

ORDINANCE NO. 2760

AN ORDINANCE TO AMEND CHAPTER 26 OF THE CODE OF SUSSEX COUNTY RELATING TO PENSION BENEFITS FOR SUSSEX COUNTY EMPLOYEES REGARDING EMPLOYEE ELIGIBILITY AND CONTRIBUTIONS, AND 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 as it relates to "Eligibility" as set forth in § 26-6 and "Funding" as set forth in § 26-9; and

WHEREAS, Sussex County further 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, § 26-3, "Allowable interruptions", by adding the following to the end of the Section:

**G.** Participation in qualified military service is deemed an "Allowable Interruption" from continuous service under the terms of the Plan. A participant who dies during this period of "Allowable Interruption" will be treated as having died while an active participant in the Plan and his or her beneficiary, if otherwise eligible under the terms of the Plan, will be entitled to the death benefit.

Section 2. Amend Sussex County Code, Chapter 26, § 26-6, "Eligibility", by inserting the additional underlined language to 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 or a covered employee hired after December 31, 2020 receive credit for covered employment for benefit purposes for any period of employment during which the covered employee does not make the full 5% 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 3. Amend Sussex County Code, Chapter 26, § 26-7G., “Computation of benefits”, by adding the following language to the end of the Section:

When determining a Participant’s Compensation under this Paragraph, differential wage payments as defined by Code §3401(h)(2), shall be treated as Compensation.

Section 4. Amend Sussex County Code, Chapter 26, § 26-7I., “Computation of benefits”, by adding the following language to the end of the Section:

A covered employee’s retirement benefits shall begin to be distributed, no later than the covered employee’s Required Beginning Date. The Required Beginning Date of a covered employee is April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires. For covered employees turning 70 ½ after December 31, 2019, The Required Beginning Date is April 1 of the calendar year following the later of the calendar year in which the participant attains age 72 or the calendar year in which the participant retires.

Section 5. Amend Sussex County Code, Chapter 26, § 26-7, “Computation of benefits”, by adding the following language to the end of the Section:

**J.** For distributions made on or after January 1, 1993, notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee’s election, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

**(1)** Eligible rollover distribution: 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: 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; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and 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).

**(2)** Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an

individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, or a qualified trust described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

**(3)** Distributee: 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 section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

**(4)** Direct rollover: A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

Section 6. Amend Sussex County Code, Chapter 26, § 26-9, "Funding", by inserting the additional underlined language to paragraph F. as follows:

F. Employee Contributions.

(1) Covered employees hired by Sussex County after December 31, 2013, shall make employee contributions to the Fund equal to 3% of the covered employees' total annual base compensation in excess of \$6,000. Covered employees hired by Sussex County after December 31, 2020, shall make employee contributions to the Fund equal to 5% of the covered employees' total annual base compensation in excess of \$6,000. In no event shall the total base compensation of a covered employee during any calendar year in excess of \$6,000 be exempt from employee contributions. A covered employee shall at all times be 100% vested in his or her employee contributions.

Section 7. Amend Sussex County Code, Chapter 26-9, "Funding", by adding the following language to the end of the Section:

**H.** Termination of Pension Plan. Upon any termination of the Pension Plan, (full or partial), all amounts shall be allocated in accordance with the provisions hereof and the accrued benefit of each affected Participant shall become fully vested to the extent funded and shall not thereafter be subject to forfeiture. Upon termination of the Plan, the Sussex County, may direct either:

- (1) continuation of the Plan and the distribution of benefits at such time and in such manner as though the Plan had not been terminated; or
- (2) the distribution of the assets in the Fund to the Participants. In such case, the assets shall distributed to the remaining Participants in the Plan and to Retired Participants in cash, in property, or through the purchase of irrevocable deferred commitments from an insurer, subject to provision for expenses of administration or liquidation. Such distributions shall be allocated in the following order to the extent of the sufficiency of such assets, basing such allocation on the Accrued Benefit for each such Participant at the date of termination of the Plan:
  - (a) to provide pensions to Retired Participants who have retired under the Plan prior to its termination without reference to the order of retirement;
  - (b) to provide retirement benefits to Participants who have reached their age of retirement under Section 26-6(B) but have not retired on the date of termination, without reference in the order in which they shall have reached their age of retirement;
  - (c) to provide retirement benefits to Participants who have not yet reached their age of retirement under Section 26-6(B) on the date of termination, in the order in which they will reach their age of retirement. Such benefits will be based upon accrued benefits as of the date of termination. The balance, if any, of the assets due to erroneous actuarial computation after such allocation shall be returned to the County, but only after the satisfaction of all liabilities with respect to Participants and pensions under the Plan. The portion of the excess attributable to mandatory contributions will be paid to the Participants who made these contributions.

Section 8. Effective Date. This Ordinance shall become effective immediately upon approval.

Synopsis

This Ordinance amends Chapter 26, § 26-6A. and § 26-9F.(1) of the Code of Sussex County to revise the eligibility and funding relating to pension benefits for covered employment of Sussex County employees hired after December 31, 2020. The purpose of the amendments to §§ 26-6A. and 26-9F.(1) is to revise the funding of the Plan for covered employees hired after December 31, 2020 to make contributions to the Fund equal to 5% of the total annual base compensation in excess of \$6,000. In addition to the foregoing, this Ordinance amends Chapter 26 to ensure that it is in compliance with the United States Internal Revenue Code.

All new language is underlined. No language has been deleted.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2760 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 8TH DAY OF DECEMBER 2020.

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ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL