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[HISTORY: Adopted by the Borough Council as the Borough of Heidelberg 7-15-1980 as Ch. 21 of the 1980 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Police Department — See Ch. 18.

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**Part 1**  
**Borough of Heidelberg Police Pension Plan**  
**[Adopted 12-16-2008 by Ord. No. 581<sup>1</sup>]**

**ARTICLE I**  
**Definitions**

**§ 21-1. Definitions.**

The following words and phrases as used in this plan shall have the meaning set forth in this Article, unless a different meaning is otherwise clearly required by the context:

**ACCRUED BENEFIT** — As of any given date, the benefit determined under § 21-11, calculated on the basis of final monthly average salary as of the date of determination and multiplied by a fraction, the numerator of which shall be the participant's aggregate service determined as of such date and the denominator of which shall be the projected aggregate service of the participant as if the participant continues in employment until attainment of normal retirement age. Notwithstanding anything contained herein to the contrary, in no event shall the fraction exceed one. In no event, however, shall the accrued benefit exceed the maximum limitation, determined as of the date of computation, provided under Article IH. All accrued benefits are subject to all applicable limitations, reductions, offsets, and actuarial adjustments provided pursuant to the terms of the plan prior to the actual payment thereof.

**ACCUMULATED CONTRIBUTIONS** — The total amount contributed by any participant to this fund or its predecessor by way of payroll deduction or otherwise, plus interest credited at 6% per annum. Interest shall be credited in the form of a simple interest rate from the first day of the plan year immediately following the date on which contributions were paid to the first day of the month preceding the date that a refund of accumulated contributions shall be paid or payment of benefits shall commence.

**ACT** — The Municipal Pension Plan Funding Standard and Recovery Act which was enacted as Act 205 of 1984, as amended, 53 P.S. § 895.101 et seq.

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**1 Editor's Note: The "Preamble" of Ord. No. 581, 12-16-2008, provides:**

“WHEREAS, the Borough of Heidelberg, Allegheny County, Pennsylvania, has previously established a retirement program under the provisions of Pub. Law 1804, 53 Pa. Con. Stat. Ann. 767 et seq., (commonly referred to as Act 600) (the “Plan”) for the benefit of the Borough’s full-time police officers and their beneficiaries; and

“WHEREAS, the Plan has been amended thereafter from time to time pursuant to various Resolutions and Ordinances; and

“WHEREAS, Council desires to facilitate the administration of the Plan by completely amending and restating the Plan to set forth the provisions thereof in a single document for purposes of consolidation; and

“WHEREAS, Council intends that the Plan shall meet the requirements for government plans pursuant to the Internal Revenue Code of 1986, as amended, and the applicable laws of the Commonwealth of Pennsylvania; and

“WHEREAS, Council intends that the Plan shall apply only to Employees who terminate employment on or after January 1, 2008 and that the pension of any former police employee who terminated employment before January 1, 2008 shall be governed by the pension arrangement in effect on the date that said former employee terminated employment

“NOW, THEREFORE, the Plan now known as “Borough of Heidelberg Police Pension Plan” is hereby amended and restated in its entirety, except as otherwise set forth, effective for employment terminations after December 31, 2007, as follows:”

**ACTUARIAL EQUIVALENT** — Two forms of payment of equal actuarial present value on a specified date. The actuarial present value shall be determined by the plan actuary.

**ACTUARY** — The person, partnership, association or corporation which at any given time is serving as actuary; provided, that such actuary must be an “approved actuary” as defined in the Act.

**AGGREGATE SERVICE** — The total period or periods of the participant’s employment with the employer whether or not interrupted. Notwithstanding the preceding sentence, should any such participant receive a distribution of accumulated contributions with respect to a period of employment which should otherwise remain in the plan, such period of employment shall not be included in aggregate service thereafter unless, at the commencement of the next period of employment, the participant repays to the fund the amount of such distribution with interest. For purposes of this aggregate service, interest shall accrue as of the date the date the participant receives a refund of accumulated contributions and shall be computed at the same rate and in the same manner as described in the definition of “accumulated contributions.”

**BENEFICIARY** — The person or entity designated by the participant to receive a distribution of the participant’s accumulated contributions should the participant die prior to becoming entitled to a retirement benefit. In the event that a participant does not designate a beneficiary or the beneficiary does not survive the participant, the beneficiary shall be the surviving spouse, or if there is no surviving spouse, the issue, per stirpes, or if there is no surviving issue, the estate; but, if no personal representative has been appointed, to those persons who would be entitled to the estate under the intestacy laws of the Commonwealth of Pennsylvania if the participant had died intestate and a resident of Pennsylvania.

**CHIEF ADMINISTRATIVE OFFICER** — The person designated by the Borough who has the primary responsibility for the execution of the administrative affairs for the plan. If none is so appointed, the Chief Administrative Officer shall be the Borough Manager and, if there shall be none then serving, the Council.

**CODE** — The Internal Revenue Code of 1986, as amended.

**COMMITTEE** — The Police Pension Committee as determined pursuant to § 21-25.8.

**COMMONWEALTH** — The Commonwealth of Pennsylvania.

**COMPENSATION** — The employee’s fixed compensation paid at periodic intervals including longevity pay and shall not include overtime, holiday pay, bonus pay or compensation paid by the Borough to the employee for traffic details or other duties where the employees’ payments from the Borough are reimbursed to the Borough by any person, firm or corporation. Compensation shall be limited on an annual basis to the amount specified for government plans pursuant to Code § 401(a)(17).

**COUNCIL** — The Council of the Borough of Heidelberg.

**DISABILITY DATE** — The date when a participant is determined by the plan administrator to be incapacitated due to total and permanent disability, or the date when the participant’s employment terminates due to such total and permanent disability, if later.

**EMPLOYEE** — Any individual employed by the employer on a regular full-time basis as a police officer of the employer’s police force.

EMPLOYER — Borough of Heidelberg, Allegheny County, Pennsylvania.

EMPLOYMENT — For the purpose of determining aggregate service:

- (1) The period of time for which an employee is directly or indirectly compensated or entitled to compensation by the employer for the performance of duties as a police officer.
- (2) Any period of time for which an employee is paid, either directly by the employer or through a program to which the employer has made contributions on behalf of the employee, a fixed, periodic amount in the nature of salary continuation payments for reasons other than the performance of duties (such as vacation, holidays, sickness, entitlement to benefits under workers' compensation or similar laws).
- (3) Any period of voluntary or involuntary military service with the armed forces of the United States of America; provided, that the participant has been employed as a regular, full-time member of the employer's police force for a period of at least six months immediately prior to the period of military service; and, the participant returns to employment within six months following discharge from military service or within such longer period during which employment rights are guaranteed by applicable law or under the terms of a collective bargaining agreement with the employer.
- (4) Subsection (4) above shall be subject to such limitations and conditions as are set forth in Act 600.

FINAL MONTHLY AVERAGE SALARY — The average monthly compensation earned by the participant and paid by the employer during the final 60 months immediately preceding termination of active employment.

FINAL MONTHLY AVERAGE SALARY — Calculated by taking into account only those periods during which an employee receives salary, as that term is defined in this Section. Therefore, for example, the final monthly average salary for a participant who receives disability benefits from this plan or who is voluntarily or involuntarily serving in the United States armed forces during the final 36 months of aggregate service shall be based on the period during which the employee last received salary (as defined in the preceding subsection) from the employer or salary used to determine final monthly average salary shall be limited on an annual basis to the amount specified for government plans in accordance with Code § 401(a)(17).

INSURER or INSURANCE COMPANY — A legal reserve life insurance company authorized to do business in the Commonwealth of Pennsylvania.

MINIMUM MUNICIPAL OBLIGATION — The minimum obligation of the municipality as determined by the chief administrative officer in consultation with the actuary pursuant to the provisions of the Act.

NORMAL RETIREMENT AGE — The date on which the participant has completed 25 years of aggregate service with the employer and has attained age 55; provided, however, that for a participant who was hired prior to January 17, 1989, normal retirement age will be the earlier of the date determined above or the date on which the later of the following occurs:

- (1) The date the participant attains age 55.
- (2) The date the participant completes 20 years of aggregate service.

NOTICE or ELECTION — A written document prepared in the form specified by the plan administrator. If such notice or election is to be provided by the employer or the plan administrator, it shall be mailed in a properly addressed envelope, postage prepaid, to the last known address of the person entitled thereto, on or before the last day of the specified notice or election period. If such notice or election is to be provided to the employer or the plan administrator, it must be received by the recipient on or before the last day of the specified notice or election period.

PARTICIPANT — An employee who has met the eligibility requirements to participate in the plan as provided in § 21-2 and who has not for any reason ceased to be a participant hereunder.

PENSION FUND or FUND — the police pension fund administered under the terms of this plan and which shall include all money, property, investments, policies and contracts standing in the name of the plan.

PLAN — The plan set forth herein, as amended from time to time, and designated as the Borough of Heidelberg Police Pension Plan.

PLAN ADMINISTRATOR — The Borough Manager, and if none is so serving, the Borough Secretary. In the event there is no Manager or Secretary, the plan administrator shall be Council.

PLAN YEAR — The 12-month period beginning on January 1 and ending on December 31 of each year.

POLICY or CONTRACT — A retirement annuity or retirement income endowment policy (or a combination of both) or any other form of insurance contract or policy which shall be deemed appropriate in accordance with the provisions of applicable law.

RESTATEMENT DATE — January 1, 2008, the date upon which this amendment and restatement of the plan becomes effective.

RETIREMENT DATE — The first day of the month coincident with or next following the date on which the participant retires from employment or the first day of any month thereafter on which the payment of retirement benefits pursuant to this plan shall commence.

TOTAL AND PERMANENT DISABILITY — A condition of physical or mental disability which permanently prevents the participant from performing the duties of a police officer. A condition shall not be treated as a total and permanent disability unless such condition is a direct result of or occurring in the line of employment as a full-time police officer with the Borough of Heidelberg. Therefore, a participant whose physical and mental impairment does not occur in the line of duty is not entitled to receive disability benefits under the plan. The determination of “total and permanent disability” shall be made after evaluation of a report made by a physician chosen by the plan administrator.

TRUSTEE — The initial and any successor trustee or trustees of the pension fund. If no trustee is appointed, Council shall be trustee.

## **ARTICLE I-A Participation in the Plan**

### **§ 21-2. Eligibility requirements.**

Each employee who is employed as regular, full-time permanent member of the police

department of the employer shall participate herein as of the date on which such employee's employment first commences or recommences provided all prerequisites to participation under this plan shall have been fulfilled including, but not limited to, completion of all forms required by the plan administrator.

**§ 21-3. Notification of plan administrator.**

Council shall furnish the plan administrator with written notification of the appointment of any new full-time permanent employee who is eligible for participation hereunder.

**§ 21-4. Designation of beneficiary.**

Any new, full-time employee who becomes a participant hereunder shall provide a written notice in the manner prescribed by the plan administrator which designates a beneficiary at the time participation commences. The participant's selection of any such beneficiary may be rescinded or changed, without the consent of the beneficiary, at any time provided the participant provides the written notice of the changed designation to the plan administrator in the manner prescribed by the plan administrator. Any designation of a beneficiary made in any manner other than one acceptable to the plan administrator shall be null and void and have no effect under the terms of this plan.

**ARTICLE I-B  
Contributions**

**§ 21-5. Participant contribution.**

Each participant shall as a requirement of participation pay regular contributions to the pension fund in an amount of 5% of the participant's annual compensation except no contributions shall be required on compensation which is not included in final monthly average salary. Each participant shall complete any forms necessary to authorize the payment of participant contributions by way of payroll deduction.

**§ 21-6. Reduction of participant contributions.**

If an actuarial study shows that the condition of the police pension fund of the Borough is such that payments into the fund by participants may be reduced below the minimum percentages hereinbefore prescribed, or eliminated, and that if such payments are reduced or eliminated, contributions by the Borough will not be required to keep the fund actuarially sound, the governing body of the Borough, may, on an annual basis, by ordinance, reduce or eliminate payments in the fund by participants.

**§ 21-7. Employer contributions.**

The chief administrative officer in consultation with the plan actuary will, in accordance with the Act, shall determine the minimum municipal obligation of the employer. The employer shall pay into the pension fund, by annual appropriations or otherwise, the contributions necessary to satisfy the minimum municipal obligation.

**§ 21-8. State aid.**

General municipal pension system State aid, or any other amount of State aid received by the employer in accordance with the Act from the Commonwealth may be deposited into the pension fund governed by this plan in amounts determined by Council, and shall be used to reduce the amount of the minimum municipal obligation of the employer.

**§ 21-9. Gifts.**

Council is authorized to take by gift, grant, devise or otherwise any money or property, real or personal, for the benefit of the plan and cause the same to be held as a part of the pension fund. The care, management, investment and disposal of such amounts shall be vested in Council or its delegate, the plan administrator, subject to the direction of the donor and not inconsistent with applicable laws and the terms of the plan.

**ARTICLE I-C**  
**Retirement Benefits**

**§ 21-10. Normal retirement.**

Each participant shall be entitled to normal retirement benefits after retirement on or after the participant has attained normal retirement age.

**§ 21-11. Normal retirement benefit.**

Each participant who shall become entitled to a benefit pursuant to § 21-10 shall receive a benefit paid monthly in an amount equal to 50% of the participant's final monthly average salary as determined herein.

**§ 21-12. Late retirement.**

If a participant who has met the requirements of § 21-10 continues to work beyond normal retirement age, there shall be no retirement benefits paid until employment ceases and retirement begins. The retirement benefit of a participant who retires after attainment of normal retirement age shall be calculated in accordance with § 21-11 on the basis of the final monthly average salary as of such participant's actual retirement date.

**§ 21-13. Service increment.**

A participant who shall retire after completion of at least 26 years of aggregate service as determined hereunder may receive a monthly service increment benefit. Such service increment shall only be available to a participant who shall retire after attainment of normal retirement age and whose aggregate service equals 26 or more completed years of aggregate service. The service increment shall not exceed \$100 and shall be paid monthly in addition to the amount of normal retirement benefit and late retirement benefit calculated pursuant to §§ 21-11 and 21-12 hereof.

**§ 21-14. Cost of living adjustment.**

Effective for retirements after December 16, 1997, each participant who shall retire and receive a retirement benefit hereunder shall be entitled to receive a cost of living adjustment to the amount of benefit payable to such participant effective as of the first day of each plan year following the date which is 12 months after the date benefit payments commenced. Such cost of living adjustment shall only be applied to the benefit determined under §§ 21-11 or 21-25.6 and shall not apply to any service increment under § 21-13. No cost of living adjustment shall ever exceed any of the following limits imposed by Act 600: (A) the percentage increase in the Consumer Price Index - All Urban Consumers (US, all items, 1982-84=100) (CPI-U) from the year in which the participant first commenced receipt of benefits; (B) the total retirement benefits payable under this plan shall not exceed 75% of the participant's final monthly average salary, (C) the total cost of living adjustment shall not exceed 30% of the participant's retirement benefit under this plan; and (D) the cost of living adjustment shall not impair the actuarial soundness of the pension fund.

**§ 21-15. Payment of benefits.**

Retirement benefit payments shall be payable as of the first day of the month coincident with or next following the participant's retirement date and the first day of each month thereafter during the participant's lifetime. A participant must complete an application for benefit in the manner prescribed by the plan administrator and deliver such application to the plan administrator at least 30 days prior to the date on which benefit payments shall commence. Notwithstanding anything contained herein to the contrary, no retirement benefit payments nor any other payments shall be due or payable on or before the first day of the month coincident with or next following the date that is 30 days after the date the plan administrator receives the application for benefits. Except as otherwise, provided herein, payment of benefits hereunder shall cease as of the date of death of the participant.

**§ 21-16. Assignment.**

The pension benefit payments prescribed herein shall not be subject to attachment, execution, levy, garnishment or other legal process and shall be payable only to the participant or designated beneficiary and shall not be subject to assignment or transfer except as may be provided in § 21-25.20 hereof.

**§ 21-17. Retired participants.**

Any participant who shall have retired prior to January 1, 2008, shall not have the benefit altered in any way by the provisions of this amended and restated plan, except where otherwise expressly provided herein. Such retired participants shall continue to have their benefits governed by the terms of the plan in effect on December 31, 2007.

**§ 21-18. One-time cost of living adjustment.**

Effective with the first monthly pension benefit paid after June 30, 2002, the plan shall provide for a one-time post retirement adjustment to the eligible retired participants of the plan, the eligibility, amount and timing of such adjustment to be as provided in Act 64 of 2002.

**ARTICLE I-D**  
**Disability Retirement**

**§ 21-19. Disability retirement.**

A participant who shall incur a total and permanent disability shall be entitled to a disability retirement benefit as of the disability date.

**§ 21-20. Disability retirement benefit.**

A participant incurring a total and permanent disability shall be entitled to a disability retirement benefit under § 21-19 and shall receive 50% of the participant's salary (within the meaning of Act 30 of 2002) at the time the disability was incurred provided that any participant who receives benefits for the same injuries under the Social Security Act (42 U.S.C. §3.01 et seq.) shall have his disability benefit offset or reduced by the amount of such benefits and to the extent permitted by law. Any participant receiving disability benefits under this Section shall be entitled to no other disability benefit under the plan.

**§ 21-21. Payment of disability benefits.**

Disability payments shall be made monthly and continuing until the earliest of the death of the participant, cessation of total and permanent disability, or attainment of normal retirement age (such a participant upon normal retirement age shall thereafter receive a normal retirement benefit under the terms of this Part 1).

**§ 21-22. Verification of disability.**

The plan administrator shall in its sole discretion determine whether a participant shall have incurred a total and permanent disability. The plan administrator shall rely on the report of a physician acceptable to the plan administrator. If the plan administrator shall determine that a participant who is totally and permanently disabled has recovered sufficiently to resume active employment as a police officer or if a participant refuses to undergo a medical examination as directed by the plan administrator (such a medical examination may not be required more frequently than once in any given 12-month period), or if a participant is employed in any capacity as a full-time or part-time police officer prior to attainment of the age and service requirements for normal retirement age, the payment of disability retirement benefits shall cease.

**§ 21-23. Cessation of disability.**

A participant who is receiving payment of disability retirement benefits under this plan must notify the plan administrator of any change which may cause a cessation of entitlement to receipt of such benefits hereunder. If a participant fails to provide immediate notice to the plan administrator of any such change in status and continues to receive payment of benefits hereunder to which the participant is not entitled, then the plan administrator may take whatever action is necessary to recover any amount of improperly paid benefits, including legal action or offsetting such amounts against future payments of retirement or other benefits under the ordinances, including the cost of such actions.

**§ 21-24. Widow's benefits.**

No survivor's pension benefit shall be payable as a result of any participant being eligible or receiving a disability retirement benefit hereunder.

**ARTICLE I-E  
Death Benefits****§ 21-25. Death of participant.**

Upon the occurrence of the death of a participant, there shall be benefits payable in accord with the following sections of this Article.

**§ 21-25.1. Survivor benefit.**

- A. In the event a participant "retires on pension" (within the meaning of Act 30 of 2002) and dies, a benefit shall be paid to the surviving spouse or if no spouse survives, or if he or she survives and subsequently dies, then the child or children under the age of 18 years or if attending college, under or attaining the age of 23 years in the case of a child or children, in the amount of 50% of the pension the participant was receiving or would have been receiving had he been retired at the time of his death. For purposes of this Section, a participant who has attained normal retirement age and dies prior to retiring shall be treated as if he had retired on the day before his death. Notwithstanding anything to the contrary in this plan, if anyone receives benefits under this Section, no one shall receive any other benefits under this plan on account of the death or retirement of the participant.
- B. To the extent required by law, the survivor of a participant who dies after receiving a deferred vested benefit or eligible to receive a deferred vested benefit will be paid a survivor benefit to the survivors determined by law in an amount no greater than the minimum required by law. Anyone receiving benefits under this paragraph shall not be entitled to any other benefits on account of the death or retirement of the participant.
- C. The phrase "attending college" shall mean the eligible children are registered at an accredited institution of higher learning and are carrying a minimum course load of seven credit hours per semester.
- D. To the extent required by Act 30 of 2002, this Section applies to the surviving spouse of a participant who died on or before April 17, 2002, and who was not remarried as of April 17, 2002.

**§ 21-25.2. Death of participant prior to retirement.**

- A. If a participant shall die before payment of a benefit has commenced and without eligibility for payment of a survivor benefit under § 21-25.1, the beneficiary shall be eligible to receive a distribution in an amount equal to the accumulated contributions of the participant as of the date of death of the participant.
- B. The surviving spouse of a participant who dies before his pension has vested, and whose survivors are entitled to no benefits under any other sections of this plan, or if no spouse survives or if he or she survives and subsequently dies, the child or children under the age of 18 years, or if attending college, under or attaining the age of 23 years, of a participant

shall be entitled to receive repayment of accumulated contributions unless the member has designated a beneficiary for this purpose.

**§ 21-25.3. [Reserved]. [Repealed 1-19-2010 by Ord. No. 589]**

**ARTICLE I-F**  
**Termination of Employment**

**§ 21-25.4. Rights of terminated employees.**

A participant who shall cease to be an employee except as otherwise hereinbefore provided shall have all interest and rights under this plan limited to those contained in the following Sections of this Article.

**§ 21-25.5. Distribution of accumulated contributions.**

A participant whose employment with the employer shall terminate for any reason other than death or total and permanent disability prior to attainment of normal retirement age shall be entitled to receive a distribution of accumulated contributions. Upon receipt of such accumulated contributions, said participant and beneficiary shall not be entitled to any further payments from the plan.

**§ 21-25.6. Deferred vested benefit.**

A participant who has completed at least 12 years of aggregate service and whose employment with the employer shall terminate for any reason other than death or total and permanent disability prior to attainment of normal retirement age shall be entitled to elect, by giving written notice of such election to the plan administrator within 90 days following the date that the participant's employment terminated, to receive a deferred vested benefit in lieu of a distribution of accumulated contributions under § 21-25.5. Such a deferred vested benefit shall be in an amount equal to the participant's accrued benefit as of the date employment terminates and shall commence after application pursuant to § 21-15 as of the first day of the month coincident with or next following the date on which the participant's normal retirement age would be attained if the participant continued in employment until such date.

**ARTICLE I-G**  
**Administration**

**§ 21-25.7. Plan administrator.**

The plan administrator shall have the power and authority to do all acts and to execute, acknowledge and deliver all instruments necessary to implement and effectuate the purpose of this plan. The plan administrator may delegate authority to act on its behalf to any persons it

deems appropriate.

**§ 21-25.8. Police pension committee.**

The Borough may establish a police pension committee. The committee shall be advisory only.

**§ 21-25.9. Authority and duties of the plan administrator.**

- A. The plan administrator shall have full power and authority to do whatever shall, in its judgment, be reasonably necessary for the proper administration and operation of the plan. The interpretation or construction placed upon any term or provision of the plan by the plan administrator or any action of the plan administrator taken in good faith shall, upon Council's review and approval thereof, be final and conclusive upon all parties hereto, whether employees, participants or other persons concerned. By way of specification and not limitation and except as specifically limited hereafter, the plan administrator is authorized:
- (1) To construe this plan.
  - (2) To determine all questions affecting the eligibility of any employee to participate herein.
  - (3) To compute the amount and source of any benefit payable hereunder to any participant or beneficiary.
  - (4) To authorize any and all disbursements.
  - (5) To prescribe any procedure to be followed by any participant and/or other person in filing any application or election.
  - (6) To prepare and distribute, in such manner as may be required by law or as the plan administrator deems appropriate, information explaining the plan.
  - (7) To require from the employer or any participant such information as shall be necessary for the proper administration of the plan.
  - (8) To appoint and retain any individual to assist in the administration of the plan, including such legal, clerical, accounting and actuarial services as may be required by any applicable law or laws.
- B. The plan administrator shall have no power to add to, subtract from or modify the terms of the plan or change or add to any benefits provided by the plan, or to waive or fail to apply any requirements of eligibility for benefits under the plan. Further, the plan administrator shall have no power to adopt, amend, or terminate the plan, to select or appoint any trustee or to determine or require any contributions to the plan, said powers being exclusively reserved to Council.

**§ 21-25.10. Plan administrator costs.**

The plan administrator shall serve without compensation for services unless otherwise agreed by Council in writing. All reasonable expenses incident to the functioning of the plan administrator, including, but not limited to, fees of accountants, counsel, actuaries and other

specialists and other costs of administering the plan, may be paid from the pension fund upon approval by Council to the extent permitted under applicable law and not otherwise paid by the employer.

**§ 21-25.11. Hold harmless.**

No Council person, the plan administrator, nor any other officer or employee of the Borough involved in the administration of the plan shall be liable to any person on account of any act or failure to act which is taken or omitted to be taken in good faith in performing their respective duties under the terms of this plan. To the extent permitted by law, the employer shall, and hereby does agree to, indemnify and hold harmless the plan administrator and each successor and each of any such individual's heirs, executors and administrators, and the delegates and appointees (other than any person, bank, firm or corporation which is independent of the employer and which renders services to the plan for a fee) from any and all liability and expenses, including counsel fees, reasonably incurred in any action, suit or proceeding to which he is or may be made a party by reason of being or having been a member, delegate or appointee of the plan administrator, except in matters involving criminal liability, intentional or willful misconduct. If the employer purchases insurance to cover claims of a nature described above, then there shall be no right of indemnification except to the extent of any deductible amount under the insurance coverage or to the extent of the amount the claims exceed the insured amount.

**§ 21-25.12. Approval of benefits.**

The plan administrator shall review and approve or deny any application for retirement benefits within 30 days following receipt thereof or within such longer time as may be necessary under the circumstances. Any denial of an application for retirement benefits shall be in writing and shall specify the reason for such denial.

**§ 21-25.13. Appeal procedure.**

Any person whose application for retirement benefits is denied, who questions the amount of benefit paid, who believes a benefit should have commenced which did not so commence or who has some other claim arising under the plan ("claimant"), shall first seek a resolution of such claim under the procedure hereinafter set forth:

- A. Any claimant shall file a notice of the claim with the plan administrator which shall fully describe the nature of the claim. The plan administrator shall review the claim and make an initial determination approving or denying the claim.
- B. If the claim is denied in whole or in part, the plan administrator shall, within 90 days (or such other period as may be established by applicable law) from the time the application is received, mail notice of such denial to the claimant. Such 90-day period may be extended by the plan administrator if special circumstances so require for up to 90 additional days by the plan administrator's delivering notice of such extension to the claimant within the first 90-day period. Any notice hereunder shall be written in a manner calculated to be understood by the claimant and, if a notice of denial, shall set forth (1) the specific plan provisions on which the denial is based, (2) an explanation of additional material or

information, if any necessary to perfect such claim and a statement of why such material or information is necessary, and (3) an explanation of the review procedure.

- C. Upon receipt of notice denying the claim, the claimant shall have the right to request a full and fair review by Council of the initial determination. Such request for review must be made by notice to Council within 60 days of receipt of such notice of denial. During such review, the claimant or a duly authorized representative shall have the right to review any pertinent documents and to submit any issues or comments in writing. Council shall, within 60 days after receipt of the notice requesting such review (or in special circumstances, such as where Council in its sole discretion holds a hearing, within 120 days of receipt of such notice), submit its decision in writing to the person or persons whose claim has been denied, written in a manner calculated to be understood by the claimant and shall contain specific references to the pertinent plan provisions on which the decision is based. The claimant shall have the right to appeal the decision of Council pursuant to the Local Agency Law, 2 Pa.C.S. § 101 et seq. If not so appealed the decision shall be final, conclusive and binding on all parties.
- D. Any notice of a claim questioning the amount of a benefit in pay status shall be filed within 90 days following the date of the first payment which would be adjusted if the claim is granted unless the plan administrator allows a later filing for good cause shown.
- E. A claimant who does not submit a notice of a claim or a notice requesting a review of a denial of a claim within the time limitations specified above shall be deemed to have waived such claim or right to review.

## ARTICLE I-H

### Applicable Provisions of the Internal Revenue Code

#### § 21-25.14. Definitions.

The following definitions apply for purposes of this Article only:

**LEASED EMPLOYEE** — Effective as of January 1, 1997, any person (other than an employee of the recipient) who pursuant to an agreement between the recipient and any other person (“leasing organization”) has performed services for the recipient (or for the recipient and related persons determined in accordance with Code § 414(n)(6) on a substantially full-time basis for a period of at least one year, and such services are performed under primary direction or control by the recipient.

**LIMITATION YEAR** — the plan year.

#### § 21-25.15. Leased employees and independent contractors.

Leased employees and independent contractors are not eligible to participate in this plan. Any person whom Council does not regard as being an employee shall not be eligible to participate.

#### § 21-25.16. Limit on compensation.

Compensation is subject to the limitation under Code § 401(a)(17), which is \$220,000 for the plan year beginning in 2006. The limit is automatically adjusted periodically, without formal

amendment, for changes in the law and cost-of-living adjustments under Code § 401(a)(17).

**§ 21-25.17. Maximum annual benefit.**

- A. **General Rule.** Except as otherwise provided, this plan shall at all times comply with the provisions of Code § 415 and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If a benefit payable to a participant under this plan would otherwise exceed the limit under Code § 415, the benefit will be reduced to the maximum permissible benefit.
- B. **Effective Date.** If there is more than one permissible effective date for any required change in the Code § 415(b) provisions, then the change shall be effective as of the latest permissible effective date; however, any adjustment in the dollar limit under Code § 415(b)(1)(A), whether required or permissible, shall take effect automatically as of the earliest permissible effective date. The “applicable mortality table” in Rev. Rul. 2001-62 became effective as of December 31, 2002.
- C. **No Reduction in Accrued Benefits.** Notwithstanding the above, no change in the limits under this Article shall reduce the benefit of any participant.
- D. **Multiple Plans.** If a participant also participates in one or more other plans that are required to be aggregated with this plan for purposes of determining the limits under Code § 415(b) or (e), and if the aggregated benefits would otherwise exceed the limit under Code § 415(b) or (e), then benefits shall be reduced first under this plan. [Historical Note: Code § 415(e) applied for limitation years beginning prior to 2000.]
- E. **Mandatory Contributions.** Participant contributions are annual additions, and any benefit attributable to participant contributions is not included in the benefit subject to the limits of Code § 415(b) or (e). This subsection does not apply to contributions “picked-up” in accordance with Code § 414(h).
- F. **Permissive Service Credit.** Effective as of January 1, 1998, if a participant makes a purchase of permissive service credit (within the meaning of Code § 415(n)) under the plan, the benefit derived from the contributions made to purchase the service credit shall be treated as part of the benefit subject to the limitations under this Section.

**§ 21-25.18. Limit on annual additions.**

- A. **Annual Additions.** Except as otherwise provided, annual additions (which include participant contributions) under this plan shall at all times comply with the provisions of Code § 415(c) and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If an annual addition would otherwise exceed the limit under Code § 415(c), the excess annual addition will be allocated in accordance with Reg. § 1.415-6(b)(6)(ii).
- B. **Multiple Plans.** If a participant also participates in one or more other plans that are required to be aggregated with this plan for purposes of determining the limits under Code § 415(c), and if the annual additions would otherwise exceed the limit under Code § 415(c), annual additions will first be reduced under the other plan. If there is more than one other plan, annual additions will first be reduced under the plan with the greatest amount of annual

additions.

- C. Effective Date. The limits under Code § 415(c) are adjusted periodically in accordance with changes in the law or cost of living adjustments without the need for a plan amendment. If there is more than one permissible effective date for any required change relating to Code § 415(c), then the change shall be effective as of the earliest permissible effective date.

**§ 21-25.19. Direct rollovers.**

- A. Effective as of January 1, 1993, if a participant, a spousal beneficiary, or an alternate payee (who is a spouse or former spouse of a participant) is entitled (under other provisions of this plan) to receive an “eligible rollover distribution” of at least \$200, the distributee may elect that the plan administrator transfer all or part (provided that the part is at least \$500) to any “eligible retirement plan” capable of accepting such a transfer.
- B. For purposes of this Section, the following definitions shall apply:
- (1) An “eligible rollover distribution” is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under Code § 401(a)(9); (c) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), and (d) effective as of January 1, 2002, any hardship distribution. Effective as of January 1, 2002, subsection B(3) does not apply to any after-tax participant contributions that are paid to an individual retirement account or annuity described in Code § 408(a) or (b), or to a qualified defined contribution plan described in Code § 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
  - (2) An “eligible retirement plan” is an individual retirement account described in Code § 408(a), an individual retirement annuity described in Code § 408(b), an annuity plan described in Code § 403(a), or a qualified trust described in Code § 401(a), that accepts the distributee’s eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse, prior to January 1, 2002, an eligible retirement plan was an individual retirement account or individual retirement annuity. Effective as of January 1, 2002, an “eligible retirement plan” includes an annuity contract described in Code § 403(b) and an eligible plan under Code § 457(b) which is maintained by a State, political subdivision of a State, or any agency or instrumentality of a State or political subdivision of a State and which agrees to separately account for amounts transferred into such plan from this plan.
  - (3) A distributee includes an employee or former employee. In addition, the employee’s or former employee’s surviving spouse and the employee’s or former employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Code § 414(p)(11), are distributees with regard to the interest of

the spouse or former spouse.

- (4) Effective as of January 1, 2002, an employee may, in accordance with Code § 457(e)(17), make a trustee-to-trustee transfer from an eligible deferred compensation plan (as defined in Code § 457(b)) to this plan for the purpose of purchasing service credit (to the extent that such purchases are permitted under the terms of the plan) or repaying a cash-out of contributions refunded under the plan.

#### **§ 21-25.20. Minimum required distributions.**

- A. Notwithstanding any provision in this plan to the contrary, the distribution of a participant's benefits shall be made in accordance with the requirements and conditions of and shall otherwise comply with Code § 401(a)(9). For purposes of complying with Code § 401(a)(9), life expectancies shall be determined in accordance with the 1987 proposed regulations prior to January 1, 2003, and with the final regulations (§1.401(a)(9)-1 through §1.401(a)(9)-9) on or after January 1, 2003.
- B. Effective as of January 1, 1997, distribution of a participant's benefits shall begin not later than April 1 of the calendar year following the later of:
  - (1) The calendar year in which the participant attains age 70½.
  - (2) The calendar year in which the participant retires.Distributions must be made over a period not exceeding the life of the participant or the joint lives a participant and his beneficiary.
- C. Distributions to a participant and his beneficiaries shall only be made in accordance with the incidental death benefit requirements of Code § 401(a)(9)(G) and the regulations thereunder.
- D. This Section does not authorize the payment of any benefit in any form not permitted under another provision of the plan.

#### **§ 21-25.21. Approved domestic relations orders.**

All rights and benefits, including elections, provided to a participant in this plan shall be subject to the rights afforded to any "alternate payee" under what is recognized pursuant to State law support provisions as an "approved domestic relations order."

#### **§ 21-25.22. Credit for qualified military service.**

Effective as of December 12, 1994, notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance Code § 414(u).

#### **§ 21-25.23. Vesting upon plan termination.**

Upon the termination of this plan, or complete discontinuance of contributions (within the meaning of pre-ERISA Code § 401(a)(7)) to this plan, each employee as of the date of such termination or discontinuance shall become vested to the extent that the plan is funded.

**§ 21-25.24. Consent for lump-sum distributions.**

Effective January 1, 2006, notwithstanding any other provision of the plan, any distribution to a participant made prior to the earlier of age 62 or normal retirement age of an amount in excess of \$1,000 that is an eligible rollover distribution as set forth in the plan and the code shall be made only upon consent of the participant.

**ARTICLE I-I  
The Pension Fund****§ 21-25.25. Operation of the pension fund.**

- A. Council is hereby authorized to hold and supervise the investment of the assets of the pension fund in trust, subject to the provisions of the laws of the Commonwealth and of this plan and any amendment thereto. To the extent that a trust is required by law and no third party trustee has been appointed, a trust is hereby created with Council as trustee.
- B. The pension fund shall be used to pay benefits as provided in the plan and, to the extent not paid directly by the employer, to pay the expenses of administering the plan pursuant to authorization by the employer.
- C. The employer intends the plan to be permanent and for the exclusive benefit of its employees. It expects to make the contributions to the pension fund required under the plan. The employer shall not be liable in any manner for any insufficiency in the pension fund; benefits are payable only from the pension fund, and only to the extent that there are monies available therein. The pension fund will consist of all funds held by the employer under the plan, including contributions made pursuant to the provisions hereof and the investments, reinvestments and proceeds thereof. The pension fund shall be held, managed, and administered pursuant to the terms of the plan. Except as otherwise expressly provided in the plan, the employer has exclusive authority and discretion to manage and control the pension fund assets. The employer may, however, appoint a trustee, custodian and/or investment manager, at its sole discretion.
- D. The employer may also enter into a free standing trust agreement in conjunction with appointing a trustee, in which case the provisions of the free-standing trust agreement shall supersede this Article.

**§ 21-25.26. Powers and duties of employer.**

With respect to the pension fund, the employer shall have the following powers, rights and duties, in addition to those vested in it elsewhere in the plan or by law, unless such duties are delegated.

- A. To retain in cash so much of the pension fund as it deems advisable and to deposit any cash so retained in any bank or similar financial institution (including any such institution which may be appointed to serve as trustee hereunder), without liability for interest thereon.
- B. To invest and reinvest the principal and income of the fund and keep said fund invested, without distinction between principal and income, in securities which are at the time legal investments for fiduciaries under Chapter 73 of the Pennsylvania Probate, Estates and Fiduciaries Code, or as the same may be subsequently modified or amended.

- C. To sell property held in the fund at either public or private sale for cash or on credit at such times as it may deem appropriate; to exchange such property; to grant options for the purchase or exchange thereof.
- D. To consent to and participate in any plan of reorganization, consolidation, merger, extension or other similar plan affecting property held in the fund; to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to any such plan.
- E. To exercise all conversion and subscription rights pertaining to property held in the fund.
- F. To exercise all voting rights with respect to property held in the fund and in connection therewith to grant proxies, discretionary or otherwise.
- G. To place money at any time in a deposit bank deemed to be appropriate for the purposes of this plan no matter where situated, including in those cases where a bank has been appointed to serve as trustee hereunder, the savings department of its own commercial bank.
- H. In addition to the foregoing powers, the employer shall also have all of the powers, rights, and privileges conferred upon trustees by Chapter 73 of the Probate, Estates and Fiduciaries Code, or as the same may be subsequently modified or amended, and the power to do all acts, take all proceedings and execute all rights and privileges, although not specifically mentioned herein, as the employer may deem necessary to administer the pension fund.
- I. To maintain and invest the assets of this plan on a collective and commingled basis with the assets of other pension plans maintained by the employer, provided that the assets of each respective plan shall be accounted for and administered separately.
- J. To invest the assets of the pension fund in any collective commingled trust fund maintained by a bank or trust company, including any bank or trust company which may act as a trustee hereunder. In this connection, the commingling of the assets of this plan with assets of other eligible, participating plans through such a medium is hereby specifically authorized. Any assets of the plan which may be so added to such collective trusts shall be subject to all of the provisions of the applicable declaration of trust, as amended from time to time, which declaration, if required by its terms or by applicable law, is hereby adopted as part of the plan, to the extent of the participation in such collective or commingled trust fund by the plan.
- K. To make any payment or distribution required or advisable to carry out the provisions of the plan, provided that if a trustee is appointed by the employer, such trustee shall make such distribution only at the direction of the employer.
- L. To compromise, contest, arbitrate, enforce or abandon claims and demands with respect to the plan.
- M. To retain any funds or property subject to any dispute without liability for the payment of interest thereon, and to decline to make payment or delivery thereof until final adjudication is made by a court of competent jurisdiction.
- N. To pay, and to deduct from and charge against the pension fund, any taxes which may be imposed thereon, whether with respect to the income, property or transfer thereof, or upon or with respect to the interest of any person therein, which the fund is required to pay; to contest, in its discretion, the validity or amount of any tax, assessment, claim or demand which may be levied or made against or in respect of the pension fund, the income, property

or transfer thereof, or in any matter or thing connected therewith.

- O. To appoint any persons or firms (including, but not limited to, accountants, investment advisors, counsel, actuaries, physicians, appraisers, consultants, professional plan administrators and other specialists), or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the management of the fund; to the extent not prohibited by applicable law, the employer 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 persons or firms, provided such persons or firms were prudently chosen by the employer, taking into account the interests of the participants and beneficiaries and with due regard to the ability of the persons or firms to perform their assigned functions.
- P. To retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the fund assets, provided that each of such persons or firms is registered as an investment advisor under the Investment Advisors Act of 1940, is a bank (as defined in that act), or is an insurance company qualified to manage, acquire or dispose of pension trust assets under the laws of more than one state; in such event, the employer shall follow the directions of such investment manager or managers with respect to the acquisition and disposition of fund assets, but shall not be liable for the acts or omissions of such investment manager or managers, nor shall it be under any obligation to review or otherwise manage any fund assets which are subject to the management of such investment manager or managers. If the employer appoints a trustee, the trustee shall not be permitted to retain such an investment manager except with the express written consent of the employer.

**§ 21-25.27. Common investments.**

The employer shall not be required to make separate investments for individual participants or to maintain separate investments for each participant's account, but may invest contributions and any profits or gains therefrom in common investments.

**§ 21-25.28. Compensation and expenses of appointed trustee.**

If a third party trustee is appointed, the trustee shall be entitled to such reasonable compensation as shall from time to time be agreed upon by the employer and the trustee, unless such compensation is prohibited by law. Such compensation, and all expenses reasonably incurred by the trustee in carrying out its functions, shall constitute a charge upon the employer or the pension fund, which may be executed at any time after 30 days written notice to the employer. The employer shall be under no obligation to pay such costs and expenses, and, in the event of its failure to do so, the trustee shall be entitled to pay the same, or to be reimbursed for the payment thereof, from the pension fund.

**§ 21-25.29. Periodic accounting.**

If a trustee is appointed, the pension fund shall be evaluated annually, or at more frequent intervals, by the trustee and a written accounting rendered as of each fiscal year end of the fund, and as of the effective date of any removal or resignation of the trustee, and such additional dates

as requested by the employer, showing the condition of the fund and all receipts, disbursements and other transactions effected by the trustee during the period covered by the accounting, based on fair market values prevailing as of such date.

**§ 21-25.30. Value of the pension fund.**

All determinations as to the value of the assets of the pension fund, and as to the amount of the liabilities thereof, shall be made by the employer or its appointed trustee, whose decisions shall be final and conclusive and binding on all parties hereto, the participants and beneficiaries and their estates. In making any such determination, the employer or trustee shall be entitled to seek and rely upon the opinion of or any information furnished by brokers, appraisers and other experts, and shall also be entitled to rely upon reports as to sales and quotations, both on security exchanges and otherwise as contained in newspapers and in financial publications.

**ARTICLE I-J**  
**Amendment and Termination of Pension Plan or**  
**Pension Fund and Conformance with Act 600**

**§ 21-25.31. Amendment of the plan.**

The employer may amend this plan at any time or from time to time by an instrument in writing executed in the name of the employer under its municipal seal by officers duly authorized to execute such instrument and delivered to Council; provided, however:

- A. That no amendment shall deprive any participant or any beneficiary of a deceased participant of any of the benefits to which he is entitled under this plan with respect to contributions previously made.
- B. That no amendment shall provide for the use of funds or assets held under this plan other than for the benefit of employees and no funds contributed to this plan or assets of this plan shall, except as provided in § 21-25.35, ever revert to or be used or enjoyed by the employer.
- C. That no amendment to the plan which provides for a benefit modification shall be made unless the cost estimate described in § 21-25.33 has been prepared and presented to Council in accordance with the Act.

**§ 21-25.32. Termination of the plan.**

Subject to State law and collective bargaining limitations, the employer shall have the power to terminate this plan in its entirety at any time.

**§ 21-25.33. Automatic termination of contributions.**

Subject to the provisions of the Act governing financially distressed municipalities, the liability of the employer to make contributions to the pension fund shall automatically terminate upon liquidation or dissolution of the employer, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit of its creditors.

**§ 21-25.34. Distribution upon termination.**

- A. In the event of the termination of the plan, all amounts of vested benefits accrued by the affected participants as of the date of such termination, to the extent funded on such date, shall be nonforfeitable hereunder. In the event of termination of the plan, the employer shall direct either (1) that the plan administrator continue to hold the vested accrued benefits of participants in the pension fund in accordance with the provisions of the plan (other than those provisions related to forfeitures) without regard to such termination until all funds have been distributed in accordance with the provisions; or (2) that the plan administrator immediately distribute to each participant an amount equal to the vested accrued benefit to the date.
- B. If there are insufficient assets in the pension fund to provide for all vested accrued benefits as of the date of plan termination, priority shall first be given to the distribution of any amounts attributable to mandatory or voluntary employee contributions before assets are applied to the distribution of any vested benefits attributable to other sources hereunder.
- C. All other assets attributable to the terminated plan shall be distributed and disposed of in accordance with the provisions of applicable law and the terms of any instrument adopted by the employer which effects such termination.

**§ 21-25.35. Residual assets.**

If all liabilities to vested participants and any others entitled to receive a benefit under the terms of the plan have been satisfied and there remain any residual assets in the pension fund, such residual assets remaining shall be returned to the employer insofar as such return does not contravene any provision of law, and any remaining balance, in excess of employer contributions, shall be returned to the Commonwealth.

**§ 21-25.36. Exclusive benefit rule.**

In the event of the discontinuance and termination of the plan as provided herein, the employer shall dispose of the pension fund in accordance with the terms of the plan and applicable law; at no time prior to the satisfaction of all liabilities under the plan shall any part of the corpus or income of the pension fund, after deducting any administrative or other expenses properly chargeable to the pension fund, be used for or diverted to purposes other than for the exclusive benefit of the participants in the plan, their beneficiaries or their estates.

**§ 21-25.37. Verification of pension plan as Act 600 plan.**

- A. The plan has been, is, and shall be operated and provide benefits only in compliance with Act 600 of the Commonwealth of Pennsylvania.
- B. Any resolution, policy, provisions, interpretation stating otherwise is of no force and effect and the Borough, by enacting this section, again has clearly established that the Borough Police Pension Plan is, and has been, an Act 600 Plan.
- C. Any footnote in the Code of the Borough of Heidelberg, notation, memorandum, and opinion inconsistent with Act 600 is specifically declared unenforceable, invalid, and not authorized by the Borough.
- D. The only Police Pension Plan adopted and enforced by the Borough of Heidelberg is an Act

600 Pension Plan, which applies to all full-time officers of the Borough of Heidelberg.

**ARTICLE I-K**  
**Provisions to Comply with the Municipal Pension**  
**Plan Funding Standard and Recovery Act of 1984**

**§ 21-25.38. Actuarial valuations.**

- A. The plan's actuary shall perform an actuarial valuation at least biennially.
- B. Such biennial actuarial valuation report shall be made as of the beginning of each plan year occurring in an odd-numbered calendar year, beginning with the year 1985.
- C. Such actuarial valuation shall be prepared and certified by an approved actuary, as such term is defined in the Act.
- D. The expenses attributable to the preparation of any actuarial valuation report or investigation required by the Act or any other expense which is permissible under the terms of the Act and which are directly associated with administering the plan shall be an allowable administrative expense payable from the assets of the pension fund. Such allowable expenses shall include, but not be limited to, the following:
  - (1) Investment costs associated with obtaining authorized investments and investment management fees.
  - (2) Accounting expenses.
  - (3) Premiums for insurance coverage on fund assets.
  - (4) Reasonable and necessary counsel fees incurred for advice or to defend the fund.
  - (5) Legitimate travel and education expenses for plan officials; provided, however, that the municipal officials of the employer, in their fiduciary role, shall monitor the services provided to the plan to ensure that the expenses are necessary, reasonable and benefit the plan; and further provided, that the plan administrator shall document all such expenses item by item, and where necessary, hour by hour.

**§ 21-25.39. Duties of chief administrative officer.**

- A. Such actuarial reports shall be prepared and filed under the supervision of the chief administrative officer.
- B. The chief administrative officer of the plan shall determine the financial requirements of the plan on the basis of the most recent actuarial report and shall determine the minimum municipal obligation of the employer with respect to funding the plan for any given plan year. The chief administrative officer shall submit the financial requirements of the plan and the minimum municipal obligation of the employer to Council annually and shall certify the accuracy of such calculations and their conformance with the Act.

**§ 21-25.40. Benefit plan modifications.**

Prior to the adoption of any benefit plan modification by the employer, the chief administrative officer of the plan shall provide to Council a cost estimate of the proposed benefit plan

modification. Such estimate shall be prepared by an approved actuary, which estimate shall disclose to Council the impact of the proposed benefit plan modification on the future financial requirements of the plan and the future minimum municipal obligation of the employer with respect to the plan.

**ARTICLE I-L**  
**Miscellaneous Provisions**

**§ 21-25.41. Plan not a contract of employment.**

No police officer of the employer nor anyone else shall have any rights whatsoever against the employer or the plan administrator as a result of this plan except those expressly granted to them hereunder. Nothing herein shall be construed to give any police officer the right to remain on the police force of the employer.

**§ 21-25.42. Masculine/feminine, singular/plural.**

For purposes of this plan, the masculine shall read for the feminine and the singular shall be read for the plural, wherever the person or context shall plainly so require.

**§ 21-25.43. Construction of document.**

This plan may be executed and/or conformed in any number of counterparts, each of which shall be deemed an original and shall be construed and enforced according to the laws of the Commonwealth, excepting such Commonwealth's choice of law rules.

**§ 21-25.44. Headings.**

The headings of articles are included solely for convenience of reference, and if there be any conflict between such headings and the text of the plan, the text shall control.

**§ 21-25.45. Severability of provisions.**

In case any provisions of this plan shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of this plan, and the plan shall be construed and enforced as if said illegal and invalid provisions had never been inserted therein.

**§ 21-25.46. Incapacity of participant.**

If any participant shall be physically or mentally incapable of receiving or acknowledging receipt of any payment of pension benefits hereunder, the plan administrator, upon the receipt of satisfactory evidence that such participant is so incapacitated and that another person or institution is maintaining him, may provide for such payment of pension benefits hereunder to such person or institution so maintaining him, and any such payments so made shall be deemed for every purpose to have been made to such participant.

**§ 21-25.47. Liability of officers of the plan administrator and/or employer.**

Subject to the provisions of the Act and unless otherwise specifically required by other applicable laws, no past, present or future officer of the employer shall be personally liable to any participant, beneficiary or other person under any provision of the plan.

**§ 21-25.48. Assets of the fund.**

Nothing contained herein shall be deemed to give any participant or beneficiary any interest in any specific property of the pension fund or any right except to receive such distributions as are expressly provided for under the plan.

**§ 21-25.49. Pension fund for sole benefit of participants.**

The income and principal of the pension fund are for the sole use and benefit of the participants covered hereunder, and to the extent permitted by law, shall be free, clear and discharged from and are not to be in any way liable for debts, contracts or agreements, now contracted or which may hereafter be contracted, and from all claims and liabilities now or hereafter incurred by any participant or beneficiary.

**ARTICLE II**  
**Nonuniformed Simple IRA Plan**  
**[Adopted 7-17-2007 by Ord. No. 573]**

**§ 21-26. Authorization for Borough officials to enter into plan.**

The proper officials of the Borough of Heidelberg are authorized and empowered to execute an agreement with Paychex, Inc., identified as “paycheck retirement services agreement.” The Borough of Heidelberg may modify or change the retirement services agreement and provider by a resolution of the Borough of Heidelberg.

**§ 21-27. Purpose of plan.**

The purpose of the agreement is to provide nonservice employees with a procedure to create a simplified IRA plan. The plan shall consist of the Master Custody Agreement and a Fidelity Advisers Simple IRA Plan and all other documents needed to implement this plan.

**§ 21-28. Compensation requirements to join plan.**

All employees of the Borough of Heidelberg who are reasonably expected to receive at least \$5,000 in compensation and have received at least \$5,000 in compensation from the Borough of Heidelberg during one prior calendar year are eligible for the plan.

**§ 21-29. Maximum employee contribution to plans.**

Eligible employees may elect to defer, from their salary, an amount of up to 3% annually, up to a maximum of \$10,000 (\$12,000 if over age 50) per year.

**§ 21-30. Borough contribution limits.**

The Borough of Heidelberg may make a contribution to the Simple IRA on a dollar-for-dollar match that a plan participant elected to defer with the contribution of the Borough being limited to a dollar-for-dollar match up to 3% per year.

**§ 21-31. Employee responsibility for investment decisions.**

All investment decisions of the elected deferral amount and/or the contribution of the Borough of Heidelberg shall be invested at the sole discretion of the plan participant, and the Borough of Heidelberg assumes no responsibility and provides no advice for the investment decisions of the participant. No claims shall be made against the Borough of Heidelberg or its elected or appointed officials for any loss sustained by any plan participant for any investment choice or choices made a plan participant.

**§ 21-32. Borough payment of custodial fees.**

The Borough of Heidelberg will annually pay the cost of a Simple IRA annual custodial fee as imposed by the custodian by each participant.

**§ 21-33. Termination of plan provisions.**

The Borough of Heidelberg reserves the right, during the month of January of each year, to reduce or terminate the matching contributions of the Borough of Heidelberg, reduce or eliminate the payment of any custodial fees or to terminate this plan.

**§ 21-34. Custodial fee obligations on resignation or termination of employment.**

The Borough of Heidelberg will assume no responsibility for the payment of any fees or contributions to the said plan or fees to continue the said plan for any employee who resigns or is terminated from the Borough of Heidelberg after the date of the resignation or termination.

**§ 21-35. Description of plan documents.**

The following plan documents<sup>3</sup> are incorporated herein and as amended from time to time:

- A. Qualified Retirement Plan and Trust Basic Plan document or Volume Submitter Basic Plan document as appropriate (collective “basic plan document”).
- B. Adoption agreement of the Borough of Heidelberg.
- C. Summary Plan description for distribution to plan participants.
- D. Master Custody Agreement.
- E. Fidelity Adviser Simple IRA Plan.

**§ 21-36. Implementation date.**

The implementation of the plan shall be effective as of January 1, 2007.

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3. Editor’s Note: Plan documents are available in the Borough offices.

