

ORDINANCE NO. 2634

AN ORDINANCE TO AMEND CHAPTER 26 OF THE CODE OF SUSSEX COUNTY RELATING TO PENSION BENEFITS FOR SUSSEX COUNTY EMPLOYEES TO BRING THE CODE INTO COMPLIANCE WITH THE UNITED STATES INTERNAL REVENUE CODE.

WHEREAS, Sussex County Code, Chapter 26 governs Sussex County employee pension benefits; and

WHEREAS, Sussex County desires to amend Chapter 26 to ensure that it is in compliance with the United States Internal Revenue Code.

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. Amend Sussex County Code, Chapter 26, § 26-6A., *Eligibility*, by inserting the additional underlined language to the end of paragraph A. as follows:

A. A covered employee who shall have service with Sussex County in continuous employment for at least eight years shall be considered eligible for retirement benefits within the meaning of this chapter, except as otherwise provided. Elected County officials (including the Recorder of Deeds, Register of Wills, Sheriff, Clerk of Peace and members of County Council) would be eligible to retire and receive a pension with five years of elected official service at the age of 60 or with 10 years of elected official service at the age of 55. In no event shall a covered employee hired after December 31, 2013, receive credit for covered employment for benefit purposes for any period of employment during which the covered employee does not make the full 3% employee contribution, except for the period of the year during which the covered employee is working and earning the first \$6,000 of base compensation. For purposes of this Chapter, a "Covered Employee" is an employee of the County who normally works at least 35 hours per week or is otherwise covered by this Chapter; or an elected official of the County.

Section 2. Amend Sussex County Code, Chapter 26, § 26-7A., *Computation of benefits*, by adding language to the end of § 26-7A. as follows:

For Plan Years beginning after January 1, 1994 and before January 1, 1997, for purposes of computing benefits under this chapter, compensation in excess of one hundred fifty thousand dollars (\$150,000) shall be disregarded. Such amount shall be adjusted for increases in the cost of living in accordance with § 401(a)(17)(B) of the United States Internal Revenue Code [26 U.S.C. § 401(a)(17)(B)], except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year.

For Plan Years beginning after December 31, 2001 for purposes of computing benefits under this chapter, compensation in excess of two hundred thousand dollars (\$200,000) shall be disregarded. Such amount shall be adjusted for increases in the cost of living in accordance with § 401(a)(17)(B) of the United States Internal Revenue Code [26 U.S.C. § 401(a)(17)(B)], except that the dollar increase in effect on January 1 of any calendar year shall be effective for the Plan Year beginning with or within such calendar year.

For any short Plan Year, the Compensation limit shall be an amount equal to the § 401(a)(17)(B) of the United States Internal Revenue Code [26 U.S.C. § 401(a)(17)(B)] limit on compensation for the calendar year in which the Plan Year begins multiplied by the ratio obtained by dividing the number of full months in the Short Plan Year by twelve (12).

For Plan Years beginning after December 31, 1996, for purposes of determining compensation, the family member aggregation rules of § 401(a)(17) of the United States Internal Revenue Code [26 U.S.C. § 401(a)(17)] and § 414(g)(6) of the United States Internal Revenue Code [26 U.S.C. § 414(g)(6)], (as in effect prior to the Small Business Job Protection Act of 1996) are eliminated.

Section 3. Amend Sussex County Code, Chapter 26, § 26-7, *Computation of benefits*, by adding new paragraphs G., H. and I. to the end as follows:

G. Limitations on Benefits. Pursuant to Treasury Regulation § 1.415(a)-1(d)(3) (“Section 415 Regulations”), effective for Plan Years beginning on or after January 1, 1976, the limitations on benefits under § 415 of the United States Internal Revenue Code [26 U.S.C. § 415] and the Section 415 Regulations applicable to governmental plans as defined in § 414(d) of the United States Internal Revenue Code [26 U.S.C. § 414(d)] are hereby incorporated by reference. For purposes of the application of these limitations under § 415 of the United States Internal Revenue Code [26 U.S.C. § 415], a covered employee’s compensation shall be as determined in accordance with Treasury Regulation § 1.415(c)(2)(b) and (c).

H. Military Service. Effective December 12, 1994, notwithstanding any provision of this chapter to the contrary, benefits and service credit under this chapter with respect to qualified military service will be provided in accordance with § 414(u) of the United States Internal Revenue Code [26 U.S.C. § 414(u)].

I. Required Minimum Distributions. The Required Minimum Distribution provisions of § 401(a)(9) of the United States Internal Revenue Code [26 U.S.C. § 401(a)(9)] and Treasury Regulations § 1.401(a)(9)-1

through § 1.401(a)(9)-9 applicable to governmental plans as defined in § 414(d) of the United States Internal Revenue Code [26 U.S.C. § 414(d)] are hereby incorporated by reference. All distributions of benefits shall be made in accordance with Treasury Regulations § 1.401(a)(9)-1 through § 1.401(a)(9)-9 and the provisions of § 401(a)(9) of the United States Internal Revenue Code [26 U.S.C. § 401(a)(9) override any distribution options in this chapter that are inconsistent with § 401(a)(9) of the United States Internal Revenue Code [26 U.S.C. § 401(a)(9)]. This incorporation by reference shall include the provisions of Section 401(a)(9)(G) of the United States Internal Revenue Code [26 U.S.C. § 401(a)(9)(g)].

Section 4. Amend Sussex County Code, Chapter 26, § 26-9E., *Funding*, by deleting paragraph E. in its entirety as follows:

[E. Pension payments shall not be subject to attachment or execution.]

Section 5. Amend Sussex County Code, Chapter 26, § 26-9E., *Funding*, by inserting a new paragraph E. in its entirety as follows:

E. Benefits Not Assignable

(1) General. Subject to the exceptions provided in Paragraph B below, no benefit under this chapter shall in any manner or to any extent be assignable or transferable by any covered employee, retired covered employee, former covered employee, spouse or child (including its guardian) of a deceased covered employee or joint pensioner under this chapter or subject to attachment, garnishment or other legal process. No attempted assignment or transfer of any benefit under this chapter shall be recognized and, notwithstanding any provisions of this chapter to the contrary as to benefits, Sussex County shall, upon proof of any attempt on the part of any such covered employee, retired covered employee, former covered employee, spouse or child (including its guardian) of a deceased covered employee, or joint pensioner to be forfeited; provided that Sussex County shall give such covered employee, retired covered employee, former covered employee, spouse or child (including its guardian) of a deceased covered employee, or joint pensioner notice in writing of the effect of the provisions of this Section upon his benefits and if prior to the time he shall cease to be an employee or within thirty (30) days after such notice, whichever is longer, as to such covered employee, or within thirty (30) days after such notice as to such, retired covered employee, former covered employee, spouse or child (including its guardian) of a deceased covered employee, or joint pensioner, valid cancellation of such attempted transfer or assignment shall have been effected and satisfactory proof thereof furnished to the trustees, then such covered employee, retired covered employee, former covered employee, spouse or child (including its guardian) of a deceased covered employee, or joint pensioner shall be entitled to the

same (but no greater) benefits under this chapter as in the case he had not attempted to make any such assignment or transfer.

(2). Exception for Domestic Relations Orders. Paragraph A shall not apply to a 'domestic relations order' defined in §414(p) of the United States Internal Revenue Code [26 U.S.C. § 414(p)], or against an amount that the member is ordered or required to pay Sussex County with respect to a judgment, order or decree issued, or a settlement entered into that otherwise complies with § 401(a)(13)(C) of the United States Internal Revenue Code [26 U.S.C. § 401(a)(13)(C)].

Section 6. Effective Date. This Ordinance shall become effective immediately upon approval.

Synopsis

This Ordinance amends Sussex County Code, Chapter 26, which governs employee pension benefits, to bring it into compliance with the United States Internal Revenue Code by amending the following code provisions: "Eligibility" as set forth in § 26-6 by adding language to the end of paragraph A.; "Computation of benefits" as set forth in § 26-7 by adding language to the end of § 26-7A. and adding new paragraphs G., H. and I.; and "Funding" as set forth in § 26-9 by deleting paragraph E. in its entirety and inserting a new paragraph E therein.

Deleted text is shown in brackets. Additional text is underlined.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2634 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 26TH DAY OF FEBRUARY 2019.

Nancy J. Cordrey
Assistant Clerk of the Council