

**ORDINANCE NO. 11-074**

**TO REVISE *NEW CASTLE COUNTY CODE* CHAPTER 26 (“HUMAN RESOURCES”) ARTICLE 4 (PENSIONS) TO CHANGE PENSION PLAN OPTIONS**

**WHEREAS**, the New Castle County Pension System contains a number of pension plans that operate on a defined benefit basis; and

**WHEREAS**, because of the nationwide and local economic downturn, employee contributions have remained at the same level while the County’s share has increased approximately 228% over the last decade, from \$3.7 million in FY01 to \$12 million in FY11; and

**WHEREAS**, part of the County’s multi-pronged approach to cutting expenses, Council adopted Ordinance 11-034 on June 14, 2011 closing the County employees’ retirement system (*New Castle County Code* Division 26.04.100, also known as “the 5% Plan”) to employees hired on or after a date certain, and

**WHEREAS**, the County desires to continue these cost cutting measures by closing the County employees’ pension plan (*New Castle County Code* Division 26.04.300, also known as “the 3% Plan”) to employees hired on or after September 1, 2011, and offer to those employees a newly created defined-benefit defined-contribution plan; and

**WHEREAS**, the County believes that this change to the County’s Pension System will promote the best interests of current plan members, plan retirees, taxpayers, and protect the future viability of the pension fund.

**NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

**Section 1.** *New Castle County Code* Chapter 26 (“Human Resources”), Article 4 (“Pensions”), Division 26.04.300 (“County employees’ pension plan”), Section 26.04.301 (“Name; effective date”) is hereby amended by deleting the material stricken and adding the material underscored.

**Sec. 26.04.301. Name; effective date.**

There shall be a County employees' pension plan to be known as the plan and to be administered by the Board of Trustees of the employees' retirement system as constituted in Section 2.05.505 of this Code. The plan became operative on November 1, 1979, which shall be referred to in this Division as the "effective date[-]" and closed to those hired on or after September 1, 2011.

**Section 2.** *New Castle County Code* Chapter 26 (“Human Resources”), Article 4 (“Pensions”), Division 26.04.300 (“County employees’ pension plan”), Section 26.04.302 (“Definitions”) is hereby amended by deleting the material stricken and adding the material underscored.

**Section 26.04.302. Definitions.**

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

...

*Membership service* means service rendered by a member on or after [~~the effective date~~] November 1, 1979.

...

*Prior service* means service prior to [~~the effective date~~] November 1, 1979 in covered employment as defined in Division 26.04.200 of this Article, and time spent in the armed forces or National Guard for which a pension benefit accrued there under.

...

**Section 3.** *New Castle County Code* Chapter 26 (“Human Resources”), Article 4 (“Pensions”), Division 26.04.300 (“County employees’ pension plan”), Section 26.04.303 (“Membership”) is hereby amended by deleting the material stricken and adding the material underscored.

**Sec. 26.04.303. Membership.**

...

C. Any eligible individual employed by the County in the unclassified service after [~~the date of this amendment~~] October 21, 1997 who has rendered six (6) months of service who has not elected to be a member of the system as provided in Section 26.04.103E, shall become a member of the plan consistent with Section 26.04.105.A [~~above~~].

D. An eligible individual hired by the County after the effective date of Ordinance 11-034 and before September 1, 2011 who has rendered six (6) months of service, and who has not attained age sixty (60) after six (6) months of service, shall become a member of the plan consistent with Section 26.04.105 A (Vesting of retirement credit) as a condition of employment; eligible employees not in the classified service, and therefore excluded from compulsory membership within the meaning of this Division, may become members of the plan after rendering six (6) months of service provided they have not attained age sixty (60) after six (6) months of service.

E. The effect of an election. . . .

F. Any current eligible employee member of the system or alternate plan of New Castle County other than those members who are collecting under the system or the alternate plan other than police officers or those employees covered under the pension programs set forth in Division 26.04.400 of this Article may become a member of this plan by filing a written election not later January 20, 2005 [~~than one (1) year from the date of adoption of Substitute 2 to Ordinance 03-068 by New Castle County~~]. Any current employee electing to become a member of this plan pursuant to this subsection shall make a contribution to this plan at the "buy-in rate" defined below together with simple interest at a rate of eight (8.0) percent for each year of service the individual "buys-in". For employees employed, or who had been extended a written offer of employment, before [~~the effective date of this Ordinance,~~] December 15, 2006, for purposes of this subsection the "buy-in rate" for individuals shall be defined as three (3.0) percent (see Section 26.04.317) of the individual's average annual salary per year for each year of service. In the case of employee members of the system electing membership into this plan, the contributions made under the system shall be deemed the "buy-in" for this plan. The "buy-in" shall include "credited service" as defined in Section 26.04.305, including local government service credit.

G. All employees employed, or who had been extended a written offer of employment, on or after ~~[the effective date of this Ordinance,]~~ December 15, 2006 and before September 1, 2011, may buy-in previous governmental service at the date of retirement. The buy-in rate will be the full actuarial cost as defined in Section 26.04.302 (Definitions).

...

**Section 4.** *New Castle County Code* Chapter 26 (“Human Resources”), Article 4 (“Pensions”), Division 26.04.300 (“County employees’ pension plan”), Section 26.04.305 (“Credited Service”) is hereby amended by deleting the material stricken and adding the material underscored.

**Sec. 26.04.305. Credited service.**

A. Under this Division, credited service shall include membership service and shall specifically exclude any period when an employee is on leave without pay. For those employees who were employed before ~~[the effective date of this Division]~~ May 1, 1979 and who choose to be covered under the County employees' pension plan, credited service shall mean such service as would have been awarded the employee under the system or the alternate plan had they remained in or gone into those plans.

B. For any employee, member or participant employed, or who had been extended a written offer of employment, before ~~[the effective date of this Ordinance,]~~ December 15, 2006, credited service shall also include service with a state and/or any political subdivision and/or municipality of a state (hereinafter "local government") not previously "bought-in" other than concurrent service rendered to the state and/or local government while a County employee; provided, however, that such a member must, no later than one (1) year after ~~[the effective date of this Ordinance,]~~ December 15, 2006: . . .

...

3. Any member who elects membership under Section 26.04.303C, (i.e., an employee hired on or after ~~[the effective date of this Ordinance,]~~ October 21, 1997) and who wishes to "buy-in" local government service as defined above shall no later than one (1) year after such election: . . .

C. For any employee, member or participant employed, or who had been extended a written offer of employment, before ~~[the effective date of this Ordinance,]~~ December 15, 2006, for the purposes of this Section, the term "buy-in rate" shall be defined as the sum of the member's contribution rate provided in this Article and the County's contribution rate established in Section 26.04.603.

...

E. For those employees who are employed by the County before ~~[the effective date of this Ordinance,]~~ October 21, 1997, and who choose to be covered under this plan, credited service shall include service "bought-in" pursuant to Section 26.04.303.

...

G. For all employees employed, or who had been extended a written offer of employment, on or after ~~[the effective date of this Ordinance,]~~ December 15, 2006 and before September 1, 2011, credited service shall also include service with a governmental entity not previously "bought-in" other than concurrent service rendered to the governmental entity while a County employee; provided, however, that such member must, on the date of retirement: . . .

...

**Section 5.** *New Castle County Code* Chapter 26 (“Human Resources”), Article 4 (“Pensions”), Division 26.04.300 (“County employees’ pension plan”), Section 26.04.306

("Eligibility for service pension") is hereby amended by deleting the material stricken and adding the material underscored.

**Sec. 26.04.306. Eligibility for service pension.**

A. An employee, employed, or who had been extended a written offer of employment, before ~~[the effective date of this Ordinance,]~~ December 15, 2006, shall become eligible to receive a service pension, beginning with the month after he or she has terminated employment, if he or she has: . . .

...

C. Any employee employed, or who had been extended a written offer of employment, on or after ~~[the effective date of this Ordinance,]~~ December 15, 2006, shall become eligible to receive a service pension, beginning with the month after he or she has terminated employment, if he or she has: . . .

**Section 6.** *New Castle County Code* Chapter 26 ("Human Resources"), Article 4 ("Pensions"), Division 26.04.300 ("County employees' pension plan"), Section 26.04.307 ("Vested right to service pension") is hereby amended by deleting the material stricken and adding the material underscored.

**Sec. 26.04.307. Vested right to service pension.**

A. An employee, employed, or who had been extended a written offer of employment, before ~~[the effective date of this Ordinance,]~~ December 15, 2006, who has five (5) years of credited service shall have a vested right to a service pension.

...

D. Any employee employed, or who had been extended a written offer of employment, on or after ~~[the effective date of this Ordinance,]~~ December 15, 2006, who has ten (10) years of credited service shall have a vested right to a service pension.

**Section 7.** *New Castle County Code* Chapter 26 ("Human Resources"), Article 4 ("Pensions"), Division 26.04.300 ("County employees' pension plan"), Section 26.04.308 ("Eligibility for disability pension") is hereby amended by deleting the material stricken and adding the material underscored.

**Sec. 26.04.308. Eligibility for disability pension.**

A. An employee, employed, or who had been extended a written offer of employment, before ~~[the effective date of this Ordinance,]~~ December 15, 2006, who has five (5) years of credited service and becomes disabled shall become eligible to receive a disability pension. Such individual shall cease to be eligible to receive a disability pension at the end of the month in which he or she recovers from the disability and is again offered employment as an employee, if such recovery and offer of employment occurs before his or her attaining age sixty (60). An employee, employed, or who had been extended a written offer of employment, on or after ~~[the effective date of this Ordinance,]~~ December 15, 2006 and before September 1, 2011, who has ten (10) years of credited service and becomes disabled shall become eligible to receive a disability pension. . . .

...

**Section 8.** *New Castle County Code* Chapter 26 ("Human Resources"), Article 4 ("Pensions"), Division 26.04.300 ("County employees' pension plan"), Section 26.04.312

("Survivor's pension") is hereby amended by deleting the material stricken and adding the material underscored.

**Sec. 26.04.312. Survivor's pension.**

- A. Upon the death of an employee, employed, or who had been extended a written offer of employment, before [~~the effective date of this Ordinance,~~] December 15, 2006, who has five (5) years of credited service, a monthly survivor's pension shall be payable to his or her eligible survivor equal to one-half ( 1/2) of the service pension for which the employee would have been eligible if he or she had been sixty-five (65) years of age. Upon the death of an employee, employed, or who had been extended a written offer of employment, on or after [~~the effective date of this Ordinance,~~] December 15, 2006 and before September 1, 2011, who has ten (10) years of credited service, a monthly survivor's pension shall be payable to his or her eligible survivor equal to one-half ( 1/2) of the service pension for which the employee would have been eligible if he or she had been sixty-five (65) years of age. . .

...  
**Section 9.** *New Castle County Code* Chapter 26 ("Human Resources"), Article 4 ("Pensions") is hereby amended by deleting the material stricken and adding the material underscored.

**Division 26.04.700. County 2011 Plan.**

**Sec. 26.04.701. Name; effective date.**

There shall be a County retirement plan to be known as the "2011 Plan" and shall be administered by the Employees' Retirement System Board of Trustees as constituted in Section 2.05.505 of this Code. The plan shall become effective on September 1, 2011.

**Sec. 26.04.702. Definitions.**

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*Accumulated Contributions* means all contributions paid to the defined benefit portion of the 2011 Plan by Members including the Members' Pickup Contributions.

*Base Salary* means the Base Salary or wage of a Member, as shown on the pay plan, without overtime, premium pay or shift differential, paid by the County to an employee before withholding or deductions. If a Member is assigned to a temporary position for a period of at least six (6) months, the salary paid to such Member during the entire period of such temporary assignment shall be considered the Member's Base Salary for purposes of computing such Member's Final Average Salary.

*Board* means the Board of Trustees of the system as constituted in Section 2.05.505, to be known also as the Employees' Retirement System Board of Trustees.

*Code* means the Internal Revenue Code of 1986, as amended from time to time. Reference to a section of the Code shall include that section and any comparable section or sections of any further legislation that amends, supplements, or supersedes such section.

*Eligible Employee* means any full-time County employee receiving regular salary or wages from the Office of Finance, including elected and appointed officials. Employees in part-time

positions, seasonal employees, employees of not more than one hundred twenty (120) days' duration in a calendar year and members of boards or commissions do not come within the meaning of this term. County police officers shall be excluded from participation in this Plan.

Final Average Salary means the average monthly Base Salary for any sixty (60) months of Credited Service, whether consecutive or not, within the last ten (10) years of Credited Service with the County during which the Member received the highest salary.

Compensation taken into account under the Plan for determining all benefits provided under such plan for any determination period shall not exceed the limit on compensation prescribed in Section 401(a)(17) of the Code (the "Section 401(a)(17) Limit"). The limit for any 2011 Plan year beginning on and after July 1, 2011 shall be Two Hundred Forty Five Thousand Dollars (\$245,000.00), as adjusted for increases in the cost of living in accordance with Code Section 401(a)(17)(B). The cost of living adjustment in effect on January 1<sup>st</sup> of any calendar year shall apply to any determination period beginning in such calendar year. For this purpose, the "determination period" is any period not exceeding twelve (12) months over which compensation is determined. If a determination period consists of fewer than twelve (12) months, the Section 401(a)(17) Limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is twelve (12).

Full Actuarial Cost means the full actuarial present value of the benefits payable under the 2011 Plan based on the governmental service that the employee is buying in at the date of retirement. The full actuarial cost shall be the full lump sum present value equivalent of the buy-in benefit, payable as a lifetime retirement annuity or survivor benefit, determined based on the actuarial valuation assumptions for mortality and interest rate, which may change from time to time.

Governmental Service means service with the federal government, a state or political subdivision thereof, or any instrumentality or agency of the foregoing, the military or state university system.

Member means any Eligible Employee who is participating in the 2011 Plan and former Eligible Employees who are no longer employed by the County and who are entitled to receive benefits from the 2011 Plan.

Membership Service means service rendered by a Member on or after September 1, 2011.

Pickup Contributions means a Member's contributions to the defined benefit portion of the 2011 Plan that are withheld from the Member's pay and are picked up by the County pursuant to Section 414(h)(2) of the Code for service on or after July 1, 2011, for services on or after July 1, 2011.

Plan Year means the period from January 1<sup>st</sup> to December 31<sup>st</sup> of each year.

### **Sec. 26.04.703. Membership.**

A. Any Eligible Employee who first becomes an employee in the classified service on or after September 1, 2011, other than a County police officer, shall become a Member of the 2011 Plan as a condition of employment upon completion of six (6) months of service. Those employees hired after September 1, 2011, who are excluded from compulsory membership in

the 2011 Plan shall become Members upon completion of six (6) months of service, provided that at the date of completion of such period of service such person has not indicated in writing that he or she has elected not to become a Member. Each Member of the 2011 Plan shall have three percent (3%) of his or her Base Salary earned after the completion of six (6) Months of Service withheld and contributed to the defined benefit portion of this 2011 Plan. Such contributions shall be treated as Pickup Contributions under Section 414(h)(2) of the Code.

- B. The effect of an election to join the plan shall be irrevocable and shall thereby waive any rights that may have existed under another pension plan established by this Article, and an employee who makes such an election shall be limited to the benefits conferred by this plan.
- C. If the recommended contribution of the Board for the defined benefit portion of the 2011 Plan for any Plan Year exceeds ten (10) percent of the total Base Salary of all the Members of the 2011 Plan, the Member Pickup Contributions to the Plan for the 12 month period commencing on the July 1 following the determination of the recommended contribution by the Board shall be increased to the extent that the recommended contribution exceeds ten (10) percent.

**Sec. 26.04.704. Proof of age.**

- A. No person shall become eligible for benefits under the 2011 Plan until he or she has provided to the Pension Board proof of age establishing his or her eligibility for benefits in accordance with the requirements of this Section. Any applicant for benefits who fails to provide the required proof of age to the Board shall remain ineligible until he or she has provided such to the Board, but nothing in this Section shall be construed to deny an applicant the full amount of his or her benefits, retroactive to his or her eligibility date, once the requisite proof of age has been provided.
- B. The term “proof of age,” as used in this Section, shall be construed to mean: (i) a certified copy of an official birth certificate; or (ii) a sworn affidavit and supporting documentation from the applicant, setting forth his or her age and such other facts as the Board deems relevant and sufficient to establish the applicant’s age.

**Sec. 26.04.705. Credited service.**

For a Member of the 2011 Plan, Credited Service shall mean:

- A. Membership Service and shall specifically exclude any period when an Eligible Employee is on leave without pay for at least 30 days; and
- B. Military service of any Member who as an Eligible Employee enters any branch of the armed forces of the United States provided that the employee reenters the service of the County within ninety (90) days from the date of termination of military service after an honorable discharge, the aggregate period of such credit not to exceed five (5) years, in accordance with federal law. Military service crediting and benefit rights shall conform to section 414(u) and section 401(a)(37) of the Code, all as amended from time to time; and
- C. Service with a state and/or any political subdivision and/or municipality of a state (hereinafter “local government”) not previously “bought-in” other than concurrent service rendered to the state and/or local government while a County employee. The buy-in amount for previous governmental service will be the full actuarial cost upon the employee’s retirement as defined

in Section 26.04.302 (Definitions). Any Member seeking to exercise his or her right to buy into the 2011 Plan in accordance with this Section must provide to the Board and the County proof satisfactory of the (i) dates of service to a state and/or local government and the amount of compensation received for such service; and (ii) forfeiture of any pension rights associated with the prior governmental service for which credit is sought. Service bought in under this Subsection at retirement will be used for determining the amount of a Member's retirement benefit but will not be used to determine a Member's level of vesting or eligibility for retirement.

**Sec. 26.04.706. Eligibility for service pension.**

- A. A Member of the 2011 Plan shall become eligible to receive a Service Pension, beginning the first day of the month after he or she has terminated employment, if he or she has ten (10) years of Credited Service and has attained age of sixty-five (65).
- B. A Member of the 2011 Plan shall become eligible to receive a reduced Service Pension, beginning the first day of the month after he or she has terminated employment, if he or she has fifteen (15) years of Credited Service and has attained age fifty-five (55); the amount of the Service Pension payable to such an employee shall be reduced as follows
  - 1. Retire between the ages of sixty (60) and sixty-five (65) Service Pension is reduced 1/180 per month for each month prior to age sixty-five (65).
  - 2. Retire between the ages of fifty-five (55) and sixty (60) Service Pension is reduced 1/360 per month for each month prior to age sixty (60) plus 1/180 per month for each month over age sixty (60) but prior to age sixty-five (65).

**Sec. 26.04.707. Vested right to service pension.**

- A. A Member of the 2011 Plan who terminates employment prior to attaining age sixty-five (65) and has ten (10) years of Credited Service shall have a vested right to a Service Pension upon attaining age sixty-five (65).
- B. A Member's vested right to a pension shall be forfeited upon the refund of the Accumulated Contributions of the Member after termination of employment before commencement of a pension.
- C. A Member with a vested right to a Service Pension shall become eligible to receive such pension, computed in accordance with the terms of the 2011 Plan in effect when he or she ceased to be an employee, beginning the first day of the month after his or her attainment of age sixty-five (65).

**Sec. 26.04.708. Eligibility for disability pension.**

- A. A Member who has ten (10) years of Credited Service and becomes totally and permanently disabled while an active employee of the County shall become eligible to receive a disability pension. Such individual shall cease to be eligible to receive a disability pension at the end of the month in which he or she recovers from the disability and is again offered employment as an employee of the County, if such recovery and offer of employment occur prior to his or her attaining age sixty-five (65).

- B. A disability retirement pension shall be payable during the period of the Member's disability. The existence and continuance of disability shall be determined by the Board of Trustees under this Division upon such medical opinion and other evidence as the Board may require. Investigational services may be utilized from time to time to determine continuance of disability and entitlement to benefit payments. A Member receiving a disability pension may be required to submit to a medical examination at least once each year and at such other times and in such places as the Board may direct. If a disagreement occurs between the Board's physician and the doctor attending the Member as to whether the Member is totally and permanently disabled, the doctor attending the Member and the Board's physician shall designate a third physician, whose determination shall be final and binding on the Member and the Board.
- C. The disability retirement pension payable under this section shall be reduced by amounts received by the Member as worker's compensation or any other payments received from the County in lieu of salary.
- D. Application for a disability pension must be made by the Member, in writing, describing the disability and making a report thereof. The pension may be made retroactive to the date of cessation of salary payments to the Member due to the Member's disability but in no case more than sixty (60) days prior to the filing of the application by the Member.
- E. A Member shall be considered totally and permanently disabled for the purposes of this Section if the Member has received a Certificate of Social Security Award under Title II of the Social Security Act (42 U.S.C. § 401, et. seq.), as amended, before age 65. The date of the permanent disability or date of entitlement under such determination shall be in accordance with the findings of the Social Security Administration.

**Sec. 26.04.709. Amount of service or disability pension.**

- A. The amount of the monthly service or disability pension payable to a Member shall be one (1.0) percent of his or her Final Average Salary multiplied by the number of years and partial years of Credited Service, taken to the nearest month.
- B. There shall be no automatic cost of living adjustments to the benefits payable to retired Members. Any cost of living adjustments to pension benefits will be determined at the discretion of the Board on an *ad hoc* basis based on the defined benefit portion of the 2011 Plan's funded status and the performance of the Plan's assets.

**Sec. 26.04.710. Payment of service pension.**

Service Pension payments shall be made to a retired Member beginning with the first day of the month after he or she becomes eligible to receive such pension and ending on the last day of the month in which he or she dies.

**Sec. 26.04.711. Payment of disability pension.**

- A. Disability pension payments shall be made to a retired employee for each month beginning with the first day of the month after he or she becomes eligible to receive such pension and ending the last day of the month in which he or she ceases to be eligible or dies.

B. Any Member who is receiving a Disability Pension who has not attained age sixty-five (65) shall report to the Board of Trustees under this Division by April 30th each year, on a form prescribed by the Board, his or her total earnings from any gainful occupation or business in the preceding calendar year. The excess of such earnings over one-half (1/2) of the annual rate of compensation received by such employee before he or she became disabled shall be deducted from his or her disability pension during the twelve (12) months beginning in July of the year following the calendar year for which earnings are reported, in a manner determined by the Board. If any person received a disability pension for less than twelve (12) months in the calendar year for which earnings are reported, the deduction, if any, shall be determined on a pro rata basis.

**Sec. 26.04.712. Survivor's pension.**

A. Upon the pre-retirement death of a Member who has ten (10) years of Credited Service, a monthly Survivor's Pension shall be payable to his or her eligible survivor equal to one-half (1/2) of the actuarial equivalent of the Member's accrued benefit at the time of the Member's death.

B. Upon the death of a Member receiving a service or disability pension at the time of his or her death, a monthly Survivor's Pension shall be payable to his or her eligible survivor equal to one-half (1/2) of such service or disability pension.

C. For the purpose of this Section, the eligible survivors of any Member shall be as follows:

1. The Member's surviving spouse, provided that the surviving spouse had been married to the deceased Member for at least one (1) year before the date of the Member's death; or

2. If there is no eligible surviving spouse, an eligible child or, with the Survivor's Pension divided among them in equal shares, all such eligible children if there are more than one (1), provided the child or children, as the case may be, is unmarried and either:

a. Has not attained age twenty-two (22);

b. Has attained age twenty-two (22) and is permanently disabled as the result of a disability which began before he or she attained twenty-two (22).

D. The amount payable to a surviving spouse or an eligible child who has not attained age sixty-five (65) at the time the Survivor's Pension begins shall be actuarially reduced, in accordance with actuarial tables approved by the Board, for each month the survivor is under age sixty-five (65) at such time.

E. A Survivor's Pension shall begin with the month following the month in which the Member dies. If payable to a surviving spouse, it shall cease the end of the month in which the surviving spouse dies or re-marries. If payable to a child, it shall cease the end of the month in which the child dies or fails to meet the conditions of eligibility in Subsection C.2.

**Sec. 26.04.713. Minimum death benefit.**

Upon the death of a Member or, if a Survivor's Pension is payable upon the death of the survivor, when such pension ceases to be payable, there shall be paid to the designated beneficiary or, in the absence of a designated beneficiary, to the estate of the Member a lump sum

equal to the excess, if any, of such Member's Accumulated Contributions without interest over the aggregate of all pension payments made to the Member and the survivor(s).

**Sec. 26.04.714. Refund of contributions.**

Upon withdrawal from service or upon being mandated to participate in the Delaware County and Municipal Police/Firefighter Pension Plan, pursuant to Section 26.04.501, the Member's Accumulated Contributions to the defined benefit portion of the 2011 Plan, without interest, may be paid to the former employee or beneficiary and all rights to a pension or survivor benefit shall be forfeited. However, if such person again becomes a Member of the 2011 Plan and continues as such for at least two (2) years, all such rights and credits for previous service may be reinstated to the Member's account if he or she repays the amount of the refunds together with interest at the rate assumed for actuarial valuation purposes that is in effect at date of repayment.

**Sec. 26.04.715. Application for benefits.**

- A. A Service Pension, Disability Pension, Survivor's Pension, death benefit or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the Board.
- B. The Board may require any Member or eligible survivor to furnish such information as may be required for the determination of benefits under this Article or to authorize the Board to procure such information. The Board may withhold payment of any pension under this Article whenever the determination of such pension is dependent upon such information and the Member or eligible survivor does not cooperate in the furnishing or procuring thereof.

**Sec. 26.04.716. Fraud.**

Any person who knowingly makes any false statement or falsifies or knowingly permits to be falsified any record of the 2011 Plan, in an attempt to defraud the pension/ retirement program, shall be guilty of a misdemeanor. The pension/retirement program and the County shall have the right to recover by setoff or otherwise any payments made as a result of such false representation. If any such person shall be a Member or the Eligible Survivor of a Member, he or she shall forfeit all rights to further participation in any of the benefits under this Article.

**Sec. 26.04.717. Defined contribution benefit.**

- A. In addition to the benefits provided in Sections 26.04.701 – 716, the County shall make an annual Nonelective Contribution of one percent (1%) of each Member's Base Salary to a defined contribution plan account on behalf of each Member. In addition, the County shall make an annual Matching Contributions on behalf of each Member of one hundred percent (100%) of each Member's contributions to the Section 457 Plan maintained by the County up to a maximum of two percent (2%) of such Member's Base Salary.
- B. A Member shall become one hundred percent (100%) vested in the County's nonelective contribution, the County's matching contribution and the earnings thereon upon the earlier of the date when the Member (i) completes ten (10) years of Credited Service; (ii) dies; or (iii) becomes disabled. For purposes of this provision, a Member shall be considered disabled if the member meets the definition of disabled in Section 26.04.708 E.
- C. The defined contribution portion of the 2011 Plan shall be an individual account plan. The Board shall establish and maintain an account in the name of each Member to which shall be

credited as of each Valuation Date, all amounts allocated to a particular Account of each such Member as set forth herein. The County contributions for each Plan Year shall be allocated as of the last day of such Plan Year (even though receipt of the County contributions may take place after the close of such Year) according to the County contributions set forth in paragraph A of this Section 26.04.717.

- D. The assets in the accounts of the Members shall be invested by the Board, unless the Board, at its discretion, permits the Members to direct the Board, in writing (or in such other form which is acceptable to the Board), to invest their entire Accounts in specific assets, specific funds or other investments selected at the discretion of the Board, subject to procedures established by the Board.
- E. As of each Valuation Date, all Members' Accounts shall be charged or credited with the net earnings, gains, losses and expenses as well as any appreciation or depreciation in the market value using publicly listed fair market values when available or appropriate as follows:
1. to the extent that the assets in a Member's Account are accounted for as pooled assets or investments, the allocation of earnings, gains and losses of each Member's Account shall be based upon the total amount of funds so invested in a manner proportionate to the Member's share of such pooled investment; and
  2. to the extent that the assets in the Member's Account are accounted for as segregated assets, the allocation of earnings, gains and losses from such assets shall be made on a separate and distinct basis.

Valuation Date means the last day of each Plan Year and may include any other date or dates deemed necessary or appropriate by the Board for the valuation of the Members' Accounts during the Plan Year, which may include any day that any transfer agent appointed by the Board or any stock exchange used by such agent, is open for business. Nothing in this 2011 Plan requires or implies a uniform Valuation Date for all Members' Accounts; thus certain valuation provisions that apply to an Account that is not valued on each business day will have no application, in operation, to an Account that is valued on each business day.

- F. A Member's vested benefits under the defined contribution portion of the 2011 Plan shall be paid to the Member or the Member's beneficiary in one lump sum as soon as administratively feasible following the last day of the Plan Year in which the Member's employment with the County terminates for any reason. Upon the death of a Member, the Member's vested benefit shall be paid to the Member's surviving spouse, but if there is no surviving spouse, or if the surviving spouse has consented to the designation of another beneficiary, then to the Member's designated beneficiary. In the event that there is no valid designation of beneficiary, a Member's vested benefit shall be paid to the estate of the Member.
- G. The account of a terminated Member who is not vested shall be forfeited on the last day of the Plan Year during which such Member's employment terminates. Any forfeitures occurring during a Plan Year will reduce the County's contribution obligation for the next Plan Year.

**Sec. 26.04.718. Reserved.**

**Sec. 26.04.719. Timing and method of distribution.**

- A. Notwithstanding the above, distribution of a Member's benefits must commence not later than the Required Beginning Date. The Required Beginning Date is the April 1 of the calendar year following the later of the calendar year in which the Member attains age seventy and one-half (70½) or retires.
- B. The provisions of this Section will apply to any distribution of a Member's interest and will take precedence over any inconsistent provisions of this article.
- C. All distributions required under this Section shall be determined and made in accordance with the regulations under Section 401(a)(9) of the Code as in effect on the applicable date and the regulations there under, including the minimum distribution death incidental benefit requirement of Proposed Treasury Regulation Section 1.401(a)(9)-2.
- D. Distribution of benefits, if not made in a single sum, shall be made over one of the following periods (or a combination thereof): 1) the life of such Member or 2) the lives of such Member and a designated beneficiary.
- E. If the distribution of the Member's interest has begun in accordance with the preceding paragraph and the Member dies before his entire interest has been distributed to him, the remaining portion of such interest shall be distributed at least as rapidly as under the method of distribution used as of his date of death.
- F. If the Member dies before distribution commences, his or her entire interest will be distributed no later than December 31<sup>st</sup> of the calendar year containing the fifth (5th) anniversary of the Member's death except to the extent an election is made to receive distributions in accordance with (1) and (2) below;
1. Payments of any portion of such interest to or for the benefit of a beneficiary may be made over the life or life expectancy of such beneficiary commencing no later than December 31<sup>st</sup> of the calendar year containing the first (1st) anniversary of the Member's death; and
  2. Payments of any portion of such interest to the Member's surviving spouse are not required to begin earlier than December 31<sup>st</sup> of the calendar year in which the Member would have attained age seventy and one half (70½) or, if later, December 31<sup>st</sup> of the calendar year in which the Member dies.
  3. If the spouse dies before payments begin, subsequent distributions are required under this subsection (except for subsection F.2) as if the surviving spouse was the Member.
  4. Such election must be made by the Member (or his beneficiary, if the Member dies without having made such an election) on or before the earlier of the date by which distribution must commence absent such election and the date distribution must commence assuming such election has been made.
- G. For the purpose of this Section, distribution of a Member's interest is considered to begin on the Member's Required Beginning Date (or, if the next to last sentence of subsection F applies, the date distribution is required to begin to the surviving spouse pursuant to subsection F). If distribution in the form of an annuity irrevocably commences to the Member before the Required Beginning Date, distribution is considered to commence on the date it actually commences.

- H. Any amount paid to a child of the Member will be treated as if it had been paid to the surviving spouse if such benefit becomes payable to the surviving spouse when the child reaches the age of majority.
- I. For purpose of this Section, any distribution required under the incidental death benefit requirements of Section 401(a) of the Code shall be treated as a distribution required under Section 401(a)(9) of the Code.

**Sec. 26.04.720. Maximum limitation on benefits.**

Pursuant to Treasury Regulation Section 1.415(a)-1(d)(3) (“Section 415 Regulations”), the limitations on benefits under Section 415 of the Code and the Section 415 Regulations applicable to governmental plans as defined in Section 414(d) of the Code are hereby incorporated by reference.

**Sec. 26.04.721. Roll over of benefits.**

A Member 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 Member in a direct rollover.

- A. Eligible Rollover Distribution: An Eligible Rollover Distribution is any distribution of all or any portion of the balance to the credit of the Member, 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 Member or the joint lives (or joint life expectancies) of the Member and the Member’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). A portion of a distribution shall not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax employee contributions which are not includable in gross income. However, such portion may be paid only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in Sections 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includable in gross income and the portion of such distribution which is not so includable.
- B. 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, a Roth Individual Retirement Account described in Section 408A 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 Member’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. An Eligible Retirement Plan shall also mean an annuity contract described in Section 403(b) of the Code and an eligible plan under Section 457(b) of the Code 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. The definition of Eligible Retirement Plan shall also apply in the

case of a distribution to a surviving spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code.

- C. The foregoing rules regarding Eligible Rollovers includes distributions to an employee or former employee. They also apply to, 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, with regard to the interest of the spouse or former spouse. These rules shall further apply the designated beneficiary of a Member who is not the surviving spouse of a Member but only with respect to Eligible Rollover Distributions to an Individual Retirement Account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code. If the Member dies before his or her required beginning date and the non-spouse beneficiary rolls over to an IRA the maximum amount eligible for rollover, the beneficiary may elect to use either the 5-year rule or the life expectancy rule, pursuant to Treas. Reg. §1.401(a)(9)-3, A-4(c), in determining the required minimum distributions from the IRA that receives the non-spouse beneficiary's distribution.
- D. Direct Rollover: A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Member, former employee or beneficiary.

**Sec. 26.04.722. Amendment and termination**

Employees shall have no right to earn future benefits under this 2011 Plan. County Council may amend, alter, revise or terminate the 2011 Plan at any time and from time to time, provided, however, that Accrued Vested Benefits at the time such amendment, alteration, revision or termination occurs shall not be reduced. Accrued Vested Benefits are those benefits that a Member would be entitled to receive at age sixty-five (65) as if he or she had terminated employment on the day before the day on which any amendment, alteration, revision or termination is effective.

**Sec. 26.04.723. Employment of pensioners.**

- A. An individual shall not receive a service or disability pension under this Article for any month during which he or she is an employee unless he or she is:
1. An official elected by popular vote; or
  2. An official appointed by the Governor, County Executive or the County Council.
- B. No individual receiving a service or disability pension under this Article shall accrue additional time toward a pension during any period of reemployment which he or she is an employee.
- C. This provision shall not preclude an individual who has received a distribution of his or her defined contribution benefits under Section 26.04.717 from being reemployed by the County.

**Section 10. Inconsistent Ordinances and Resolutions Repealed.** All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

**Section 11. Severability.** The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

**Section 12. Effective Date.** This ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive, or as otherwise provided in 9 *Del. C.* § 1156 and its provisions shall become effective on September 1, 2011.

Approved on:

Adopted by County Council of  
New Castle County on: June 28, 2011

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County Executive

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President of County Council  
New Castle County

**SYNOPSIS:** This amendment creates a new retirement program for new County employees hired on or after September 1, 2011, excluding Police. In addition to the 5% plan that was closed by the adoption of Ord. 11-034 on June 14, 2011, this amendment would close the 3% plan to new employees (current employees and retirees participating in those plans will not have any changes in their benefits). The new program comprises a "hybrid" structure with a basic defined benefit plan (like most public sector plans) and a defined contribution plan with employer contributions (like most private sector plans).

**FISCAL NOTE:** The 2011 Plan is expected to save the County about \$1.5 million over the next 10 years and about \$11 million over a 25 year period.