

TOWNSHIP OF WARMINSTER
BUCKS COUNTY, PENNSYLVANIA

ORDINANCE NO. 768

AN ORDINANCE OF THE TOWNSHIP OF WARMINSTER, BUCKS COUNTY, PENNSYLVANIA, AMENDING THE WARMINSTER TOWNSHIP CODE BY ADDING CHAPTER 1 PART 12, OTHER POST RETIREMENT EMPLOYMENT BENEFITS PLAN AND TRUST

WHEREAS, the Township provides for certain retiree benefits other than pension, as are defined in the collectively bargained agreements between the Township of Warminster and the respective bargaining units of covered employees (the "Plan"); and

WHEREAS, the Township desires to more formally recognize this Plan as the "Warminster Township Other Post-Employment Benefits Plan" and to allow for the designation of a Plan Administrator which shall be the Township Manager to ensure that benefits are paid as required, and:

WHEREAS, the Governmental Accounting Standards Board ("GASB") has recently established standards for measuring and reporting "other post-employment benefit" ("OPEB") liabilities which will require that the cost of Plan benefits be reported on Warminster's financial statements as such liability is accrued; and

WHEREAS, the Board believes that it is in the best interest of the Township to prefund all or a portion of its OPEB liability in order to (i) offset the liability on the financial statements, and (ii) accumulate earnings on the amount set aside so as to reduce the Township's overall costs for Plan benefits; and

WHEREAS, the Board desires to establish a Trust to be known as "The Warminster Township OPEB Trust" (the "Trust") to hold assets and earnings to be used for the exclusive purpose of funding post- retirement benefits under the Plan;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED, the Code of the Township of Warminster is amended to add Chapter 1, Part 12 "Other Post-Retirement Employee Benefits Plan and Trust" as follows:

Section 1 DEFINITIONS:

1.1. "Account" means the custody account maintained under this Plan by the designated Custodian for the Assets of the Plan.

- 1.2. **“Assets”** means the securities, cash, and other property the Employer contributes, or causes to be contributed, from time to time, including contributions made under the Plan and amounts the Employer causes to be transferred to the Account from another funding medium maintained for the Plan; investments and reinvestments thereof; and income thereon, as provided herein.
- 1.3. **“Beneficiaries”** means beneficiaries of Participants (as defined below).
- 1.4. **“Benefits”** means OPEB as described in detail in the collective bargaining agreements between the Township and the Warminster Township Police Benevolent Association, AFCSME unit 1598 and AFSCME unit 2289.
- 1.4. **“Board”** means the Warminster Township Board of Supervisors.
- 1.5. **“Code”** means the Internal Revenue Code of 1986, as amended.
- 1.6. **“Custodian”** means a financial institution that holds securities for safekeeping to prevent them from being stolen or lost.
- 1.7. **“Employer”** means Warminster Township.
- 1.8. **“Employee”** means an individual who performs services for the Employer, and who has been designated as eligible to participate in, and receive benefits under the Plan.
- 1.9. **“Funding Policy”** means a periodic written analysis of the Plan’s cash-flow history, short-term financial needs, long-term financial needs, sources of money for plan-administration expenses, expected levels and timing of contributions, expected levels and timing of distributions, liquidity needs (including but not limited to the anticipated liquidity required to make benefit distributions), Employers ability to provide future funding, and other significant information which could affect cash-flow or the exercise of discretion to manage the Assets.
- 1.10. **“GASB”** means the Governmental Accounting Standards Board.
- 1.11. **“Guidelines”** means the written investment objectives, policies, strategies, and restrictions for the Account (or for any Sub-accounts therein), including but not limited to proxy-voting guidelines, as amended from time to time.
- 1.12. **“Investment Advice”** means a recommendation, or a suggestion to engage in or refrain from taking a particular course of action, as to (i) the advisability of acquiring, holding, disposing of, or exchanging any Asset or any securities or other investment property or (ii) the Guidelines, the Funding Policy, the permissible investments set forth in the Trust Agreement, the composition of the Plan’s portfolio, or the selection of persons to provide investment advice or investment management services with respect to the Assets.
- 1.13. **“Investment Advisers Act”** means the Investment Advisers Act of 1940, as amended.

1.14. **“Investment Manager”** means any person or firm (other than the Custodian) which (i) has the power to manage, acquire, or dispose of any asset of a plan; (ii) is registered as an investment adviser under the Investment Advisers Act or is a bank as defined in the Investment Advisers Act or is an insurance company qualified to manage, acquire, or dispose of any asset of a plan under the laws of more than one state; (iii) has acknowledged in writing that it is a fiduciary with respect to the Plan; and (iv) has been appointed to manage Assets as provided under the Plan.

1.15. **“IRS”** means the Internal Revenue Service.

1.16. **“Legal Action”** means any freeze order, garnishment, levy, restraining order, search warrant, subpoena, writ of attachment or execution, bankruptcy-court order, receivership order, or similar order relating to the Account.

1.17. **“OPEB”** means Other Post-Employment Benefits other than Pension.

1.18. **“OPEB Plan”** means the Other Post-Employment Benefits other than Pension.

1.19. **“Participants”** means Plan participants.

1.20. **“Plan”** means the plan established to pay OPEB, as herein set forth and as the same may hereafter be amended.

1.21. **“Plan Administrator”** means the person or entity appointed by the Board of Supervisors to administer the Plan and Trust.

1.22. **“Trust”** means the Warminster Township OPEB Trust as defined under Section 4 of the Plan.

1.23 **“Trustee”** means the Board or any other agency or person appointed by the Board to serve in that capacity.

1.23. **“Custodian Agreement”** means the agreement made between the Township and the Custodian to hold the Plan’s Assets.

Section 2 - PURPOSE:

2.1 There is hereby established the Warminster Other Post Employment Benefit Plan (Plan), the purpose of which will be to ensure the accurate payment of OPEB provide by the Employer, and to establish a Trust fund where Assets may be accumulated to offset the cost of those benefits.

Section 3 - The PLAN

3.1 **PLAN NAME** - Warminster Township Other Post-Employment Benefits Plan (Plan).

3.2 **PLAN DESCRIPTION** - The Plan is a single-employer defined benefit plan to

provide for retiree benefits, other than pension, as are defined in the collectively bargained agreements between the Township of Warminster and the respective bargaining units of covered employees.

3.3 BENEFACTS - Include only OPEB as described in detail in the collective bargaining agreements between the Township and the Warminster Township Police Benevolent Association, AFCSME unit 1598 and AFSCME unit 2289. The Plan Administrator is the party responsible for maintenance of files and records detailing the OPEB provided to eligible retirees of the Township. The establishment of this Plan and funding of the Trust associated with it, does not create, nor is it intended to create, a right or promise to OPEB for any individual employee, retiree, or Beneficiary.

3.4 PLAN ADMINISTRATOR- The Township Manager shall serve as Plan Administrator and shall be responsible for ensuring that all Benefits of the Plan are paid according to the provisions of the Plan to each Beneficiary and/or to any insurer or other provider of benefits. The Plan Administrator shall determine the amounts due and payable for the cost of benefits provided and shall pay from Trust assets only the portion of those costs approved by the Trustees. The Plan Administrator is authorized to disburse amounts in respect of Benefits from the Trust (i) to one (1) or more Benefit Administrator for subsequent distribution to or for the benefit of Beneficiaries, (ii) to or for the benefit of Beneficiaries, or (iii) to the Township for reimbursement of documented benefits paid from Township assets.

Section 4 -OPEB PLAN TRUST:

4.1 Purpose - To establish an entity separate from the Township where contributions can be made and set aside for the exclusive benefit of the plan participants and their beneficiaries and not of the Township.

4.2 Name - The Warminster Township OPEB Trust (Trust)

4.3 The principal of the Trust, together with any earning thereon, shall be held by the Trustees in an Account separate and apart from any assets of the Township.

4.4 The Trust Assets shall be held by the Trustees at all times and shall not be considered funds or assets of the Township for any purpose. Neither Plan Administrator, nor Employer, nor any Benefit Administrator, nor any entity associated with Plan Administrator, Employer or any Benefit Administrator shall have any legal or equitable interest in the Trust or assets of the Trust.

4.5 Assets held in the Trust are not subject to the claims of creditors of the Plan Administrator, Benefits Administrator, Employer, Plan Participants, Beneficiaries, or the Plan.

4.6 Beneficiaries shall have no preferred claim, lien, or encumbrance of any kind on, or security interest in, or any beneficial interest in any particular Assets of the Trust.

4.7 Except to the extent allowed by law, the expectation of any Beneficiary to receive any Benefits is not subject to attachment or garnishment or other legal process by any creditor of any such Beneficiary, nor shall any Beneficiary have the right to alienate, anticipate, commute, pledge, encumber or assign any Benefit until same shall have been paid.

4.8 All Trust Assets and all income thereon are dedicated to, and shall be used for the exclusive purpose of paying Benefits of plan participants and their beneficiaries, and for paying the reasonable and ordinary expenses of administering the Trust. At no time will any Trust Assets be used for, or diverted to, any other purposes.

4.9 Contributions - As soon as is practical after the adoption of this plan and appointment of the Custodian and Investment Advisor, the Plan Administrator is directed to make an initial Contribution to the Custodian of \$1,500,000 from monies currently committed for this purpose in the General fund of the Township. At its sole discretion, Employer from time to time and at any time may make (or cause to be made) additional contributions of cash or other assets acceptable to the Custodian of the Trust, from employer funds, employee contributions or any other source. Neither the Custodian, or any Beneficiary, or any party to or any other entity referred to in this Plan, shall have any right to compel such additional contributions.

All such contributions and all income thereon are irrevocably dedicated to, and shall be used for the exclusive purpose of paying the cost of Benefits provided Plan Participants and Beneficiaries and for paying expenses of administering the Trust.

4.10 The Assets of this Trust are to be taken into account for purposes of GASB 75. Contributions to the Trust may constitute all or part of Employer's unfunded accrued liability for Benefits.

4.11 The principal of the Trust, together with any earning thereon, are exempt from federal income taxation under section 115 of the IRC Code.

4.12 Amendment and Termination: The Board reserves the right to alter, amend, or terminate the Trust at any time and for any reason without the consent of the Trustees or any other person, provided that no amendment affecting the rights duties, or responsibilities of the Trustees shall be adopted without the execution of the Trustees to the amendment. Any such amendment shall become effective as of the date provided in the amendment, if requiring the Trustees' execution, or delivery of the amendment to the Trustees, if the Trustees' execution is not required.

Upon termination of the Trust, any amount of Employer contributions, plus accrued earnings thereon, remaining in the Accounts shall be used to continue to pay benefits under the Plan. In the event that the Plan terminates at the same time or before this Trust is terminated, and the Employer fails to maintain any other Plans, The Trust shall automatically terminate and remaining assets shall be used for the satisfaction of all liabilities under all Plans to provide such benefits. Upon such satisfaction of the Plan liabilities, any amount of Employer contributions, plus accrued earnings thereon, remaining in the Accounts shall be returned to the Employer.

Section 5 - TRUSTEES:

5.1 Appointment - The Board of Supervisors shall serve as the Trustees of the Trust, without compensation. The Board may appoint an agency or other persons to serve as Trustees, at which time the Board will cease to serve in that capacity.

5.2 Name - Warminster Township OPEB Trust Board of Trustees

5.3 DUTIES AND RESPONSIBILITIES of the Trustees:

A. General

1. Establish and maintain an Account with a Custodian where the Assets of the Trust will be held according to the provisions noted above.
2. Oversee a regular selection process for service providers to the Trust including the Investment Advisor, Custodian, and legal counsel, as deemed necessary.
3. Oversee the activities of the Plan Administrator ensuring that all disbursements from the Trust are in accordance with the Plan and that all Contributions made to the plan are promptly deposited with the Custodian.

B. Investments.

1. Investment Manager -The Trustees will appoint and oversee the activities of the Trust Investment Manager ensuring that investments are made:
 - a. Solely in the interest of, and for the exclusive purposes of providing for funding of benefits for participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the Trust;
 - b. With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims; and
 - c. By diversifying the investments of the Trust so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.
2. Investment Policy - The Trustees will establish a written statement of Investment Policy. At least annually, the Trustees will evaluate the appropriateness of the policy and, based on such evaluation, either confirm the terms of the policy as then in effect, or amend the investment policy as appropriate. The investment policy will achieve the following:
 - a. Document investment objectives, performance expectations and investment guidelines for Assets under the Trust;
 - b. Establish an appropriate investment strategy for managing all assets under the Trust, including an investment time horizon, risk tolerance ranges and asset allocation to provide sufficient diversification and overall return over the long-term time horizon of the Trust;

- c. Establish investment guidelines to control overall risk and liquidity;
 - d. Establish periodic performance reporting requirements that will effectively monitor investment results and ensure that the investment policy is being followed; and
 - e. Comply with all fiduciary, prudence, due diligence and legal requirements for the investment of assets under the Trust.
- C. The Trustees will take all other actions deemed prudent in its fiduciary capacity as a fiduciary and in the furtherance of the duties and responsibilities delegated under this Chapter. In addition, the Trustees may perform any other activities consistent with this Chapter and governing law, as the Trustees deem necessary or appropriate.

5.4 RESOURCES:

- A. Expenses which are reimbursable in accordance with Township policy and state law;
- B. The Trustees will have access to Township resources, including but not limited to internal advisors within the Township to assist the Trustees in carrying out their fiduciary duties and responsibilities to the Trust;
- C. The Trustees may engage any service providers to assist in the performance of their duties and responsibilities, including but not limited to consultants, legal counsel or other providers; and
- D. The Trustees may utilize funds under the Trust to pay reasonable expenses of the Trust, including but not limited to compensation of any service provider to the Trust appointed by Trustees or the Township, unless such expenses are paid directly by the Township.

5.5 - MONITORING AND REPORTING:

At least quarterly, the Trustees will do the following:

- A. Monitor compliance with the investment policy for the Trust;
- B. Review and assess the performance of any service providers appointed by the Trustees or the Township to perform services related to the Trust; and
- C. Deliver a report to the Township Board of Supervisors setting out the results of the Trustees' evaluation of the two (2) preceding items.

5.6 - MEETINGS

- A. **Regular Meetings.** Regular meetings of the Trustees shall be held annually.
- B. **Special Meetings.** Special meetings of the Trustees may be called periodically, as needed, to address special topics and to review the Quarterly reports of the Custodian and Investment Manager. If the Board has not appointed an Agency or other persons to serve as Trustees, the meetings may take place during the regularly scheduled meetings of the Board of Supervisors.

- C. **Quorum.** Three (3) members of the Trustees constitute a quorum. A vote of a majority of the Trustees shall be required for action. Action may be taken by motion.
- D. **Agenda.** Agendas shall be prepared and distributed to Trustees a minimum of 5 calendar days in advance of the scheduled meetings. Trustees may request an item to be included on the agenda by contacting the Plan Administrator.
- E. **Minutes.** The Plan Administrator or Township Secretary shall cause to be recorded in the minutes the time and place of each meeting of the Trustees, the names of Trustees present, all official acts of the Trustees, the votes given by Trustees except when the action is unanimous, and when requested by a Trustee's dissent or approval with his or her reasons, and shall cause the minutes to be written forthwith and presented for approval at the next regular meeting. The approved minutes shall form part of the permanent records of the Trustees.
- F. **Committees.** The Board may appoint committees, comprised of Trustees and non-members, as may be deemed necessary to carry out the business of the Trustees.
- G. **Execution of Documents.** Any documents required to be executed on behalf of the Trustees may be executed by the Plan Administrator.

5.7 - ACCOUNTABILITY:

- A. **Annual Reports.** The Trustees shall submit an annual report (fiscal year) of performance to the Township within ninety (45) days after the end of the fiscal year. An audit of the financial statements of the Trust will be conducted by an independent certified public accountant appointed by the Board of Supervisors.
- B. **Review of Financial Information.** The Trustees shall periodically receive reports from the Plan Administrator, Investment Manager, and Actuary and shall review all key financial information to ensure that resources are used and actions taken in compliance with the Plan, and the approved Investment Policy Statement. The Trustees shall review all audits and similar information to ensure compliance with financial control practices and accounting rules.

5.8 - CONFLICTS OF INTEREST:

A trustee shall not engage in any employment, activity or enterprise for compensation which is inconsistent, incompatible, in conflict with or inimical to his or her fiduciary duties, functions or responsibilities to the OPEB Trust. Trustees shall not perform any work, service or counsel for compensation outside of his or her OPEB Trust responsibilities where any part of his or her efforts will be subject to approval by the Trustees.

Section 6. Severability.

The provisions of this Ordinance are severable. If any section, clause, sentence, part or provisions hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair any of the remaining sections, clauses, sentences, parts of provisions of this Ordinance or prior Ordinances. It is hereby declared to be the intent of the Warminster Township Board of Supervisors that this Ordinance would have been adopted if such illegal, invalid or unconstitutional section, clause, sentence, part or provision had not been included.

Section 7. Effective Date.

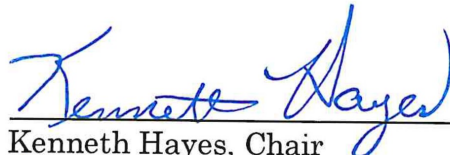
This Ordinance shall become effective five (5) days after the date of enactment, listed below.

ORDAINED AND ENACTED by the Board of Supervisors of Warminster Township this 14th day of July, 2022.

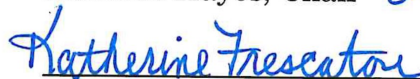
Attest:



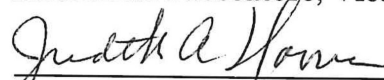
Tom Scott,
Township Manager



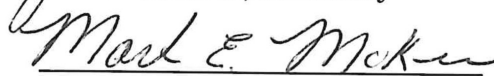
Kenneth Hayes, Chair



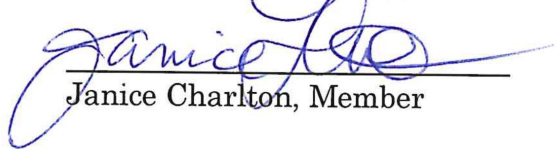
Katherine Frescatore, Vice Chair



Judith Hoover, Secretary



Mark McKee, Treasurer



Janice Charlton, Member