.090 Reemployment.**

If an Employee or Participant who reaches a Termination Date is subsequently reemployed as a Covered Employee, his or her status with respect to the Plan shall be governed by the following:

A. *Eligibility for participation.* If the reemployed Employee was not a Participant prior to his or her Termination Date, or the Employee's Reemployment Commencement Date occurs prior to July 1, 2010, the Employee shall become a Participant in accordance with the provisions of Section 2.28.080. If the reemployed Employee was a Participant prior to such termination, or the individual's Reemployment Commencement Date occurs after June 30,



2010, his or her participation shall commence immediately upon the resumption of status as a Covered Employee.

*B. Vesting.* Subject to subsection C. below, if the reemployed Employee was a Participant prior to his or her termination, that Employee's prior Years of Service shall be aggregated with Years of Service performed after his or her Reemployment Commencement Date for purposes of determining eligibility to receive his or her Accrued Benefit (with respect to the periods before and after the Period of Severance).

*C. Cash-out.*

1. If, after his or her Termination Date, (a) the Participant receives a Cash-out of his or her Employee Contributions Benefit plus his or her Transferred Benefit, and (b) the Participant resumes status as a Covered Employee, then the Years of Service with respect to which the distribution was received shall be disregarded in subsequent determinations of Participant's eligibility to receive his or her Accrued Benefit.

2. However, if the Participant resumes status as a Covered Employee, and within 90 days of the his or her Reemployment Commencement Date, repays to the Trust the full amount of the Cash-out, plus interest from date of distribution to date of repayment at the rate of 3% per annum, compounded annually, his or her eligibility will be determined taking into account the Participant's Years of Service before as well as after the Termination Date.

#### **2.28.100 Enrollment.**

Participation hereunder shall be automatic when the requirements of Section 2.28.080 have been met; provided, however, that the Town may, in its discretion, require each Covered Employee to execute a written application containing such items as may be desired by the Town including, but not limited to, the Employee's consent to be bound by all the terms and conditions of the Plan and all amendments thereto.

#### **2.28.110 Credit for service with Town.**

*A. Service generally.* Except as otherwise provided in Sections 2.28.080 through 2.28.150, a Participant will receive credit only for Years of Service for his or her actual service with the Town as a Covered Employee.

*B. Service prior to the Effective Date.* A Participant who consents to the transfer of his or her account balance attributable to Town contributions from the Town of Elkton, Maryland Money Purchase Pension Plan to this Plan as described in Section 2.28.050 shall receive credit for all of his or her Years of Service. A Participant who does not consent to the transfer of his or her to the transfer of his or her account balance attributable to Town contributions from the Town of Elkton, Maryland Money Purchase Pension Plan to this Plan as described in Section 2.28.050 shall not receive credit for his or her Years of Service prior to the Effective Date.

#### **2.28.120 Leaves of absence.**

*A. Temporary absence is not a termination of employment.* A Covered Employee's employment will not be deemed to have terminated though it is interrupted by a temporary absence from active service, extending for not more than 6 months, under conditions which are not treated by the Town as a termination of employment. The performance of an hour of service after a Leave of Absence has commenced will constitute an expiration of the Leave of Absence.

- B. Basis for computing Compensation and/or Average Compensation.* If, during a Leave of Absence, a Participant is unpaid or the Participant's rate of basic pay is reduced, then, for purposes of computing plan benefits and the cost of purchasing service pursuant to subsection H, the Participant's Compensation and/or Average Compensation will be computed as if he or she were being paid at a rate equivalent to that in effect for his or her position at the end of the calendar month immediately preceding the month in which the Leave of Absence began.
- C. Expiration of Leave of Absence.* If any Participant on Leave of Absence fails to answer an inquiry by the Town as to the status of the Leave of Absence, or if the Town is not notified of the death or disability of such Participant, and the Town has no actual knowledge thereof, the Town may determine that the Leave of Absence had or has expired.
- D. Crediting of service during paid Leaves of Absence.* Service with respect to a Leave of Absence will be credited pursuant to the following:
1. Paid Leaves of Absence will constitute continuation of employment.  
Service will be credited for the customary period of work during a paid Leave of Absence, and Section 2.28.200 contributions will continue to be made.
  2. For purposes of calculating Years of Service, including fractional Years of Service, for periods on or after July 1, 2010, a Covered Employee on a Leave of Absence for reasons of illness or injury will be deemed to be on a paid Leave of Absence so long as the Covered Employee's rate of pay is not reduced and so long as he or she is paid directly by the Town or through Town-sponsored wage continuation insurance; but the individual will not be considered to be on paid Leave of Absence under circumstances where payments are made solely for the purpose of complying with workers' compensation, unemployment insurance or disability insurance laws.
  3. For purposes of calculating Years of Service, including fractional Years of Service for periods prior to July 1, 2010, an individual on a Leave of Absence for reasons of illness or injury will be deemed to be on a paid Leave of Absence so long as the Covered Employee is receiving payments through workers' compensation or through Town-sponsored disability insurance. (Ord. 13-2018 eff. Jan. 8, 2019)
- E. Crediting of service during unpaid Leave of Absence.* Except as provided in Subsection D (4) of this Section, a Leave of Absence where the Participant's rate of pay is reduced shall constitute an unpaid Leave of Absence. Service credit shall not be granted for an unpaid Leave of Absence that extends for a full calendar month, unless the Leave of Absence is for military service or family leave, as described below. (Ord 13-2018 eff. Jan 8, 2019)
- F. Credit for service during unpaid Leave of Absence for Military Service.* A Participant will receive credit for service during an unpaid Leave of Absence for Military Service to the extent required by law. If a Participant fails to again become an Employee as a result of the employee's death while in Military Service after July 1, 2007, the Participant shall be entitled to receive credit for such Military Service. (Ord. 13-2018 eff Jan. 8, 2019)
- G. Credit for service during unpaid Leave of Absence for Family Leave.* Except as provided in section D (3) of this Section, a Participant will receive credit for service for that portion of an unpaid Leave of Absence during which the Participant is on leave under the Family and Medical Leave Act of 1993 for a reason other than those covered in subsections D. and E. above. (Ord. 13-2018 eff. Jan. 8, 2019)

#### H. *Purchase of Workers' Compensation Leave*

1. A participant may purchase credit for up to 12 months for periods of workers compensation leave that qualify as unpaid leave pursuant to paragraph D above if the participant pays over to the Plan the amount described on paragraph 2 below in a single lump sum within 30 days after the later of the effective date of this amendment or the participant's return to active employment following missed service time due to Workers' Compensation related absences.
2. The amount that the participant shall pay for such service is equal to the participant's compensation as determined under subsection B multiplied by the sum of the pick-up contribution rate described in section 2.28.200 plus the average employer contribution rate as determined by the Plan's actuary for the two most recently completed Plan years. (Ord. 4-2021; effective Aug. 10, 2021)

#### **2.28.130 Fractional credit for service.**

For purposes of determining the extent to which a Participant is vested in his or her Accrued Benefit and for purposes of determining eligibility for normal retirement benefits under Section 2.28.210 or early retirement under Section 2.28.220, the Participant shall receive credit on the basis of the number of whole Years of Service. Except as provided in Section 2.28.120, a Participant shall receive fractional credit equal to 1/12th of a Year of Service for each calendar month during which he or she was a Covered Employee for the entire month, but shall receive no fractional credit with respect to any calendar month during which he or she was not a Covered Employee for the entire month. (Ord. 13-2018 eff. Jan. 8, 2019) (Ord. 2-2020; effective June 16, 2020)

#### **2.28.140 Service from other employers.**

No credit for Years of Service shall be given under this Plan for service credited under any other retirement plan or system, including, but not limited to, a retirement or pension system sponsored by a Maryland employer.

#### **2.28.150 Pre-employment military service.**

- A. A participant shall receive credit for additional years of service to the extent of the participant's military service, to a maximum of 36 months, if the participant: Has military service that precedes the participant's employment with the Town and that has not been recognized by the Maryland State Retirement System.
  1. Is not entitled to a military pension from the United States Government (except for benefits under a Reservist's Pension described in Chapter 1223 of the United States Code) or any other foreign government on account of such service; and
  2. Has 20 years of service (determined without regard to the participant's military service)
- B. The credit for additional months of service equals the months of active duty military service up to a maximum of 36 months [[shown on form DD-214.]] **will be calculated as follows:**
  1. For military service shown on Form DD-214 or a similar form that shows military service time in years, months, and days, the time will be converted into whole months of service. Thirty days of service is equal to one month. Partial months of military service and military service in excess of 36 months are disregarded.
  2. For military service shown on Form DA-5016 and NGB Form 23 or a similar form that shows military service in points, the total months of military service is equal to

the total number of points divided by 28. Partial months of military service and military service in excess of 36 months are disregarded.  
(Ord. 4-2022 eff. September 27, 2022) (Ord. 4-2021; eff. Aug. 10, 2021)

**2.28.160 Transfers of credited service to other plans.**

If a Participant terminates employment for the Town, becomes an employee of another Maryland Employer and becomes eligible to participate in a retirement plan sponsored by another Maryland Employer, the Participant may elect to transfer service earned under this Plan to the retirement plan sponsored by such other Maryland Employer to the extent allowed by such other retirement plan. Notwithstanding any provision to the contrary herein or any provision of the retirement plan sponsored by such other Maryland Employer, the Plan shall not be required to transfer to such other Maryland Employer any Accrued Benefits with respect to the Participant, other than the Participant's Employee Contributions Benefit plus his or her Transferred Benefit.

**2.28.170 Payment of contributions.**

The funding of the Plan and payment of benefits hereunder shall be provided for through the medium of the Trust. The Trust shall accept transfer of funds from the Town of Elkton, Maryland Money Purchase Pension Plan, consistent with the elections made by Participants pursuant to subsection B. of Section 2.28.110. The Town, from time to time, shall make contributions to the Trust in amounts determined, in accordance with generally accepted actuarial principles, to be sufficient to fund the benefits provided by the Plan. Contributions made by the Town to the Trust are irrevocable and may not be returned to the Town except as provided in paragraph C.5 of Section 2.28.540.

**2.28.180 Disposition of forfeitures.**

Any forfeiture arising under the provisions of the Plan shall be used to reduce the then current or future costs of funding the benefits provided in the Plan.

**2.28.190 Actuarial examination.**

The Committee shall, at least once every other Plan Year, cause the liabilities of the Plan to be evaluated by an enrolled actuary who shall report to the Committee as to the soundness and solvency of the Trust in relation to the said liabilities and the amount of the Town's contributions sufficient to meet the requirements of Section 2.28.170.

**2.28.200 Pick-up contributions.**

Under limited circumstances described below, Participant contributions may be accepted by the Plan.

*A. Town pick-up contributions.*

1. Effective for the pay period beginning July 1, 2010, and for each pay period thereafter, each Participant shall make contributions to the Plan equal to 8.0% of his or her Per-pay Compensation in accordance with rules established by the Committee.
2. The Participant's contributions referred to in subsection A.(1) of this Section 2.28.200 shall be separately accounted for, but shall be made a part of the Participant's Employee Contributions Benefit, which shall be part of the Accrued Benefit of the respective Participant.
3. The Participant contributions referred to in this Section 2.28.200 shall be (a) picked up by the Town, as described in Section 414(h)(2) of the Internal Revenue Code, (b) deducted from the pay of the contributing Participants as salary reduction contributions, and (c) paid by the Town to the Trustees with reasonable promptness after the total of such contributions

during any month has been determined, and in any event by the end of the succeeding month. The Participant contributions referred to in subsection A.(1) of this Section 2.28.200, although designated as Participant contributions, are being paid by the Town in lieu of contributions by the Participant pursuant to Section 414(h)(2) of the Internal Revenue Code.

- B. *Suspension of contributions.* A participant's salary reduction contributions shall be automatically suspended for any payroll period during which the Participant is not a Covered Employee or during which he or she is on an unpaid Leave of Absence including a Leave of Absence for Military Service.
- C. *Withdrawals of pick-up contributions.* A Participant who has reached his or her Termination Date may elect, at any time, to receive a Cash-out of the Employee Contributions Benefit plus his or her Transferred Benefit by filing a written notice of such election with the Town. Such Cash-out shall constitute full payment of all benefits due to such Participant under the Plan.
- D. *Forfeiture of remaining Accrued Benefit.* In the event of a Cash-out to a Participant pursuant to subsection C., then, subject to restoration provided in subsection C.(2) of Section 2.28.090, the Participant shall forfeit the entire remaining portion of his or her Accrued Benefit.
- E. *Vesting of pick-up contributions.* Notwithstanding any provisions of this Plan to the contrary, Participant contributions picked up by the Town and made to the Plan shall be fully vested at all times.
- F. *Payment of benefits.* Subject to the right of withdrawal described above, the benefits purchased from the Participant's contributions shall be payable at the same time, in the same manner, and, in the event of the Participant's death, to the same Beneficiary or Beneficiaries, as is the remainder of his or her Accrued Benefit.
- G. *Plan termination.* In the event of a termination of the Plan, distribution to each Participant of the portion of the Participant's Accrued Benefit attributable to his or her contributions picked up by the Town shall, notwithstanding any other provisions of Section 2.28.540, be treated as a priority distribution ahead of any other distribution to Participants based upon the remainder of the Trust.

#### **2.28.210 Normal retirement.**

Except as otherwise provided in Sections 2.28.210 through 2.28.300, a Participant shall retire on his or her Normal Retirement Date. A Participant who retires on his or her Normal Retirement Date shall be entitled to receive a monthly retirement income, beginning with the Participant's Normal Retirement Date and continuing for the remainder of his or her life. Subject to the limitations set forth in Section 2.28.260: the amount of the monthly retirement income for a participant who reaches his or her Normal Retirement Date by attaining age 60 and completing 10 or more Years of Service shall be 2.0% of his or her Average Compensation times his or her Years of Service, and the amount of the monthly retirement income for a participant who reaches his or her Normal Retirement Date by completing 25 Years of Service shall be 50% of his or her Average Compensation.

**2.28.220 Early retirement.**

A participant may elect to retire on any date on or after the first date which qualifies as an Early Retirement Date, in which case the date of retirement shall be deemed to be his or her Early Retirement Date and the participant shall be entitled to a monthly early retirement benefit equal to 2.0% of his or her Average Compensation (calculated as of his or her Early Retirement Date) times his or her Years of Service (based upon the participant's actual years of service at his or her Early Retirement Date). A participant's early retirement benefit will not be subject to an actuarial reduction for payment prior to his or her Normal Retirement Date. Early retirement benefits shall commence on the first day of the month coincident with or otherwise next following the participant's Early Retirement Date. (Ord. 2-2020; eff. June 16, 2020)

**2.28.230 Deferred Retirement.**

In the event a Participant remains a Covered Employee after the Participant reaches his or her Normal Retirement Date, then, subject to the limitations set forth in Section 2.28.260, and except as otherwise provided in Section 2.28.330, the Participant shall be entitled to receive, commencing on the first day of the month coincident with or otherwise next following his or her Termination Date, a monthly benefit equal to 2.0% multiplied by the Participant's Years of Service not in excess of 25 Years of Service multiplied by the Participant's Average Compensation. If a Participant retires after he or she completes 25 Years of Service, the participant shall be entitled to receive the benefit to which the Participant would have been entitled pursuant to Section 2.28.210 if he or she had retired after completing 25 Years of Service, but adjusted by taking into account any increases in Average Compensation which may be generated by increases in Compensation earned since his or her completion of 25 Years of Service.

**2.28.240 Disability benefits.**

The Plan shall not pay disability benefits.

**2.28.250 Other terminations of employment.**

*A. Amount of termination benefit.* If a Participant reaches a Termination Date for any reason other than normal retirement as described in Section 2.28.210 early retirement as described in 2.28.200 or deferred retirement as described in Section 2.28.230, the Participant shall receive a Cash-out of his or her Employee Contributions Benefit plus his or her Transferred Benefit, in which case such Cash-out automatically shall be made as soon as administratively feasible following the Participant's request for a Cash-out.

*B. Form of benefits.* The benefits payable pursuant to this Section 2.28.250 shall be payable in a single lump sum. (Ordinance 2-2020; effective June 16, 2020)

**2.28.260 Maximum limitation on benefits.**

*A. Maximum benefit.* To the extent necessary to prevent disqualification under Section 415 of the Internal Revenue Code, and subject to the remainder of this Section, the maximum monthly benefit to which any Participant may be entitled at any time (the "Maximum Benefit") shall be equal to one-twelfth (1/12) of the amount set forth in Section 415(b)(1)(A) of the Internal Revenue Code, as adjusted by C/L Increases, (the "Monthly Dollar Limit"). The rate of benefit accrual shall be frozen or reduced accordingly to comply with the limitations.

*B. Actuarial adjustment of monthly dollar limit.* The Monthly Dollar Limit shall be subject to actuarial adjustment as follows:



1. If the benefit is payable in any form other than a single life annuity or a qualified joint and survivor annuity (as defined for purposes of Section 415 of the Internal Revenue Code), the Monthly Dollar Limit shall be reduced so that it is the actuarial equivalent of the single life annuity. For purposes of this paragraph (1), the Monthly Dollar Limit shall be the actuarial equivalent of the straight life annuity limit based on a 5% interest rate and the applicable mortality table under Treasury Regulation §1.417(e)-1(d)(2) that is effective for the annuity starting date.
2. With respect to a benefit beginning before age of sixty-two (62), the Monthly Dollar Limit shall be reduced to the actuarial equivalent of a monthly benefit in the amount of the Monthly Dollar Limit beginning at age 62. For purposes of this paragraph (2), the Monthly Dollar Limit shall be the actuarial equivalent of the age 62 amount based on a 5% interest rate and the applicable mortality table under Treasury Regulation §1.417(e)-1(d)(2) that is effective for the annuity starting date and the age of sixty-two (62) dollar amount multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan to the annual amount of the straight life annuity under the Plan commencing at age of sixty-two (62). Notwithstanding the foregoing, however, in no event shall the Monthly Dollar Limit applicable to benefits beginning before age of sixty-two (62) be reduced for Participants who have earned at least 15 Years of Service as a Covered Employee, including Military Service.
3. With respect to a benefit beginning after age of sixty-five (65), the dollar limit shall be increased so that it is the actuarial equivalent of the Monthly Dollar Limit applicable to a benefit beginning at age of sixty-five (65).

*C. Reducing dollar limit.* The dollar limit shall be reduced (but not by more than 90%) by 1/10th for each year of service less than 10, considering only those years of service during any part of which the Participant was participating in the Plan.

*D. Limitation year.* The limitation year shall be defined as the calendar year, except as otherwise provided by adoption of a written resolution by the Town.

*E. Other reductions in maximum benefit.* In addition to the foregoing, the Maximum Benefit shall be reduced, and the rate of benefit accrual shall be frozen or reduced accordingly, to the extent necessary to prevent disqualification of the Plan under Section 415 of the Internal Revenue Code, with respect to any Participant who is also a participant in:

1. Any other tax-qualified pension plan maintained by the Town, including a defined benefit plan in which an individual medical benefit account (as described in Section 415(1) of the Internal Revenue Code) has been established for the Participant;
2. Any welfare plan maintained by the Town in which a separate account (as described in Section 419A(d) of the Internal Revenue Code) has been established to provide post-retirement medical benefits for the Participant; and/or
3. Any retirement or welfare plan, as aforesaid, maintained by a related employer, as described in Section 414(b), (c), (m) or (o) of the Internal Revenue Code. (Ord. 4-2021; eff: Aug. 10, 2021)

## **2.28.270 Post termination changes.**

Any change in benefits provided for by amendment to the Plan shall not apply to any Participant whose Termination Date with the Town occurred prior to the Effective Date of

such amendment, except as otherwise specifically provided for in the Plan or in such amendment.

#### **2.28.280 Cost of living adjustments.**

The monthly retirement income, as computed pursuant to Section 2.28.210 or 2.28.220, of any Participant shall be not subject to any cost of living adjustment. (Ord. 4-2021; eff: Aug. 10, 2021)

#### **2.28.285 Deferred Retirement Option Program.**

##### ***A. Definitions***

In this section, the following words have the meanings indicated:

1. DROP means the Deferred Retirement Option Program established under this Section 2.28.285, pursuant to which a Participant agrees to delay receipt of retirement benefits while the Participant continues to work.
2. DROP Participant means a Participant who is eligible for and who elects to participate in DROP.
3. DROP Participation Period means the time during which a Participant participates in DROP while actively employed by the Town.
4. DROP Account means the account established for a DROP Participant in accordance with subsection G. to which the Participant's retirement benefits are credited while the Participant continues to work for the Town.
5. DROP Effective Date means November 1, 2017.

##### ***B. Eligibility.***

1. A Participant who has completed 25 Years of Service as of the DROP Effective Date shall be eligible to participate in DROP as of the DROP Effective Date.
2. A Participant who has not completed 25 Years of Service as of the DROP Effective Date shall be eligible to participate in DROP on the date the Participant has completed 25 Years of Service.

##### ***C. Term of DROP Participation.***

Except as provided in subsection L., the maximum term of a DROP Participation Period shall be five (5) years.

##### ***D. Application for DROP Participation.***

An eligible Participant who elects to participate in DROP shall complete and submit to the Finance Director:

1. A written application on a form approved by or acceptable to the Committee, stating the Participant's intention to participate in DROP;
2. An election as to whether the Participant's retirement benefits will be credited to his or her DROP Account in the normal form described in Section 2.28.210 or in one of the optional forms of benefit described in Section 2.28.320;
3. A binding letter of resignation accepted by the Town Administrator stating that the Participant will terminate employment on the last day of his or her DROP Participation Period;
4. Such other information required by the Committee to implement DROP with respect to the Participant.

##### ***E. Timing of Application***

The Participant shall submit the items described in subsection D. to the Finance Director by the date provided in paragraphs 1 or 2 below:



1. If the Participant has completed at least 25 Years of Service as of the DROP Effective Date, the application is due to be submitted no later than 30 days before the DROP Effective Date.
2. If the Participant has not completed 25 Years of Service as of the DROP Effective Date, the application is due to be submitted no later than 30 days before the date the Participant earns 25 Years of Service.

*F. Irrevocability of Election or Failure to Elect.*

1. A Participant's election to participate in DROP is irrevocable on the date the election to participate is submitted to the Finance Director.
2. Failure to elect to participate in DROP at the time prescribed in paragraph (2) of subsection D. is deemed to be an irrevocable election not to participate in DROP.

*G. DROP Account.*

1. The Finance Director shall establish and maintain a DROP Account for each DROP Participant. The DROP Account is maintained solely for purposes of accounting for the DROP Participant's benefit from the DROP. The Committee shall be under no obligation to segregate funds from the Trust for the Participant's DROP Account.
2. During the DROP Participation Period, the Finance Director shall credit to the DROP Participant's DROP Account the DROP Participant's monthly retirement income determined pursuant to Section 2.28.210 or 2.28.320. No interest will accrue on this amount.
3. At least once a year, the Finance Director shall provide to a DROP Participant a statement of the account balance credited to the DROP Account as described in paragraph 2.

*H. Status during Participation.*

During the DROP Participation Period:

1. A DROP Participant will remain an active Participant in the Plan;
2. A DROP Participant will not accrue credit for Years of Service;
3. A DROP Participant's Compensation shall not be subject to the Town pick up contributions provided for in Section 2.28.200;
4. A DROP Participant's Compensation shall not be used to increase the DROP Participant's Average Compensation;
5. A DROP Participant shall continue to be eligible to participate in any health and welfare plan or deferred compensation plan, and receive any other benefits otherwise available to Town employees who are sworn police officers; and
6. A DROP Participant shall continue to be subject to the personnel laws, regulations and policies applicable to Town employees who are sworn police officers.

*I. Death of a DROP Participant.*

If during the DROP Participation Period, the Participant reaches a Termination Date by reason of death, the Participant's Beneficiary will receive (1) the balance of the Participant's DROP Account plus (2) the death benefit described in subsection B. of Section 2.28.290.

*J. Payment of Retirement Income and DROP Account at Termination Date.*

1. Upon the termination of a DROP Participant's employment with the Town at the end of the DROP Participation Period, the Trustee shall pay to the Participant the amount accrued in the Participant's DROP Account, determined in accordance with paragraph G.

at the end of the DROP Participation Period, in the form of: (a) an eligible rollover distribution, pursuant to Section 2.28.340; (b) a lump sum distribution, reduced by any withholding taxes remitted to the Internal Revenue Service or other taxing authority; (c) the normal form of monthly benefit specified in Section 2.28.210 if the Participant's monthly income is payable in the normal form of monthly benefit specified in Section 2.28.210; or (d) the form of monthly benefit elected by the DROP Participant in accordance with paragraph (2) of subsection D.

2. The form of payment shall be at the election of the DROP Participant or the DROP Participant's Beneficiary, as applicable. In the event the DROP Participant or the DROP Participant's Beneficiary elects payment in the form described in subparagraph (c) or (d) of paragraph (1) of this subsection J., the monthly benefit shall be the actuarial equivalent of the balance of the DROP Account as of the last day of the DROP Participation Period.

3. Upon the termination of a DROP Participant's employment with the Town at the end of the DROP Participation Period pursuant to subsection D., the Participant will receive the monthly retirement income determined in accordance with Section 2.28.210 or 2.28.320.

4. If the DROP Participant reaches a termination date, other than by reason of death, prior to the end of the DROP Participation Period pursuant to subsection D., without regard to whether the termination of employment is voluntary by the Participant or involuntary and at the request of the Town (a) the Participant will receive the balance of his or her DROP Account; and (b) the Participant's monthly retirement income shall be determined in accordance with the election made during the application for participation in DROP.

*K. Termination Date.*

The Termination Date of a DROP Participant shall be the last day of his or her DROP Participation Period. The DROP Participant will begin receiving a retirement benefit as of the first day of the month following the end of the DROP Participation Period.

*L. Participation of the Police Chief in DROP* Notwithstanding any other provision of this Section 2.28.285, the Town may provide by written agreement between the Town Administrator and the Chief of Police for a DROP Participation Period for the Chief of Police that is longer than five (5) years.

*M. Adjustment for Maximum Limitations on Benefits.*

The benefits payable pursuant to this Section 2.28.285 shall be adjusted, if necessary, to conform to the limitations on the accrual of benefits pursuant to Section 2.28.260. (Ordinance 10-2017 Effective 9/26/2017)

**2.28.290 Death benefits.**

*A. Death prior to Benefit Commencement Date.* In the event of the death of a Participant, including a Participant who is on a leave of absence for Military Leave, prior to his or her Benefit Commencement Date, the Participant's Beneficiary shall be entitled to receive as a single lump sum an amount equal to the Participant's Employee Contributions Benefit plus his or her Transferred Benefit: and

*B. Death after Benefit Commencement Date.* If a Participant dies after the Participant's Benefit Commencement Date, the benefits, if any, to which his or her Beneficiary shall be entitled shall depend upon the form in which the Participant's benefits were payable at the time of death, under the applicable form of benefit described in Sections 2.28.310 through 2.28.340.

**2.28.300 Limitations on death benefits.**

All death benefits payable pursuant to Section 2.28.290 shall be distributed only in accordance with a reasonable, good faith interpretation of Section 401(a)(9) of the Internal Revenue Code, as follows:

- A. *Lump sum benefit.* All benefits payable under Section 2.28.290 shall be distributed in full not later than the last day of the calendar year containing the fifth anniversary of the death of the Participant.
- B. *Surviving spouse annuity benefit.* If the Participant's Beneficiary is the Participant's surviving spouse, then, unless the Participant's spouse elects to receive the lump sum benefit under subsection C. of Section 2.28.320, benefits payable under Section 2.28.290 to or for the benefit of the spouse, and which begin not later than the later of the last day of the calendar year containing the first anniversary of the Participant's death, or the last day of the calendar year in which the Participant would have reached age 72, may be distributed over the life of the spouse or a period certain not extending beyond the life expectancy of the spouse, under a method of distribution which meets the requirements of subsection A. of Section 2.28.330. The life expectancy shall be based upon the spouse's attained age as of the spouse's birthday in the calendar year in which falls:
  - 1. The date on which non-annuity benefits are required to commence pursuant to this subsection; or
  - 2. If earlier, the date on which annuity benefits actually commence.
- C. *Surviving spouse dies prior to commencement of benefits.* If benefits are payable in accordance with subsection B. of this Section, and the surviving spouse dies after the Participant but prior to:
  - 1. The date on which non-annuity benefits are required to commence pursuant to subsection B of this Section; or
  - 2. The date on which annuity distributions meeting the requirements of subsection B of this Section actually commence;Then, in either case, the aforesaid 5 year limit, and the alternate limit set forth in subsection A of this Section are to be applied as if the spouse were the Participant, so that such limits shall be measured from the death of the spouse.
- D. *When annuity benefits commence before participant's death.* If annuity benefits meeting the requirements of Section 2.28.330 had commenced prior to the Participant's death, then the death benefits payable pursuant to Section 2.28.290 may be distributed without regard to the aforesaid 5-year limit, but must be distributed at least as rapidly as they would have been under the pre- death method of distribution.

#### **2.28.310 Method of payment.**

- A. All benefit distributions shall be in cash (or in annuity contracts as provided herein).
- B. The Committee shall determine, in its discretion, whether the distribution shall be funded through periodic payments made directly from the Trust, or through the purchase of annuity contracts, or whether a combination of such methods of distribution shall be used, and the Committee shall give to the Trustees such directions and information as may be necessary for the Trustees to carry out the decision of the Committee.
- C. If the Committee shall determine that the whole or any part of the distribution is to be funded through the purchase of an annuity contract for a Participant, the Committee shall select such form of contract (including a variable annuity) to be so purchased and shall direct the Trustees to pay the premium of such contract to the issuing company.

- D. The Committee shall direct that all right, title and interest in such contract shall remain in the Trustees under the terms of the Plan, and the Participant shall have no right, title or interest therein except to receive the payments therefrom as provided therein, and to change the Beneficiary from time to time.
- E. Alternatively, the Committee may direct that the contract shall be purchased in the name of the Participant and distributed to the Participant free and clear of the Trust, in which case:
  - 1. The contract shall be issued so as to be nontransferable;
  - 2. It shall not contain a death benefit in excess of the greater of the reserve or the total premiums paid for annuity benefits; and
  - 3. It shall not contain provisions that expand upon, change or eliminate any plan provisions applicable to distributions in annuity form.

#### **2.28.320 Optional forms of benefit.**

A Participant, subject to the conditions hereinafter set forth, may elect to receive, in lieu of the normal monthly form of retirement income described in Section 2.28.210 or 2.28.220, as applicable, a benefit which is its Actuarial Equivalent, payable in any of the following forms and in the form described in Section 2.28.340:

##### *A. Joint and survivor option.*

- 1. The joint and survivor option is a monthly income payable during the Participant's lifetime and continuing after the Participant's death at the rate of either 50% or 100% (as elected by the Participant) to his or her Beneficiary for the remainder of such Beneficiary's life.
- 2. If, before the Participant's Benefit Commencement Date (whether before or after the Participant's Termination Date), the Participant's Beneficiary dies, the election shall thereupon become void.
- 3. If, after the Participant's Benefit Commencement Date but before the death of the Participant, the Participant's Beneficiary dies, the election shall remain effective and the Participant shall continue to receive the reduced retirement income payable to him or her in accordance with the option.

*B. Life only option.* The life only option, which is the normal form of benefit under the Plan, is a monthly income payable during the Participant's lifetime, with no payments to be made after the last payment prior to the Participant's death.

*C. Lump sum option.* A Participant may elect, at any time after his or her Termination Date and before his or her Benefit Commencement Date, to receive a lump sum cash payment of the Participant's Employee Contributions Benefit plus his or her Transferred Benefit in lieu of all other benefits under the Plan and, upon payment of that lump sum cash payment, then, subject to restoration provided in subsection C. of Section 2.28.090, the entire remaining portion of his or her Accrued Benefit shall be forfeited by the Participant. (Ordinance 4-2018, effective 5/22/2018)

*D. Single life annuity with refund.* The single life annuity with refund option is a monthly income payable during the Participant's lifetime, and, as soon as administratively feasible following the Participant's death, the Participant's Beneficiary will receive a lump sum payment of an amount which is the unpaid balance of the Participant's Employee Contributions Benefit plus his or her Transferred Benefit. (Ordinance 2-2020; effective June 16, 2020)

### **2.28.330 General provisions applicable to options.**

A. *Minimum distribution requirements.* Notwithstanding any other provision in the Plan to the contrary, distribution shall be made only in accordance with a reasonable, good faith interpretation of Section 401(a)(9) of the Internal Revenue Code. To the extent required thereby, distribution of benefits shall comply with the following limitations:

1. Except as otherwise provided below, distribution shall begin not later than the later of April 1st of the calendar year (hereinafter referred to as the "commencement year") in which the Participant retires or attains age 72, whichever occurs later.
2. Distribution shall be made (a) over the life of the Participant or the lives of the Participant and the Participant's Beneficiary; and/or (b) over a period certain not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and his or her Beneficiary, all as described in proposed treasury regulation §401(a)(9)-1 or, if shorter, the alternate period described in proposed treasury regulation §1.401(a)(9)-(2).
3. A required distribution shall be deemed to have been made during the commencement year if actually made by the following April 1st, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the commencement year.
4. Benefits paid prior to the commencement year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein.
5. Nothing contained in this subsection shall prevent distribution of annuity benefits providing for non-increasing (except as otherwise permitted in treasury regulation section 1.401(a)(9)-1) payments beginning not later than the commencement year (except as provided in subsection A.(4) of this Section) and payable at least annually over a period permitted by this subsection (for which purpose, if benefit commencement under the annuity precedes the commencement year, each relevant life expectancy shall be based on the individual's attained age as of his or her birthday occurring in the calendar year in which benefit commencement occurs).

B. *Election procedures.* An election of any optional form of benefit described in Section 2.28.320, or any revocation or change of such election, must be made by a Participant in writing, on a form supplied by or acceptable to the **Committee**. Upon the Participant's Benefit Commencement Date, such election (including the designation of a Beneficiary) shall be irrevocable.

C. *Effect of death.* In the event of the death of a Participant prior to his or her Benefit Commencement Date, no benefits shall be payable to the Participant's spouse or other Beneficiary except as provided in subsection A. of Section 2.28.290, regardless of whether or not the Participant has elected an optional form of benefit pursuant to Section 2.28.320.

D. *Timing of benefit commencement.* Notwithstanding any other Plan provision to the contrary, in no event (unless the Participant otherwise elects pursuant to any elective provision which may be then present in the Plan) shall benefits begin later than the 60th day after the close of the Plan Year in which occurs the later of:

1. The date on which the Participant attains his or her Normal Retirement Age; or
2. The termination of the Participant's employment with the Town.

(Ordinance 2-2020; effective June 16, 2020)

### **2.28.340 Eligible rollover distributions.**



A. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

*B. Definitions.*

1. *Eligible rollover distributions.* 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:
  - a. any distribution that is none 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;
  - b. any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under Section 401(a)(9); and
  - c. the portion of any distribution that is not includable in gross income.
2. *Eligible retirement plan.* An “eligible retirement plan” is
  - a. an individual retirement account described in Section 408(a) of the Internal Revenue Code;
  - b. an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;
  - c. a qualified trust described in Section 401(a) of the Internal Revenue Code or an annuity plan described in Section 403(a) of the Internal Revenue Code, that accepts the eligible rollover distribution;
  - d. an annuity contract described in Section 403(b) of the Internal Revenue Code;
  - e. an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state which agrees to separately account for the amounts transferred into such plan from this Plan; or
  - f. a Roth IRA described in Section 408A of the Internal Revenue Code. However in the case of an eligible rollover distribution to the surviving spouse of a Participant or former Participant, an eligible retirement plan is an individual retirement account or individual retirement annuity.
3. *Distributee.* A “distributee” includes a Participant or former Participant. In addition the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse who is the alternate payee under qualified domestic relations order, as defined in Section 414-(p) of the Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse.
4. *Direct rollover.* A “direct rollover” is a payment by the Plan to the eligible retirement plan specified by the distributee.

**2.28.350 Distribution to non-spouse beneficiaries.**

Notwithstanding any provision of the Plan to the contrary that would otherwise limit the options of the Beneficiary of a deceased Participant who is not a distributee (within the meaning of Section 2.28.340), the Committee shall, upon the request of such a Beneficiary transfer a lump sum distribution to the trustee of an individual retirement account established

under Section 408 of the Internal Revenue Code in accordance with the provisions of Section 402(e)(11) of the Internal Revenue Code.

#### **2.28.360 Designation of Beneficiaries.**

A. *Participant designates Beneficiary.* Each Participant may designate a Beneficiary or Beneficiaries (who may be named contingently or successively) to receive such benefits as may be payable under the Plan upon or after the Participant's death, and, subject to the provisions of Sections 2.28.1310 through 2.28.340 such designation may be changed from time to time by the Participant by filing a new designation. Each designation will revoke all prior designations by the same Participant, shall be on form prescribed by the **Committee**, and shall be effective only when filed in writing with the **Committee** prior to the Participant's Benefit Commencement Date.

B. *Absence of valid Beneficiary designation.* In the absence of a valid Beneficiary designation (except in conjunction with the election of a form of benefit payment which does not require the designation of a specific Beneficiary), or if, at the time of any benefit payment is due to a Beneficiary, there is no living Beneficiary validly named by the Participant eligible to receive the payment, the Committee shall direct the Trustees to distribute any such benefit payment to:

1. The Participant's spouse, if then living; otherwise to
2. The Participant's then living descendants, if any, per stirpes; otherwise to
3. The Participant's then living parent or parents, equally; otherwise to
4. The Participant's estate.

C. *Question regarding right of a person to receive a benefit payment.* In determining the existence or identity of anyone entitled to a benefit payment, the Committee and the Trustees may rely conclusively upon information supplied by the Participant's personal representative. In the event of a lack of adequate information being supplied to the Committee, or in the event that any question arises as to the right of any person to receive a benefit payment as aforesaid, or in the event that a dispute arises with respect to any such payment, then, notwithstanding the foregoing, the Committee, in its sole discretion, may, in complete discharge of the Town, the Committee and the Trustees, and without liability for any tax or other consequences which might flow therefrom, direct the Trustees to:

1. Distribute the payment to the Participant's estate;
2. Retain such payment, without liability for interest, until the rights thereto are determined; or
3. Deposit the payment into any court of competent jurisdiction.

#### **2.28.370 Location of Participants and Beneficiaries.**

A. *Notice to last post office address.* Any communication, statement or notice addressed to a Participant or Beneficiary at his or her last post office address filed with the Committee, or if no such address was filed with the Committee, then at the individual's last post office address as shown on the Town's records, shall be binding on the Participant or Beneficiary for all purposes of the Plan. Except for the Committee's sending of a registered letter to the last known address, neither the Trustees nor the Committee shall be obliged to search for any Participant or Beneficiary.

B. *Distribution to next of kin if Participant or Beneficiary fails to claim amount.* If the Committee notifies any Participant or Beneficiary that he or she is entitled to an amount

under the Plan and the Participant or Beneficiary fails to claim such amount or make his or her location known to the Committee within three years thereafter, then, except as otherwise required by law, if the location of one or more of the next of kin of the Participant, including the Participant's surviving spouse, is known to the Committee, it may direct distribution of such amount to any one or more or all of such next of kin, and in such proportions as the Committee determines.

*C. If location of Participant, Beneficiary, or next of kin cannot be determined.* If the location of none of the foregoing persons can be determined, the Committee shall have the right to direct that the amount payable shall be deemed to be a forfeiture and treated in accordance with Section 2.28.180, except that the dollar amount of the forfeiture, unadjusted for gains or losses in the interim, shall be reinstated if a claim for the benefit is made by the Participant or Beneficiary to whom it was payable. If any benefit payable to an unlocated Participant or Beneficiary is subject to escheat pursuant to applicable state law, neither the Trustees nor the Committee shall be liable to any person for any payment made in accordance with such law.

#### **2.28.380 Investment of funds.**

- A. All contributions under the Plan shall be paid to the Trustees and deposited in the Trust.
- B. Such contributions, all investments made therewith and proceeds thereof and all earnings and profits thereon, less the authorized disbursements therefrom, shall constitute the Trust, which Trust, and the agreement under which it is maintained, shall in all respects constitute a part of the Plan.
- C. The Town reserves the right to select, and from time to time to change, the Trustees, to amend the Trust with the consent of the Trustees, or to adopt a different funding vehicle.

#### **2.28.390 Prohibition against diversion of funds.**

It shall be impossible by operation of the Plan or Trust, by natural termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the Trust, or any funds contributed thereto, to inure to the benefit of the Town or otherwise be used for or diverted to purposes other than providing benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan, except as otherwise set forth in paragraph C. (5) of Section 2.28.540 and the Trust with respect to the conditions under which Trust assets may be returned to the Town.

#### **2.28.400 Prohibition against assignment of benefits.**

- A. Except as provided below, no benefit payable at any time under this Plan may be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, execution, levy or other legal and equitable process.
- B. However, the prohibitions of the preceding sentence shall not apply to, and the Trustees shall fully recognize the creation, assignment or recognition of a right to any benefit payable pursuant to a “qualified domestic relations order.”



- C. For the purposes hereof, a “qualified domestic relations order” shall mean a judgment, decree or order made pursuant to a state domestic relations law which relates to the provision of child support, alimony payments or marital property rights and which clearly specifies:
1. The name, social security number, date of birth and last known mailing address of the Participant and alternate payee covered by the order;
  2. The amount or percentage of the Participant's benefits to be paid by the Plan to the alternate payee, or the manner in which such amount or percentage is to be determined;
  3. The number of payments or period for which payments are to be made;
  4. The name of the Plan and the plan administrator; and
- D. Notwithstanding subsection C. of this Section 2.28.400, an order will not be a “qualified domestic relations order,” if it:
1. Requires this Plan to provide any type or form of benefit or benefit option not otherwise provided under the Plan;
  2. Requires this Plan to provide increased benefits (determined on the basis of actuarial value); or
  3. Requires the payment of benefits to an alternate payee which are required to be paid to another alternate payee;
  4. Provides for payment of benefits to an alternate payee which commence before the commencement of benefit payments to the Participant;
  5. Provides for payment of benefits to an alternate payee over a period longer than the lifetime of the Participant;
  6. Allows an alternate payee to designate a beneficiary to receive payments following the death of the alternate payee; or
  7. Fails to specifically provide that, upon the death of the alternate payee while benefits are in pay status and prior to the death of the Participant, the payments being made to the alternate payee will be paid to the Participant;

**2.28.410 Administrative authority.**

- A. *Sole responsibility and control.* Except as otherwise specifically provided herein, the Town shall have the sole responsibility for and the sole control of the operation and administration of the Plan.
- B. *Powers, duties and responsibilities.* The Town shall have the power and authority to take all action and to make all decisions and interpretations which may be necessary or appropriate in order to administer and operate the Plan, including, without limiting the generality of the foregoing, the power, duty and responsibility to:
1. Resolve and determine all disputes or questions arising under the Plan, including the power to determine the rights of Employees, Participants and Beneficiaries, and their respective benefits, and to remedy any ambiguities, inconsistencies or omissions;
  2. Adopt such rules of procedure and regulations as in its opinion may be necessary for the proper and efficient administration of the Plan and as are consistent with the Plan;
  3. Implement the Plan in accordance with its terms and such rules and regulations;
  4. Direct the Trustees with respect to the eligibility of any Employee as a Participant and the crediting and distribution of the Trust, which are to be made only upon the basis of instructions from the Town pursuant to the terms of the Plan; and
  5. Establish and carry out a funding policy and method consistent with the objectives of the Plan, pursuant to which the Town shall determine the Plan's liquidity and financial needs and communicate them to the Trustees (or other fiduciaries who are charged with determining investment policy).

- C. *Act through Mayor and Commissioners.* Subject to the power to delegate in the manner described in Section 2.28.420, the Town shall act through the Mayor and Commissioners of the Town of Elkton.

**2.28.420 Town administration.**

The Plan shall be operated and administered on behalf of the Town by the Committee which shall be governed by the following:

- A. *Powers of the Committee.* Except as the Town shall otherwise expressly determine, the Committee shall have the following powers:

1. To make and enforce rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;
2. To make and enforce procedures to be followed by Employees in filing applications for benefits and for furnishing the evidence necessary to establish the Employees' right to benefits;
3. To make and enforce determinations concerning the rights of Employees applying for or receiving benefits;
4. To make and enforce procedures which afford a mechanism for adjusting complaints of an Employee dissatisfied with determinations of the Committee;
5. To make and enforce procedures for determining the service credit of Employees which affords Employees an opportunity to object, in writing, and to establish service credit in advance of retirement;
6. To make and enforce procedures for authorizing disbursements from the fund created under the Plan and to authorize disbursements from the Trustees of the fund in accordance with the Plan documents;
7. To compute the amount of benefits that shall be payable to any person in accordance with the Plan documents;
8. To interpret the Plan;
9. To otherwise decide questions concerning the eligibility of any Employee to Participate in the Plan or to receive benefits from the Plan;
10. To employ or engage actuaries to make actuarial evaluations of the liabilities under the Plan, to recommend the mortality and other tables and interest rates to be used from time to time in actuarial and other computations for any purpose of the Plan, to recommend the amounts of contributions to be made by the Town and to perform such other services as the Committee shall deem necessary or desirable in connection with the administration of the Plan;
11. To employ or engage accountants as it shall deem necessary or desirable in connection with the administration of the Plan;
12. To employ or engage legal counsel as it shall deem necessary or desirable in connection with the administration of the Plan;
13. To employ or engage any other experts as it shall deem necessary or desirable in connection with the administration of the Plan;
14. To determine the mortality and other tables and interest rates to be used from time to time in actuarial or other computations for any purpose of the Plan;
15. To recommend to the Town the amounts of contributions to be made by the Town, from time to time, under the provisions of the Plan; and
16. To act for the Town before all persons in any matter directly pertaining to the Plan.

- B. *Limits on power.* The Committee shall have no power to:

1. Amend or terminate the Plan;
2. Determine Town contributions; or

3. Affect the employer-employee relationship between the Town and any Employee, all of which powers are reserved to the Town unless expressly granted to the Committee.
- C. *Fiduciary powers, duties and responsibilities.* (including those reserved to the Trustees, with respect to management or control of trust assets) may be allocated among the fiduciaries (if there be more than one) to whom such duties, powers and responsibilities have been delegated, so long as such allocation is pursuant to action of the Committee or by written agreement executed by the involved fiduciaries and approved by the Committee in which case, such fiduciary shall have any liability, with respect to any duties, powers or responsibilities not allocated to him, for the acts or omissions of any other fiduciary. Any person may serve in more than one fiduciary capacity under the Plan, including those of Committee and Trustee.
- D. *Specialized advice or assistance.*
1. Appoint persons or firms; rely upon advice. The Committee may appoint any persons or firms, or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the administration and operation of the Plan. The Committee shall be entitled to rely conclusively upon, and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such firms or persons.
  2. Delegation to Coordinator. The Committee shall have the power and authority to delegate from time to time by written instrument all or any part of its duties, powers or responsibilities under the Plan, both ministerial and discretionary, as it deems appropriate, to the Human Resources Manager of the Town (the "Coordinator"), and in the same manner to revoke any such delegation of duties, powers or responsibilities. Any action of the Coordinator in the exercise of such delegated duties, powers or responsibilities shall have the same force and effect for all purposes hereunder as if such action had been taken by the Committee. Further, the Committee may authorize the Coordinator to execute any certificate or document on behalf of the Committee, in which event any person notified by the Committee of such authorization shall be entitled to accept and conclusively rely upon any such certificate or document executed by such person as representing action by the Committee until such third person shall have been notified of the revocation of such authority. The Committee shall not be liable for any act or omission of any person to whom the Committee's duties, powers or responsibilities have been delegated, nor shall the Coordinator have any liabilities with respect to any duties, powers or responsibilities not delegated to him or her.
- E. *Liability.* The Trustees and the Committee shall use ordinary care and diligence in the performance of their duties pertaining to the Plan, but no such individual shall incur any liability:
1. By virtue of any contract, agreement, bond or other instrument made or executed by the individual or on his or her behalf in the individual's official capacity with respect to the Plan;
  2. For any act or failure to act, or any mistake or judgment made, in his or her official capacity with respect to the Plan, unless resulting from the individual's gross negligence or willful misconduct; or
  3. For the neglect, omission or wrongdoing of any other person involved with the Plan.

F. *Indemnity.* The Plan shall indemnify and hold harmless each such individual from the effects and consequences of the individual's acts, omissions and conduct in his or her official capacity with respect to the Plan, except to the extent that such effects and consequences shall result from the individual's own willful misconduct or gross negligence; provided, however, that any person who shall claim the right to any payment or damage as a result of the actions of any individual in connection with the performance of their duties pertaining to the Plan, shall be entitled to look only to the Trust fund created by the Plan for payment. Such individual shall have no other right, claim or demand therefor against the Town.

G. *Liability insurance.* The Plan shall purchase, using Plan assets and as an expense of the Plan, liability insurance for the Plan and for its fiduciaries to cover liability or losses occurring by reason of an act or omission of a fiduciary.

H. *Fiduciary's benefits.* Nothing in the Plan shall be construed so as to prevent any fiduciary from:

1. Receiving, any benefit to which he or she may be entitled as a Participant or Beneficiary; or
2. Receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly incurred in the performance of his or her duties under the Plan (except that no person so serving who receives compensation as an Employee shall receive compensation from the Plan, except for reimbursement of expenses properly incurred); or
3. Serving as a fiduciary in addition to being an officer, Employee, agent, or other representative of the Town or any related entity.

However, the fiduciary shall not be entitled to vote or act upon, or execute on behalf of the Plan, documents specifically relating to, his or her own participation in the Plan.

#### **2.28.430 Retirement Plan Committee.**

Except to the extent that the Town has retained any power or authority, or allocated duties and responsibilities to another fiduciary, the Committee shall have full power and authority to administer and operate the Plan in accordance with its terms and, in acting pursuant thereto, shall have full power and authority to deal with all persons in any matter directly connected with the Plan, including, but not limited to, the Trustees, other fiduciaries, insurance companies, investment advisors, other advisors and specialists, Participants, Beneficiaries and their representatives, in accordance with the following provisions:

A. *Individuals serving on the Committee.* The Committee shall consist of those individuals who hold the following positions:

1. Town Administrator as Chair of the Committee;
2. Town Finance Director
3. Representative of Elkton Police FOP Lodge 124;

B. *Compensation, acceptance of duties and responsibilities.* Subject to his or her right to resign at any time, each member of the Committee shall serve without compensation at the pleasure of the Town, and the Town may appoint, and may revoke the appointment of, additional members to serve with the Committee as may be determined to be necessary or desirable from time to time. Each member of the Committee, by accepting appointment to the Committee, shall thereby be deemed to have accepted all of the duties and responsibilities of such appointment, and to have agreed to the faithful performance of his or her duties thereunder.

C. *Organization; voting*

1. The Committee shall adopt such formal organization and method of operation as it shall deem desirable for the conduct of its affairs.
2. The Committee shall act as a body, and the individual members of the Committee shall have no powers and duties as such, except as provided herein.
3. The Committee shall act by vote of a majority of its members at the time in office other than those disqualified from voting pursuant to subsection H. of Section 2.28.420, either at a meeting or in writing without a meeting.

D. *Decisions final.* Except as set forth in Section 2.28.490, the determination of the Committee on any matter pertaining to the Plan within the powers and discretion granted to it shall be final and conclusive on the Town, the Trustees, all Participants and beneficiaries and all those persons dealing in any way or capacity with the Plan.

**2.28.440 Mutual exclusion of responsibility.**

Neither the Trustees nor the Committee shall be obliged to inquire into or be responsible for any act or failure to act, or the authority therefor, on the part of the other.

**2.28.450 Uniformity of discretionary acts.**

Whenever in the administration or operation of the Plan discretionary actions by the Town, the Committee or the Trustees are required or permitted, such action shall be consistently and uniformly applied to all persons similarly situated, and no such action shall be taken which shall discriminate in favor of highly-compensated employees as defined in Section 414(q) of the Internal Revenue Code.

**2.28.460 Fiduciary standards.**

The Committee and all other persons in any fiduciary capacity with respect to the Plan shall discharge their duties with respect to the Plan:

- A. Solely in the interest of the Participants and Beneficiaries and for the exclusive purposes of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering and operating the Plan;
- B. With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and
- C. In accordance with the documents and instruments governing the Plan.

**2.28.470 Litigation.**

In any action or judicial proceeding affecting the Plan and/or the Trust, except as may be otherwise required by law, no Participant or Beneficiary shall be entitled to any notice or service of process, and any final judgment entered in such action shall be binding on all persons interested in, or claiming under, the Plan.

**2.28.480 Payment of administration expenses.**

Expenses incurred in the administration and operation of the Plan shall be paid by the Trustees out of the Trust unless the Town, in its discretion, elects to pay them.

**2.28.490 Review procedure.**

An Employee aggrieved by a decision of the Committee may request that the Committee review its decision, and the Committee shall then review its decision. The decision of the Committee following such review upon request of an Employee shall be final and conclusive.

**2.28.500 Right to amend.**

- A. Except as otherwise provided herein, all rights, benefits and obligations of officers or Employees of the Town with respect to pensions or retirement are provided under the terms of this Plan and this Plan supersedes and prevails over the terms of any rules, regulation, resolution or ordinance concerning such matters.
- B. The Town shall have the right to amend the Plan, at any time by ordinance, and all parties claiming any interest under this Plan shall be bound thereby. Notwithstanding any other provision of Town law, no Town resolution or ordinance which relates to the subject matter of the Plan or conflicts with, narrows, or expands any term of this Plan shall be effective unless the Town acts by ordinance which specifically amends the provisions of this Plan. No amendment shall reduce a Participant's Accrued Benefit or deprive a Participant of an already vested interest to the extent funded unless required by law. No amendment shall cause any assets of the Trust to revert to the Town except that, if after the Plan is terminated there are assets remaining after all Plan liabilities have been provided for, such assets may be returned to the Town. No amendment which affects the rights, duties, responsibilities or immunities of the Trustees shall be binding upon the Trustees in the absence of their consent thereto.
- C. Notwithstanding the provisions of this Section, the Plan and Trust may be amended at any time, by amendment to the Code of the Town, retroactively if required, if found necessary in order to conform to the provisions and requirements of the Internal Revenue Code or any similar act or any amendments thereto or regulations promulgated thereunder; no such amendment shall be considered prejudicial to any interest of a Participant or Beneficiary hereunder.

**2.28.510 Right to terminate.**

It is the present intention of the Town to maintain the Plan throughout the Town's existence. Nevertheless, the Town reserves the right, at any time, to permanently discontinue further contributions to the Trust or to terminate the entire Plan and Trust.

**2.28.520 Automatic termination of contributions.**

The liability of the Town to make contributions to the Trust shall automatically terminate upon liquidation of the Town, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of creditors.

**2.28.530 Allocation and distribution.**

**A. Causation.**

This Section shall become operative in any of the following events: (a) a complete termination of the Town's liability to make further contributions to the Trust; (b) a complete discontinuance of contributions by the Town to the Trust; or (c) a complete termination of the Plan.

The provisions of this Section shall also become operative in the event of a partial termination of the Plan, but only with respect to that portion of the Plan attributable to the Participants to whom the termination is applicable.

*B. Effective date set by ordinance of the Town.* The effective date of any termination or discontinuance of contributions shall be as set forth in an ordinance adopted by the Town.

*C. Actions upon termination or discontinuance of contributions.*

1. Upon the effective date of any such event, then, notwithstanding any other provisions of the Plan, subject to the remainder of this Section 2.28.530: (a) no persons who were not theretofore Participants shall be eligible to become Participants; (b) no further benefits shall accrue; and (c) the Accrued Benefits of all Participants not theretofore vested, and not theretofore forfeited shall immediately become fully vested.

2. The Accrued Benefits of all Participants and Beneficiaries shall be determined and distributed to them, as soon as is practicable after such termination or discontinuance, in accordance with Sections 2.28.210 through 2.28.350.

3. The assets in the Trust shall be allocated for the purposes set forth below and in the order set forth below, to the extent the assets are sufficient therefor. The allocations may be implemented by distribution of Trust assets, or by the purchase and distribution by the Trustees of insurance company annuity contracts, or by a combination of these methods.

#### **2.28.540 Priorities for allocation of trust assets.**

Upon termination of the Trust, the Trustees shall liquidate all assets remaining in the Trust. After deduction of estimated expenses in liquidating and distributing the Trust, and any reasonable compensation for the Trustees agreed upon with the Town, the balance of the Trust assets shall be allocated so as to provide the Accrued Benefits otherwise payable under the Plan pursuant to the following order of priorities:

*A. Participants in first priorities.* To provide Accrued Benefits for each Participant who:

1. Had begun to receive benefits at least three years prior to the effective date of the termination of the Plan;

2. Would have begun to receive retirement benefits at least three years prior to the effective date of the termination of the Plan but for the fact that commencement of benefits was deferred; or,

3. Would have been eligible to receive retirement benefits at least three years prior to the effective date of the termination of the Plan but for the fact that the Participant did not actually retire; and,

*B. Other Participants.* To provide Accrued Benefits for all other Participants, in the following order of preference:

1. For each Participant who would have qualified under the priority described in subsection A. above, but for the fact that the entitling event occurred or would have occurred within three years of the effective date of the termination of the Plan, and

2. For all other Participants in the priority described in this subsection B.

*C. Trust assets utilized according to priority.*

1. Trust assets shall be utilized under a particular priority only after all Accrued Benefits set forth in all preceding priorities shall have been fully provided for.

2. For purposes of the allocation of funds within each priority, as set forth in this Section 2.28.540, funds will be credited to each Participant to provide the Accrued Benefits to which the Participant is so entitled, but only to the extent that such Accrued Benefits have not been provided under a preceding priority.

3. Any reductions in Accrued Benefits within a particular priority (or within any particular preference set forth within a priority) as set forth above, due to insufficient Trust assets, shall be allocated pro-rata among the Participants within that priority (or preference) on the basis

of then present values of the respective Accrued Benefits described in that priority (or preference) for each such Participant.

4. Any reference to Accrued Benefits payable to Participants shall also be deemed to include Accrued Benefits payable to beneficiaries of deceased Participants. If any balance of Trust assets remains after all of the allocations described above, and after all liabilities with respect to Participants and retired Participants and their Beneficiaries, if any, are satisfied, then the balance shall be returned to the Town, and the Trust shall terminate. Upon making such distribution, the Trustees shall be discharged from all obligations under the Trust and no Participant shall have any further right or claim therein.

- D. *Death of Participant after effective date of termination.* Notwithstanding any provision to the contrary in Section 2.28.530 or this Section 2.28.540, if a Participant dies or otherwise terminates employment with the Town during the interim between the effective date of termination and the distribution of Trust assets, and if the Participant's Benefit Commencement Date had not yet occurred as of the effective date of termination, the amount distributable to the Participant or to his or her Beneficiary, and the timing thereof, shall be determined pursuant to Section. 2.28.290.

#### **2.28.550 Alternative to immediate distribution of the Trust.**

- A. *Event entitling Participant to benefit.* As an alternative to immediate distribution of the Trust, the Committee, in its discretion, and subject to its option at any time to require the complete distribution of the Trust to the then Participants in accordance with Section 2.28.530, may defer commencement of benefits to each Participant until such Participant reaches an event which would otherwise entitle him or her to benefit commencement pursuant to Sections 2.28.210 through 2.28.250, at which time the provisions of Sections 2.28.310 through 2.28.350 shall become applicable.
- B. *Separate account.* During the interim period, there shall be established and maintained a separate account in the name of each Participant, based upon the values established pursuant to Sections 2.28.530 through 2.28.560. The separate account shall thereafter define and measure the amount available for benefits distributable to the Participant, and there shall be credited or charged thereto any income, expenses, gains or losses (whether or not realized, based upon fair market value of invested assets) attributable or allocable thereto as of each Trust valuation date (or the date of complete distribution of the Trust) with respect to the period since the last valuation date.

#### **2.28.560 Modification of allocation provisions.**

The provisions set forth in Sections 2.28.530 through 2.28.550 shall be subject to such modification, retroactively if required, without necessity of formal amendment to the Plan, as may be necessary in order to cause the termination of the Plan and/or Trust, and any distributions made pursuant thereto and to conform to any requirements which may be imposed by the Internal Revenue Service to prevent disqualification of the Plan and/or Trust, and no such modification shall be deemed prejudicial to the interest of any Participant or Beneficiary.

#### **2.28.570 Plan combinations and transfers.**

In the case of any merger or consolidation of the Plan with, or transfer of assets or liabilities of the Trust to, any other plan, the transaction shall be structured so that each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the transaction



which is at least equal to the benefit the Participant would have been entitled to receive immediately before the transaction (if the Plan had then terminated).

**2.28.580 Limitations on liability of Town.**

- A. *No rights except as provided by law, Plan, provisions, or terms of insurance of annuity policy.* Neither the establishment of the Plan or Trust, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Town (or any person connected therewith) the Trustees or any insurance company, except as provided by law, by any Plan provision or by the terms of any insurance or annuity policy.
- B. *Town does not guarantee the Trust.* The Town does not in any way guarantee the Trust from loss or depreciation, nor does the Town guarantee the payment of any money which may be or become due to any person from the Trust. Any person having a right or claim under the Plan shall look solely to the Trust assets, and in no event shall the Town (or any person connected therewith) be liable to any person on account of any claim arising by reason of the provisions of the Plan or of any instrument or instruments implementing its provisions, or for the failure of any Participant, Beneficiary or other person to be entitled to any particular tax consequences with respect to the Plan, the Trust or any contribution thereto or distribution therefrom.
- C. *Town not liable for failure to make contributions.* The Town shall not be liable to any person for failure on its part to make contributions as provided in Section 2.28.170 nor shall any action lie to compel the Town to make such contributions.
- D. *Town not liable for failure of plan to qualify under Internal Revenue Code.* The Town (or any person connected therewith) shall not have any liability to any person by reason of the failure of the Plan to attain and/or maintain qualified status under Section 401(a) of the Internal Revenue Code, or the failure of the Trust to attain and/or maintain tax exempt status under Section 501(a) of the Internal Revenue Code, regardless of whether or not such failure is due to any act or omission (willful, negligent or otherwise) of the Town (or any person connected therewith).

**2.28.590 Construction.**

- A. *Intended to comply with requirements for qualification under Internal Revenue Code.* The Plan is intended to comply with all requirements for qualification under Section 401(a) of the Internal Revenue Code and, if any provision of the Plan is subject to more than one interpretation or construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the Plan being so qualified.
- B. *Severability.* In case any provision of the Plan shall be held to be illegal or void, such illegality or invalidity shall not affect the remaining provisions of the Plan, but shall be fully severable, and the Plan shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.
- C. *Laws of State of Maryland shall govern.* Except to the extent preempted by the laws of the United States of America, the laws of the State of Maryland shall govern, control and determine all questions arising with respect to the Plan and the interpretation and validity of its respective provisions. Participation under the Plan will not give any Participant the right to be retained in the service of the Town or any right or claim to any benefit under

the Plan unless such right or claim has specifically accrued hereunder. (Ordinance 3-2012, effective 6/5/12) (Prior Ordinance 7-2010, effective 9/7/10)

END OF SECTION

**ACCEPTED FOR INTRODUCTION ON THE 17<sup>th</sup> of August, 2022.**

**ADOPTED ON THE 7<sup>th</sup> of September, 2022.**

**CERTIFICATION OF LEGAL REVIEW**

**THE AMENDMENTS TO THIS ORDINANCE WERE PREPARED BY MR.  
PAUL MADDEN, ESQ., WHITEFORD, TAYLOR, & PRESTON, L.L.P.,  
BALTIMORE, MARYLAND**

**\*\* END OF SECTION \***

**Date of Effect:**

**THIS ORDINANCE SHALL BE EFFECTIVE ON THE 27<sup>th</sup> DAY OF SEPTEMBER, 2022.**

**Mayor and Commissioners  
of the Town of Elkton**

**Commissioner Charles H. Givens, Sr.  
Commissioner Robert M. Massimiano  
Commissioner Earl M. Piner, Sr.**