

BOROUGH OF FREEPORT

ORDINANCE NO. 339

SECOND AMENDMENT TO THE

**BOROUGH OF FREEPORT POLICE PENSION PLAN
(as amended and restated, effective January 1, 1992)**

AN ORDINANCE OF THE BOROUGH OF FREEPORT RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE OF EMPLOYEES PENSION, ANNUITY, INSURANCE AND BENEFIT FUND OR FUNDS, TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM APPLICABLE TO THE POLICE OF SAID BOROUGH:

WHEREAS, the Borough of Freeport (the "Borough") has previously enacted an Ordinance establishing the Borough of Freeport Police Pension Plan (the "Plan"); and

WHEREAS, the Plan was totally amended and restated, effective January 1, 1992; and

WHEREAS, the Borough reserved the right to amend the Plan pursuant to section 9.01; and

WHEREAS, the Borough now desires the Plan to be further amended;

BE IT ORDAINED AND ENACTED by the Borough Council and it is HEREBY ORDAINED AND ENACTED by authority of the same:

Effective January 1, 1998, sections 4.05 and 5.02 are amended in their entirety by deleting the said sections and substituting new sections 4.05 and 5.02 as follows:

4.05 Maximum Benefit Limitations - Notwithstanding any provision of this Plan to the contrary, no benefit provided under this Plan attributable to contributions of the Employer shall exceed, as an annual amount, the amount specified in Code section 415(b)(1)(A) as adjusted pursuant to Code section 415(d), assuming the form of benefit shall be a straight life annuity (with no ancillary benefits). The limitations described in this section 4.05 shall be governed by the following conditions and definitions:

- (a) benefits paid or payable in a form other than a straight life annuity (with no ancillary benefits) or where the Employee contributes to the Plan or makes rollover contributions shall be adjusted on an actuarially equivalent basis to determine the limitation contained herein;

- (b) in the case of a benefit which commences prior to the attainment of age sixty-two (62) by the Participant, the limitation herein shall be adjusted on an actuarially equivalent basis to the amount determined pursuant to this section commencing at age sixty-two (62); however, the reduction shall not reduce the limitation below \$75,000 for a benefit commencing at or after age fifty-five (55), or if the benefit commences prior to attainment of age fifty-five (55) the amount which is actuarially equivalent to a benefit of \$75,000.00 commencing at age fifty-five (55); however, in the case of a qualified Participant (a Participant with respect to whom a period of at least fifteen (15) years of service, including applicable military service, as a full-time employee of a police or fire department is taken into account in determining the amount of benefit), the limitation contained herein shall not reduce the limitation to an amount less than the amount specified pursuant to Code section 415(b)(2)(G)(i) as of the Restatement Date of this Plan and such amount shall be adjusted pursuant to Code section 415(d);
- (c) in the case of a benefit which commences after attainment of age sixty-five (65) by the Participant, the limitation herein shall be adjusted on an actuarially equivalent basis to the amount determined herein commencing at age sixty-five (65);
- (d) benefits paid to a Participant which total less than \$10,000.00 from all defined benefit plans maintained by the Employer expressed as an annual benefit shall be deemed not to exceed the limitation of this section provided that the Employer has not at any time maintained a defined contribution plan in which the Participant has participated; however, in the case of a Participant who is not receiving a Disability Retirement Benefit pursuant to section 12.02, with fewer than ten (10) years of participation, the limitation expressed in this subsection (d) shall be reduced by one-tenth (1/10) for each year of participation less than ten (10) but in no event shall this limitation be less than \$1,000.00;
- (e) the limitations expressed herein shall be based upon Plan Years for calculation purposes, shall be applied to all defined benefit plans maintained by the Employer as one (1) defined benefit plan and to all defined contribution plans maintained by the Employer as one (1) defined contribution plan, and shall be applied and interpreted consistent with Code section 415 and regulations thereunder as applicable to government plans in general and this Plan in particular; and
- (f) in the case of a Survivor Benefit under section 5.02 or a Disability Retirement Benefit under section 12.02, the adjustment under subsection (b) hereof shall not apply and the applicable limitation shall be the limitation contained herein without regard to the age of the benefit recipient.

5.02 Survivor Benefit -If a Participant shall die after commencement of benefit payments hereunder, after the Participant is eligible to retire under section 4.01 and before retirement benefit payments commence, or as a direct result of and in the line of duty of Employment, a survivor benefit shall be paid to the surviving spouse, if any, of the Participant in an amount equal to fifty percent (50%) of the Participant's Accrued Benefit as of the date of death. The survivor benefit shall be paid to the surviving spouse monthly until the death of the surviving spouse shall occur. Upon the occurrence of the death of the surviving spouse or if there is no spouse surviving at the date of death of the Participant, the survivor benefit shall be paid to the surviving dependent children of the deceased Participant until the death or attainment of age eighteen (18) of each child. The shares payable to the surviving dependent children shall be adjusted as each child ceases to be eligible to receive a share of the benefit hereunder due to death or attainment of age eighteen (18).

Effective January 1, 1998, the Plan is amended by adding new sections 1.29, 1.30, 1.31, 4.09, 4.10, 4.11, 4.12 and a new Article XII as follows:

- 1.29 "Early Retirement Age" shall mean the date on which the Participant has completed twenty (20) years of Aggregate Service with the Employer.
- 1.30 "Service Increment" shall mean the amount calculated pursuant to section 4.11 on behalf of a Participant for Aggregate Service in excess of twenty-five (25) years.
- 1.31 "Total and Permanent Disability" shall mean a condition of physical or mental impairment due to which a Participant is unable to perform the usual and customary duties of Employment, which condition continues for at least six (6) months, and which is reasonably expected to continue to be permanent for the remainder of the Participant's lifetime. For purposes of this section 1.31 and Article XII, a condition shall not be treated as a Total and Permanent Disability unless such condition is a direct result of and occurs in the line of duty of Employment. Therefore, an Employee whose physical or mental impairment does not occur in the line of duty or which is the result of alcoholism, addiction to narcotics, perpetration of a felonious criminal activity or is willfully self-inflicted, is not entitled to receive disability benefits under the Plan.
- 4.09 Early Retirement - Each Participant shall be eligible for an Early Retirement Benefit after application under section 4.10 and after the Participant has attained Early Retirement Age.
- 4.10 Early Retirement Benefit - Each Participant who shall become eligible for a benefit pursuant to section 4.09 may retire and commence receipt of such a benefit provided that the Participant files a written application for Early Retirement Benefit with the Council. The amount of such benefit shall be the actuarial equivalent of the Participant's Accrued Benefit where the actuarial equivalent shall be determined by actuarially reducing the Accrued Benefit to reflect the early commencement of benefit payments prior to attainment of Normal Retirement Age using the actuarial assumptions reported in the last actuarial valuation report prepared under section 10.01 and filed with the Public Employee Retirement Commission under the Act.

- 4.11 Service Increment - A Participant who shall retire after completion of at least twenty-six (26) years of Aggregate Service may be entitled to receive a monthly service increment benefit provided, however, that the Participant shall have accrued sufficient service credit pursuant to this section 4.11. Such Service Increment shall only be available to a Participant who shall retire on a Retirement Date after attainment of Normal Retirement Age and whose years of Aggregate Service for purposes of this section 4.11 shall only include periods of time when the Participant actively renders service in Employment and shall not include any period of time during which the Participant received a Disability Benefit under the terms of this Plan or was not otherwise in active Employment. Such Service Increment shall be an amount equal to one hundred dollars (\$100.00) provided at least twenty-six (26) years of Aggregate Service have been completed as determined hereunder. The Service Increment shall not exceed one hundred dollars (\$100.00), and shall be paid monthly in addition to the amount of Normal Retirement Benefit, calculated pursuant to section 4.02 hereof.
- 4.12 Cost of Living Adjustment - Each Participant who shall retire and receive a retirement benefit determined pursuant to section 4.02 or 4.10 hereunder shall be entitled to receive a cost-of-living adjustment to the amount of benefit payable to such Participant under section 4.02 or 4.10 whichever is applicable and not to the amount of Service Increment Benefit payable to such Participant under section 4.11 effective as of each January 1 which occurs after commencement of the Participant's retirement benefit payments hereunder. Such cost-of-living adjustment shall be an amount equal to the percentage change in the Consumer Price Index (CPI-W) during the last year times the retirement benefit payable but shall not exceed the following limits: (1) the percentage increase in the Consumer Price Index from the year in which the Participant was last employed as an Employee of the Employer; (2) the total retirement benefits payable under this Plan shall not exceed seventy-five percent (75%) of the Participant's Final Monthly Average Salary; (3) the total cost-of-living increase shall not exceed thirty percent (30%) of the Participant's retirement benefit under this Plan; and (4) the cost-of-living adjustment shall not impair the actuarial soundness of the Pension Fund.

ARTICLE XII

DISABILITY RETIREMENT

- 12.01 Disability Retirement - A Participant who shall incur a Total and Permanent Disability before attaining Normal Retirement Age shall be entitled to a Disability Retirement Benefit as of the date of disability.

12.02 Disability Retirement Benefit - A Participant who shall be entitled to a Disability Retirement Benefit under section 12.01 shall receive a monthly benefit in an amount equal to fifty percent (50%) of the Participant's Final Monthly Average Salary determined as of the date of Total and Permanent Disability and reduced by the amount of any disability payments for which the Participant is eligible under any worker's compensation or similar laws, any other disability program provided by the Employer, or any payment received from third parties or their insurance carrier for the loss of future income including any social security disability benefits.

12.03 Payment of Disability Benefits - Disability payments shall be made monthly as of the first day of each month, commencing as of the first day of the month coincident with or immediately following the Participant's date of disability 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 who attains Normal Retirement Age shall thereafter receive a Normal Retirement Benefit pursuant to section 4.02).

A Participant who shall fail to return within three (3) months to Employment as an Employee of the Employer upon cessation of Total and Permanent Disability prior to attainment of Normal Retirement Age shall be deemed to have terminated Employment as of the date of disability, shall not be entitled to any distribution of Accumulated Contributions pursuant to section 6.02 to the extent that the total amount of disability payments exceeds the value of the Participant's Accumulated Contributions as of the date of disability, and shall not be entitled to any other benefits under the Plan on account of any Aggregate Service as of the date of disability.

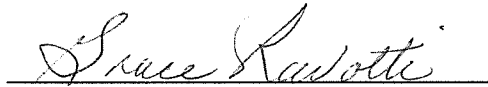
12.04 Verification of Disability - The Plan Administrator shall in its sole discretion determine whether a Participant shall have incurred a Total and Permanent Disability. The Plan Administrator shall rely on the report of a physician acceptable to the Plan Administrator. If the Plan Administrator shall 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 twelve (12) month period), the payment of Disability Retirement Benefits shall cease.

12.05 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 may take whatever action is necessary to recover any amount of improperly paid amounts, including legal action or offsetting such amounts against any future payments of retirement or other benefits under the Plan, including the costs of such actions.

ORDAINED AND ENACTED this 7th day of February, A.D., ~~199~~* 2000

ATTEST:

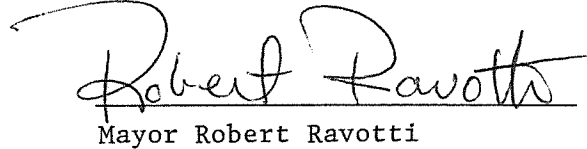
BOROUGH OF FREEPORT



Borough Secretary


President of Council

EXAMINED AND APPROVED this 7th day of February, A.D., ~~199~~* 2000


Mayor Robert Ravotti