

IN THE
Court of Appeals of Maryland

September Term, 2020

No. 36

Robert F. Cherry, Jr., *et al.*,

Appellants/Cross-Appellees,

v.

Mayor and City Council of Baltimore,

Appellee/Cross-Appellant.

ON APPEAL FROM THE
CIRCUIT COURT FOR BALTIMORE CITY
HON. JULIE R. RUBIN

ON A WRIT OF CERTIORARI TO THE
COURT OF SPECIAL APPEALS

Brief of Appellee/Cross-Appellant Mayor and City Council of Baltimore

James P. Ulwick (CPF No. 7701010016)
Jean E. Lewis (CPF No. 0002070001)
Louis P. Malick (CPF No. 1112140197)
KRAMON & GRAHAM, P.A.
One South Street, Suite 2600
Baltimore, Maryland 21202
(410) 752-6030
(410) 539-1269 (facsimile)
julwick@kg-law.com
jlewis@kg-law.com
lmalick@kg-law.com

*Counsel for Appellee/Cross-Appellant
Mayor and City Council of Baltimore*

Table of Contents

Table of Authorities	ii
Introduction	1
Statement of the Case	4
Questions Presented	5
Statement of Facts	5
Standard of Review	12
Argument	13
I. The court correctly concluded that Appellants failed to show any breach of the City’s funding obligation.....	13
II. The court appropriately accepted the City’s “but for” damages analysis and rejected Appellants’ actuaries’ opinions as not credible or persuasive.....	19
A. Appellants conceded multiple times that New Hires cannot be part of what Appellants call the “Closed Plan.”	20
B. Mr. Reese performed an accurate “but-for” damages analysis that followed Article 22 and the FPERS Board’s past practice	21
C. The court appropriately rejected Appellants’ damages model as neither credible nor persuasive	24
III. The City did not breach a contract with any category of Plan member in enacting Ordinance 10-306	30
A. Maryland and federal law provide municipalities with a reserved power to modify pension contracts in limited circumstances	30
B. <i>Harford County v. Town of Bel Air</i> is irrelevant.....	35
C. There was no breach of contract because Ordinance 10-306 made only prospective changes and, even if retrospective, provided comparable benefits or was justified by countervailing equities for the public welfare	36
1. Ordinance 10-306 was entirely prospective, and the court should have found no liability as to any Plan members.....	37
a. Any pension changes for Actives were clearly prospective	37
b. Forward-looking replacement of the uncertain variable benefit with a guaranteed COLA also was a prospective change for Retirees and Retirement-Eligibles	38
2. Ordinance 10-306 left Actives with the substantial equivalent of the benefits they had before	40

a.	Appellants’ actuaries’ attempt to present the variable benefit as having value for Actives relied on a 4.3% interest assumption that was nowhere close to the 6.8% assumption Article 22 actually prescribed	41
b.	Ordinance 10-306’s other changes had minimal effects.....	42
3.	Any reduction or diminution of benefits was balanced by comparable other benefits “or justified by countervailing equities for the public welfare”	44
Conclusion		47
Certification of Word Count and Compliance with Rule 8–112.....		48
Certificate of Service		49

Appendix

Baltimore City Code, Article 22, Sections 29 through 49 (as of December 31, 2009)

Table of Authorities

Cases

<i>Asibem Assocs., Ltd. v. Rill</i> , 264 Md. 272 (1972)	22
<i>Baker v. Baltimore County</i> , 487 F. Supp. 461 (D. Md. 1980).....	33, 34, 44
<i>Balt. Teachers Union, Am. Fed’n of Teachers Local 340, AFL-CIO</i> <i>v. Mayor & City Council of Baltimore</i> , 6 F.3d 1012 (4th Cir. 1993)	33
<i>Bd. of Trustees of Employees’ Ret. Sys. of City of Baltimore</i> <i>v. Mayor & City Council</i> , 317 Md. 72 (1989)	33
<i>City of Frederick v. Quinn</i> , 35 Md. App. 626 (1977).....	<i>passim.</i>
<i>Clickner v. Magothy River Ass’n, Inc.</i> , 424 Md. 253 (2012)	12–13
<i>Cochran v. Norkunas</i> , 398 Md. 1 (2007).....	28
<i>Dabbs v. Anne Arundel County</i> , 458 Md. 331 (2018).....	37, 39
<i>Davis v. City of Annapolis</i> , 98 Md. App. 707 (1994).....	30, 34
<i>Della Ratta v. Dyas</i> , 414 Md. 556 (2010)	12
<i>Dennis v. Fire & Police Employees’ Ret. Sys.</i> , 390 Md. 639 (2006).....	13, 17
<i>Federal Ins. Co. v. Allstate Ins. Co.</i> , 275 Md. 460 (1975).....	17
<i>Figgins v. Cochrane</i> , 403 Md. 392 (2008)	25
<i>Harford County v. Town of Bel Air</i> , 348 Md. 363 (1998).....	35
<i>Howell v. Anne Arundel County</i> , 14 F. Supp. 2d 752 (D. Md. 1998)	33, 34, 37
<i>Lazorcak v. Feuerstein</i> , 273 Md. 69 (1974)	22
<i>Maryland State Teachers Ass’n v. Hughes</i> , 594 F. Supp. 1353 (D. Md. 1984), <i>aff’d</i> , No. 84-2213 (4th Cir. Dec. 5, 1985), <i>cert. denied</i> , 475 U.S. 1140 (1986).....	<i>passim.</i>
<i>Mattingly Lumber Co. v. Equitable Bldg. & Sav. Ass’n of Baltimore City</i> , 176 Md. 403 (1939)	17
<i>Montgomery County v. Bigelow</i> , 196 Md. 413 (1950).....	38
<i>Quesenberry v. Washington Suburban Sanitary Comm’n</i> , 311 Md. 417 (1988)	30, 33
<i>Saxton v. Bd. of Trustees of Fire & Police Emp. Ret. Sys. of City of Baltimore</i> , 266 Md. 690 (1972)	30–31, 34, 37, 38–39
<i>State v. Raines</i> , 326 Md. 582 (1992)	25
<i>Tshiani v. Tshiani</i> , 436 Md. 255 (2013)	25
<i>United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.</i> , 550 U.S. 330 (2007)	46
<i>Urban Site Venture II Ltd. P’ship v. Levering Assocs. Ltd. P’ship</i> , 340 Md. 223 (1995)	12
<i>U.S. Tr. Co. of New York v. New Jersey</i> , 431 U.S. 1 (1977).....	33, 46

Constitutional Provisions

U.S. Const., Art. I, § 10, cl. 1 33

Rules

Md. Rule 8-131 12, 25

Introduction

In the spring of 2010, the pension plan for Baltimore City's public safety workers ("the Plan") faced an unprecedented crisis. The Plan had indisputably become actuarially unsound. The cause of this condition—the variable benefit—was well-known to all stakeholders, including Plan members, their unions, the Plan's and unions' respective actuaries, and the City Council.

The variable benefit provision was enacted in 1983 to provide a cost-of-living adjustment (COLA) to retirees. A variable benefit was awarded to retirees in years that the investment earnings on the Plan's assets exceeded 7.5%, and it came out of earnings that were used to fund the basic benefit for all Plan members. If investment returns did not meet the prescribed level, however, no raise was awarded that year.

It became apparent in the 2000s that the assumed rate of return on the retiree reserves—a core term of the Plan—was overly optimistic. These two provisions—the variable benefit and the assumed rate of return on the retiree reserves—combined with the increasing volatility in the market to threaten both the basic benefit provided to Plan members and the City's ability to provide core services to its citizens. The City paid its prescribed contributions each year, but those contributions did not make up for significant amounts drained out of the assets to fund variable benefit increases, and the City could not afford to pay the increased cost that would result from amending the contract to change the assumed rate of return for the retiree reserves.

Appellants ignore all of this and pretend there was no crisis, despite agreeing in June 2010 that the variable benefit needed to go. As Thomas Lowman, one of the unions'

actuaries, told the City Council: “We don’t want any variable, just scrap it,” E.2848, “[w]e know you can’t afford that.” E.2851–52. Although the parties were unable to agree on the exact replacement for the variable benefit, the City Council acted to save the Plan while preserving the City’s ability to provide core services to its residents. Ordinance 10-306 was designed to make the *minimum* changes necessary to make the Plan sustainable and affordable. To that end, Ordinance 10-306 replaced the variable benefit with an age-based COLA that provides a 1% annual raise beginning at age 55, increasing to 2% at age 65. The unions filed suit in federal court before the Ordinance was even passed.

After nearly nine years of litigation, including multiple rounds of briefing and eight days of trial in 2018, the circuit court (Judge Julie R. Rubin) issued a 144-page opinion, E.4966–5114, including 99 factual findings, addressing the danger the variable benefit posed to the Plan’s actuarial soundness. E.4998–5031 (Record Extract, vol. X). The court studied dozens of actuarial reports and considered the live testimony of Plan members and professionals involved with the Plan, four actuarial and public finance experts, former Mayor Stephanie Rawlings-Blake, and additional testimony from the prior federal trial. The result was not a homerun for either side. The court ruled for the Retirees and those eligible to retire as of June 30, 2010 (“the Retirement-Eligibles”) on liability, concluding that those members were damaged to the extent Ordinance 10-306 reduced future pension increases. But the court also found the City lawfully modified the Plan as to active employees (“the Actives”) given the City’s dire financial condition in 2010 and the undeniable need to address the Plan’s actuarial soundness. The court

correctly concluded that the modifications left members with substantially the same program they had before Ordinance 10-306.

Because the court determined Retirees' and Retirement-Eligibles' contractual rights had been breached, a major portion of the trial focused on those members' damages (if any). Both sides presented actuaries to support their damages models. Those models and the experts' testimony differed substantially. After hearing all the evidence, the court found the City's actuary was helpful, credible, and persuasive while Appellants' actuaries were not.

The court correctly decided the City did not breach its contract with the Actives, and that the extremely adverse financial circumstances facing the City and the Plan's broken condition justified the changes Ordinance 10-306 made. The City respectfully submits, however, that the court erred in ruling that the same circumstances did not also justify changing the mechanism for determining *future* increases to Retirees' benefits. Nonetheless, the court correctly determined that, for purposes of calculating any damages Retirees and Retirement-Eligibles sustained, the proper comparison was between (i) what they have received and will receive from the tiered COLA Ordinance 10-306 created and (ii) what the same members would have received if Ordinance 10-306's changes had been limited to Actives and employees hired after June 30, 2010 ("New Hires"). Consistent with the City's goal to make the minimum changes necessary, most class members were better off under Ordinance 10-306's tiered COLA and had no damages. The younger Retirees, who did not immediately receive the COLAs, were awarded a total of approximately \$31 million in damages.

Statement of the Case

The City identifies here only its most significant disagreements with Appellants' statement, which omits significant actuarial work the parties worked together to complete between the court's May 13, 2019 decision and the June 11, 2020 entry of judgment.

On the question of damages Judge Rubin made express findings that Appellants' experts were not credible or persuasive, but that the City's experts were. E.5109–13. Judge Rubin adopted the City's model of calculating damages, explaining in great detail the reasons why the assumptions Appellants' experts had made were not credible or reasonable (including that they would require changes to the terms of the very contract Appellants sought to enforce), or were otherwise unsound. *Id.*

Over the next year, Appellants and the City and their respective teams of actuaries worked together to arrive at the assumptions and calculations required to determine, using the City's actuary's model, whether any of the Retirees or Retirement-Eligibles had sustained damages as a result of replacing the variable benefit with a guaranteed, tiered COLA. The tiered COLA provided a 1% annual raise for retirees starting at age 55, increasing to a 2% annual raise at age 65. The actuaries considered actual data from FY2010 through FY2020 and projections for investment performance going forward. Their calculations determined that, generally, Retirees younger than age 53 when Ordinance 10-306 was enacted had damages, but Retirees older than that would net better pension payments over their lifetimes via the tiered COLA than under the variable benefit regime and, accordingly, had no damages.

Questions Presented

1. Did the circuit court correctly conclude that Appellants failed to show any breach of the City's funding obligation to the Plan?
2. Did the circuit court appropriately accept the City's "but for" damages analysis and reject Appellants' actuaries' opinions as not credible or persuasive?
3. Did the circuit court correctly find no breach of contract as to the Actives?
4. Did the circuit court improperly find that the City breached a contract with the Retirees and Retirement-Eligibles, where the Ordinance maintained intact the basic benefit and all prior raises, and only made prospective legislative changes that were necessary and reasonably intended to preserve the integrity of the pension system and were justified by countervailing equities for the public's welfare?¹

Statement of Facts

In the spring of 2010, the City faced the worst fiscal crisis in generations, brought on by the delayed effects of the worst economic downturn since the Great Depression. At the same time, the Fire & Police Employees Retirement System ("FPERS") Plan was becoming more and more actuarially unsound due to an increasingly volatile investment market and a dysfunctional means of providing benefit increases to retirees. The City was barely able to keep pace with the annual contributions Article 22 of the City Code

¹ Question 4 is the subject of the City's cross-appeal. The City addresses Questions 3 and 4 together in Part III of its argument.

required. It could not come close to paying the contributions needed to support the Plan if the variable benefit were left in place.²

The City already had closed a \$120 million budget gap for FY2010 (in early 2009) by implementing cuts that included rotating fire company closures; shifting to once-a-week trash and recycling collection; eliminating the 311 call center night shift; abolishing 523 city employee positions across agencies (excluding sworn police and fire positions); reducing hours at libraries; closing five recreation centers; turning two recreation centers over to the school system; and shortening hours at remaining recreation centers. E.54; E.4697; E.2770–71; E.5013–14. Then, unforeseen State cuts and preliminary local revenue shortfalls resulted in an additional \$60.2 million mid-year budget gap. E.54; E.2771. The City resolved this by making additional cuts including unpaid furloughs for City employees (excluding line-of-duty public safety workers); agency budget reductions of \$13 million; deferral of \$2.3 million in pay-as-you-go capital expenditures; and extension of the then two-year-old hiring freeze. *Id.*; E.4697–98. Still, as local revenues deteriorated further and the City was hit with a series of historic snowstorms, the City had to implement yet another round of agency cuts and look to its reserves. E.54. In the end, the City endured three rounds of budget cuts during FY2010 and used approximately \$30 million of its reserves to balance what was already a very lean budget. *Id.* The City, however, made its full statutorily-required contribution, of more than \$69 million, to the Plan. E.3745.

² Many of the facts in the following paragraphs were stipulations. E.47–61.

The City's mounting deficits in 2010 culminated in a \$121 million budget gap for FY2011, which did not include an additional \$64 million that would be needed if the City Council adopted the actuaries' recommendations to amend Article 22 and lower the assumed rate of return for the retirees' assets in the Plan to account for the increased funds being siphoned out of the Plan for variable benefit increases. *See* E.54; E.5013–14. The City's budgeted \$101 million contribution for FY2011, already 270% greater than the City's contribution in FY2001, would balloon to \$165 million if the actuarial recommendation were adopted. *See* E.54; E.4656. Over the previous 20 years, the Plan's actuarial liabilities had increased from \$1.1 billion in FY1990 to \$3.1 billion in FY2010, as the system matured, life expectancies increased, and benefits steadily improved. E.4656. Meanwhile, the unfunded portion of this liability had increased dramatically from \$100 million (on an actuarial basis) in FY2005 to half a billion dollars in FY2009. *Id.*

To address the budget gap, the City enacted legislation creating approximately \$50 million in new taxes and made \$73 million in further cuts to City services. E.54. The FY2011 cuts included: expansion of the furlough program; elimination of another 361 City positions; reduction of the employer share (and a corresponding increase of the employee share) of prescription drug costs; a \$6.3 million reduction in transportation and crossing guard subsidies to the school system; continuation of three rotating closures of fire stations; the reduction in maintenance and custodial services for City buildings; and reductions in park maintenance expenses. E.4698; E.2771. Although the City ultimately maintained its FY2011 contribution to the Plan at \$101 million, it could not keep pace

with the increasing cost of the system, let alone the cost of enacting the change required to address the unpredicted cost of the variable benefit, while still maintaining essential, core city services. E.4656–58; E.5013–20.

Under the former variable benefit regime, unique to Baltimore City, a benefit increase would be triggered on June 30 of a given year if, during the prior fiscal year, the earnings on the system’s funds exceeded 7.5%. Art. 22, § 36A(c) (2009). In that event, all of the investment returns on the retirees’ assets between 7.5% and 10%, and half of the returns on the retirees’ assets in excess of 10%, would be transferred from the system’s four primary funds³ into two special funds, created by legislation, to pay for a benefit increase for retirees. § 36A(c)–(d).

To illustrate, in FY2005, the four primary funds earned a return of 11.59%, or \$175 million. Of that \$175 million, approximately \$50 million represented (1) all of the earnings between 7.5% and 10% and (2) half the earnings in excess of 10%. Of that \$50 million, approximately \$37 million was attributable to returns on the two funds earmarked for the retirees. E.52–53. Accordingly, \$37 million was transferred from the system’s primary funds and into the funds created to support the variable benefit. *Id.* Using those funds, the system purchased fixed-income instruments that provided each eligible retiree or beneficiary with a 2.2% pension raise. *Id.*

³ The four primary funds are the Pension Accumulation Fund (“PAF”), “the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by the City of Baltimore,” § 36(d)(1), and in which the three other primary funds reside; the Annuity Savings Fund (“ASF”), which holds the Actives’ employee contributions; the Annuity Reserve Fund (“ARF”), which holds the Retirees’ employee contributions; and the Pension Reserve Fund (“PRF”), which holds the City’s previous contributions for Retirees.

Because the variable benefit depended on market performance, benefit increases were not assured in any given year. While the variable benefit generated the equivalent of a 3.0% annual increase from 1984 through 2009, it returned only 2.18% between 1990 and 2009 and only 1.42% between 2000 and 2009. E.2553. The legislation enacting the variable benefit provided a 1% per year increase for the years 1962 to 1981. § 36A(b)(iii).

Because of increasing market volatility during the 2000s, it became apparent that the variable benefit was negatively affecting the Plan's viability. E.52; E.2123–25. Simply put, the Plan was unable to offset the large investment losses in some years because many of the investment gains in good years were siphoned off to fund variable benefit increases. E.3524, E.3530–32.

The combination of poor market performance in FY2008 and FY2009 and the partial rebound of the market in FY2010 provides a perfect illustration of the flaws in the variable benefit system before Ordinance 10-306. In the spring of 2010, the Plan's investment earnings exceeded 7.5% and, therefore, would have triggered a benefit increase notwithstanding the devastating losses just prior to FY2010. *See* E.3754. Thus, even though the market plummeted during FY2008 and FY2009 (without any negative impact on Retirees' benefits), and even though the gains posted in FY2010 represented only a fraction of what had been lost, the variable benefit would have been triggered because the gains appeared likely to exceed 7.5%. Consequently, as much as \$100 million would have been removed from the Plan's primary assets just when those funds were needed most. The variable benefit—a provision designed and intended to provide

cost of living increases—threatened to undermine the Plan’s ability to continue providing the basic benefit. As Judge Garbis observed during the federal trial, it was “wacko,” “totally irrational,” and “extremely wacko.” March 24, 2011 tr. at 158–59.⁴

All relevant actors agreed in 2010 that the variable benefit was a key factor threatening the Plan’s actuarial soundness. Even the public safety unions’ actuary, Thomas Lowman, candidly recognized in testimony before the City Council on June 10, 2010, that the variable benefit needed to go: “You know, the Union knew that the Plan had troubles. The Union said, ‘We don’t want any variable, just scrap it.’ We were the first one to say, you know, just get rid of the whole thing.” E.2848.

Mr. Lowman agreed with the Plan’s actuary that if the City did not abolish the variable benefit, it needed to amend Article 22 and adopt a lower earnings assumption for post-retirement assets. *Id.* He also agreed that “the trend line”—*i.e.*, the increases in the City’s annual contributions—“has to come down.” E.2849. Mr. Lowman acknowledged that the City could not afford to fix the variable benefit by lowering the assumed rate of return: “[T]he cost recommended by the Board this year, recommended by the actuaries but not put in the budget, probably for obvious reasons. \$165 million. That’s the true cost of the benefits if you don’t do anything. *We know you can’t afford that.*” E.2851–52 (emphasis added).

Ordinance 10-306 was a necessary measure to prevent additional cuts to core City services. The drafters took care to maintain benefits for the Retirees who most depended

⁴ The parties provided the record of the federal proceedings to the circuit court on April 5, 2017.

on them while at the same time safeguarding the future availability of benefits for Actives within an annual contribution level the City could actually afford. In other words, Ordinance 10-306 included those changes minimally necessary to buttress the Plan's actuarial soundness and preserve the City's ability to provide essential services to its citizens. It modified the Plan in the following respects:

- it replaced the variable benefit (or post-retirement benefit increase) with a guaranteed, tiered COLA;
- for members with less than 15 years in the system⁵ it lengthened the service requirement from 20 to 25 years, matching the time the average public safety worker actually remained on the force (59% of members retired with at least 25 years of service and 28.2% served 30 years or more, E.4336–37) (under the Plan's provisions, members retiring with 25 years of service receive 60% of their average final compensation ("AFC") on an annual basis as opposed to the 50% of AFC received for 20 years of service);
- it adjusted the base period used to calculate a member's AFC from 18 months to three years (resulting in about a 2% difference in AFC for a typical Plan member, E.4338), but again, only for members with less than 15 years in the system;

⁵ Members with 15 or more years of service were "grandfathered" and not affected by this change.

- it increased employee contributions by one percent per year, from 6.0%, as of July 1, 2009, to 10% as of July 1, 2013 (similar to what the public safety unions themselves had proposed, E.2931); and
- it adjusted the interest-rate assumption for the funds holding the assets of active employees from 8.25% to 8.0%, to address market realities and the Plan's underfunded status.

E.5025–27. Ordinance 10-306 did not alter the basic benefit provided to members, and it had no effect on any variable benefit “raises” that already had been awarded.

Standard of Review

On bypass certiorari review, the Court “will consider those issues that would have been cognizable by the Court of Special Appeals.” Rule 8-131(b)(2). In an action that was tried without a jury, the Court “review[s] the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Rule 8-131(c). The Court “must consider the evidence in the light most favorable to the prevailing party, and decide not whether the trial judge’s conclusions of fact were correct, but only whether they were supported by a preponderance of the evidence.” *Urban Site Venture II Ltd. P’ship v. Levering Assocs. Ltd. P’ship*, 340 Md. 223, 230 (1995) (citations omitted). “If there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.” *Della Ratta v. Dyas*, 414 Md. 556, 565 (2010) (citations and internal quotations omitted). When a decision involves interpretation and application of statutes

or case law, the Court determines whether the circuit court’s conclusions “are legally correct.” *Clickner v. Magothy River Ass’n, Inc.*, 424 Md. 253, 266–67 (2012). Contract interpretation is a legal issue, though this Court follows the same objective theory of contracts that governed the trial court. *Dennis v. Fire & Police Employees’ Ret. Sys.*, 390 Md. 639, 656–57 (2006).

Argument

I. The court correctly concluded that Appellants failed to show any breach of the City’s funding obligation.

Though Appellants claim the City breached its contract by inadequately funding the Plan, the court correctly found that the City never breached any funding requirement.

The arguments Appellants actually made to the trial court supporting their underfunding claim were all arguments that the City should have *changed* the existing funding requirements: that the City allegedly breached its funding obligations by (i) not amending Article 22 to lower the 6.8% assumed rate of return on the retirees’ reserves to 5.0% for purposes of calculating the City’s required contribution; (ii) delaying recognition of losses related to the 2001 tech bubble burst through “double smoothing” as allowed by Article 22, § 36(j); and (iii) passing Ordinance 10-306 instead of making contributions beyond those Article 22 actually required to address the financial losses of 2008 and 2009.⁶ E.5073; E.5092 n.88. The trial court devoted over twenty pages to *these*

⁶ Appellants never developed this last argument other than to invoke § 36(j)(4) and the guarantee in § 37. Section 36(j)(4) provides that in cases of “deficit” earnings *the Board of Trustees* is permitted “(a) to increase the amount to be contributed by the City of Baltimore, and/or (b) to increase the period over which the unfunded accrued liability will be amortized as provided in § 36(d)(4).” (emphasis added).

arguments (not including the pertinent factual findings) and correctly concluded there was no provision in Article 22 requiring the funding Appellants alleged should have occurred, and that Article 22 contained several specific provisions that were inconsistent with such a requirement. E.5093 (“In addition to the absence of an affirmative obligation to maintain the Plan in a fully funded state, provisions of the Plan at sections 33, 36 and 37 are fundamentally at odds with such an obligation.”).⁷ Further, the court correctly determined that underfunding claims arising before June 3, 2007 were time-barred, a conclusion which Appellants have not challenged despite their claims of “chronic underfunding.” Appellants’ Br. 2, 24.

Article 22,⁸ the contract at issue in this matter, sets forth in precise detail the method for funding the Plan and for calculating the amount of the City’s contribution. Section 36(d) in particular defines the Pension Accumulation Fund (“PAF”) as “the fund in which shall be accumulated *all reserves for the payment of all pensions* and other benefits payable from contributions made by the City of Baltimore and from which shall be paid all pensions and other benefits on account of members with prior service credit and lump sum death benefits for all members payable from the said contributions.” § 36(d)(1) (emphasis added). The section directs how the City’s contributions shall be made to the PAF (and in what amount) and how payments from the PAF shall be made to Retirees. *Id.*

⁷ Appellants omit this portion of the court’s opinion from the quote in their Brief at 16–17.

⁸ Pertinent sections of Article 22 are reproduced in an Appendix to this Brief.

Subsection 36(d)(2) describes the two primary components of the City's annual contribution to the Plan:

On account of each member there shall be paid annually into the Pension Accumulation Fund ..., for the preceding fiscal year, a certain percentage of the earnable compensation of each member to be known as the "*normal contribution*," and an additional percentage of his earnable compensation to be known as the "*accrued liability contribution*."

Subsection 36(d)(3) provides further detail on the first of these two components:

On the basis of *regular interest* and of such mortality and other tables as shall be adopted by the Board of Trustees, the actuary engaged by the Board shall make a valuation to determine the required contribution by the City ... to the Pension Accumulation Fund.

The actuary shall determine a *normal cost* for each employee which is equal to the amount of annual contribution which is necessary to provide his benefit if such contributions had been made annually from his date of employment to his date of retirement. The total of amounts so determined shall be known as "*normal cost contribution*."

(Emphasis added). Subsection 36(d)(4) then provides additional detail on the second of the two components:

(i) For each employee, the Board of Trustees shall calculate an accrued liability equal to the accumulation of the annual normal cost contribution described in paragraph (3) of this subsection from date of employment to the valuation date on the basis of the actuarial assumptions adopted by the Board of Trustees.

(ii) The accrued liability [thus] calculated ... shall be added to the reserve for retirement benefits payable to retired members from the Pension Accumulation Fund to obtain the total accrued liability.

(iii) The assets of the Pension Accumulation Fund shall be applied against the total accrued liability calculated for all participants to determine the amount of *unfunded accrued liability*.

(iv) If the total accrued liability exceeds the assets in the Pension Accumulation Fund, an accrued liability contribution shall be determined as the amount that is sufficient to meet regular interest on the unfunded accrued liability and to amortize the principal of the unfunded accrued liability over the period determined by the Board of Trustees.

(Emphasis added). This last subsection directs that unfunded liability is addressed like a mortgage—the City makes regular payments of interest and principal over a specified term and at a specified interest rate.

Subsection 36(d)(5) then reiterates that these two components constitute the City’s required contribution (“The required contribution by the City ... is the amount equal to the normal cost, plus the accrued liability contribution or less the amortization of the excess assets, as the case may be.”), with a proviso that “the aggregate payment by the City must be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the then-current year.”

Thus, subsections 36(d)(2) through (5) provide the framework for determining the amount of the City’s contribution to the Plan: (i) a normal cost component related to the value of benefits earned in the year for each working employee and (ii) an unfunded actuarial liability component related to the amount by which the Plan is underfunded, the sum of which must be at least the amount needed to pay the pensions and other benefits due to members in the “then-current year.”

Appellants failed to establish that the City ever breached these requirements. In fact, the evidence was undisputed that the City made its required contribution every year. Appellants instead argued the City should have *changed* the “regular interest” factor required to be used in the calculation of the liabilities owed to Retirees; that the City should have adopted a more aggressive funding approach to the tech bubble losses than Article 22 § 36(j) allowed; and that the City should have contributed something beyond what § 36(d) required when confronted with substantial losses in 2008 and 2009. Appellants thus failed to present evidence that the City’s contributions to the Plan fell short of the specific terms in the contract that addressed funding requirements.

Appellants urged the application of general phrases from Article 22 to override the specific prescriptions in § 36(d). But in a breach of contract action, the Court must construe the contract as actually written, not as one party now wishes for it to have been written. *Dennis*, 390 Md. at 656–57. And, “where two clauses or parts of a written agreement are apparently in conflict and one is general in character and the other is specific, the specific stipulation will take precedence over the general, and control it.” *Mattingly Lumber Co. v. Equitable Bldg. & Sav. Ass’n of Baltimore City*, 176 Md. 403, 408 (1939); *see also Federal Ins. Co. v. Allstate Ins. Co.*, 275 Md. 460, 472 (1975). Applying settled Maryland law on contract interpretation, the trial court correctly rejected Appellants’ argument that the City had an obligation to “fully fund” the Plan or its reserves (and the corresponding opinions of their experts).

Appellants’ second complaint—that the trial court’s reliance on § 36(d)(5) was erroneous because that subsection “deals only with a legacy provision applicable to

benefits promised to public safety employees retired prior to January 1, 1926,” Appellants’ Br. 17—is a last ditch effort to convert Appellants’ failure of proof into a legal error by the court. Indeed, Appellants did not raise it until five months after the trial court issued its May 2019 opinion and, even then, raised it only in the context of a dispute between the parties as to how the forward-looking portion of the damages model would function.⁹ That is for good reason.

First, Appellants’ unsupported assertion that the language in § 36(d)(5) applies “only to a legacy pension obligation that by 2010 likely no longer existed,” because “[t]he only pensions payable from the Pension Accumulation Fund are for pensions to ‘members entitled to credit for prior service,’” completely disregards the fact that the PAF holds *all* the funds and pays *all* the pensions. § 36(d)(1) (defining PAF as “the fund in which shall be accumulated *all reserves* for the payment of *all pensions* and other benefits payable from contributions made by the City ...”) (emphasis added). The PRF— from which, according to Appellants, all current benefits are paid—sits within the PAF. *Id.*

Second, Appellants’ argument ignores the structure of § 36(d), which lays out in step-by-step fashion the components of the City’s required contribution and how they are to be combined. Appellants’ unsupported argument that the section establishing a floor for the City’s contribution applies only to the pensions of a select group of members who had prior service in 1926 does not square with basic principles of contract interpretation,

⁹ Although the City raised § 36(d)(5) in its post-trial brief and twice in its closing argument, E.4831–32, E.4850, E.4920, Appellants never responded, other than acknowledging in argument that “[s]ection 36 tells you how it’s done.” E.4790.

particularly given Appellants' failure to provide any explanation as to why the provision has survived more than a dozen amendments of § 36 since 1962 if it applies to no one.

Third, the argument does not help Appellants' cause. The statement in § 36(d)(5) that "the aggregate payment by the City must be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the then-current year" operates only to *increase* the amount the City would be required to contribute to the Plan. If it does not apply, then the City's contribution would be limited to the sum of the normal contribution and the unfunded liability, as provided in the first portion of § 36(d)(5) and in § 36(d)(2).

Under well-settled principles of contract interpretation, the specific terms of § 36(d)—the Plan's funding mechanism—dictate the requirements for the City's contributions to the Plan. The trial court correctly concluded that Appellants failed to establish the City breached those terms.

II. The court appropriately accepted the City's "but for" damages analysis and rejected Appellants' actuaries' opinions as not credible or persuasive.

Appellants all but ignore the real reasons the circuit court rejected their actuaries' opinions: They were not credible or persuasive, and they inflated Appellants' damages without any factual or legal basis. E.5109–12. By contrast, the City's actuary, Adam Reese, presented an accurate model that built on Appellants' actuaries' work but corrected for assumptions they made that ran counter to Article 22—including assumptions that the City would have changed statutorily defined interest rates by

enacting further legislation—and ran counter to the FPERS Board’s past practice, as the evidence at trial showed.

Appellants conceded multiple times before trial, including in their operative complaint, that Plan members hired after June 30, 2010 were properly part of a “new” plan subject to Ordinance 10-306. Appellants also requested that the variable benefit be *reinstated* for persons other than New Hires by way of specific performance. E.182–85.¹⁰ This necessarily would have required the creation of two plans. Nevertheless, Appellants now claim the court erred in adopting a damages model that, in their view, creates two plans and does not permit use of New Hires’ pension contributions (or the City’s contributions on their behalf) to fund larger pension raises for Retirees. The Court should see through Appellants’ shifting theories to what their argument really is: an assertion that Retirees are somehow entitled to use all Plan assets, even those assigned to Actives and New Hires, to inflate future variable benefit payments, without regard for the Plan’s health or ability to fund even the basic benefit in the future. To state the obvious, that is not what Article 22 requires.

A. Appellants conceded multiple times that New Hires cannot be part of what Appellants call the “Closed Plan.”

Persons who were not hired—and, therefore, did not become members of the Plan—until after June 30, 2010, have never been part of this litigation, and Appellants conceded multiple times that these New Hires were properly subject to the 2010 legislation. In their Amended Complaint, Appellants proposed the certified class be

¹⁰ The circuit court appropriately denied Appellants’ request for specific performance, E.5108–09, which Appellants do not challenge.

limited to “[a]ll members and beneficiaries of the Plan as of June 30, 2010,” and, therefore, excluded New Hires. E.79; E.86. Appellants complained that Ordinance 10-306 was not limited prospectively to “new hires who were not members of the Plan as of June 30, 2010,” and who “had no contractual rights to Plan benefits” as they existed before the Ordinance. E.118. In their pretrial brief, Appellants said it was “important to note that the Actives are a *closed group*,” that members “hired after the effective date of 10-306 accepted employment with a different set of conditions than those hired before its enactment,” and that “[t]he City is free to chart a course for its future workers.” Pls.’ Oct. 5, 2018 Pre-Trial Br. at 8 n.1 (emphasis added).

Appellants’ concessions remain correct: Contributions associated with New Hires cannot be used to increase variable benefit increases for Retirees and must be attributed to the “new” plan in the damages model. And, given the court’s ruling that the City did not breach a contract with the Actives by enacting Ordinance 10-306—which is correct for the reasons explained *infra*—the Actives also are properly part of the “new” plan and the contributions associated with them also cannot be used to shore up variable benefit raises for Retirees. Use of a damages model that limits the calculation of the variable benefit to funds properly associated with those people entitled to receive it is not error.

B. Mr. Reese performed an accurate “but for” damages analysis that followed Article 22 and the FPERS Board’s past practice.

At trial, everyone understood that two separate plans had not actually been created, and that Mr. Reese’s analysis was for the purpose of creating an accurate damages model based on a hypothetical “but for world” that assumed no breach.

Appellants bore the burden of proving their damages with “reasonable certainty,” *see, e.g., Lazorcak v. Feuerstein*, 273 Md. 69, 75 (1974); *Asibem Assocs., Ltd. v. Rill*, 264 Md. 272, 276 (1972), and, as the Defendant, the City had no obligation to undertake this exercise. The circuit court accepted the City’s damages model, however, because Appellants failed in their burden of proving contract damages to a reasonable certainty. As explained *infra*, the court appropriately concluded that Appellants’ damages experts and their opinions were neither credible nor persuasive and, by contrast, that Mr. Reese’s model was “credible, persuasive, and helpful to the court.” E.5112.

While Appellants’ experts relied on their conception of a supposedly ideal version of the Plan that never actually existed, either in Article 22 or in practice, the court found the City’s damages model was based on Article 22 and actual past practice. Thus, the model assumed the Retirees’ and Retirement-Eligibles’ request for specific performance had been granted, and variable benefits for those members were to be calculated per Article 22. But, the model also assumed that Ordinance 10-306 continued to apply to New Hires (as Appellants conceded), and to Actives (because, as the court found, the City was permitted to modify the Plan for the Actives). The model assumed, correctly, that the contributions associated with New Hires and Actives would support the benefits set aside for those members, and would not be used to artificially increase the benefits of Retirees and Retirement-Eligibles, as Appellants’ model proposed. The court correctly found that adopting Appellants’ model would have resulted in a “windfall,” which bedrock contract law does not permit. E.5112.

Accordingly, the circuit court directed damages to be calculated according to Mr. Reese's model, after adding the Retirement-Eligibles to the analysis. This required substantial work. Mr. Reese and his team spent months modeling what would have occurred had Ordinance 10-306 not applied to the Retirees and Retirement-Eligibles, focusing on issues related to the addition of the Retirement-Eligibles to the closed model and the creation of valuations for FY2011 through 2020. For purposes of calculating the variable benefit increases that would have been due to Retirees and Retirement-Eligibles in each of those years, the actuaries assigned *all* of the assets of the pre-Ordinance 10-306 Plan to the closed model, except for the Actives' employee contributions. The Actives' employee contributions which were then being held in the ASF—and only those assets—were assigned to the continuing plan under Ordinance 10-306.¹¹ Thus, all of the funds in the Retiree reserves and all of the Retirement-Eligibles' employee contributions being held in the ASF were attributed to the closed model. Even with all of these assets, the model showed conclusively that most Retirees have fared and are expected to fare better under Ordinance 10-306's guaranteed COLAs than under the previous variable benefit regime and without the ability to rely on contributions made by and for the benefit of Actives and New Hires.

Mr. Reese subsequently prepared a final report, detailing the assumptions included in the model, E.5298–5339, all of which were painstakingly reviewed with Appellants' actuaries and submitted to the court. *See* E.5340–42; E.5295–97. Appellants now ignore

¹¹ Actives are entitled to a refund of their contributions if they leave service before retirement.

this final report, making assertions about the damages model that are demonstrably incorrect. They incorrectly assert, for example, that Mr. Reese assumed no contribution to the plan in FY2011. Appellants' Br. 21. Instead, the model:

Maintain[ed] the method that was in place prior to 10-306. Normal Cost for retirement-eligible employees net of employee contributions, plus Amortization of Unfunded Actuarial Liability over open 20-year period, plus expenses.

E.5301. Using this methodology, the City's contribution for FY2011 was more than \$55 million to the closed model. *See* Ex. 2 to June 5, 2020 Revised Joint Stipulation Regarding Computation of Damages (E.5295). Similarly, Appellants imply that Mr. Reese allowed for no transfers to the reserves pursuant to § 36(d)(7). That is again incorrect. As noted in the report and shown in the worksheet attached to it in the record, transfers were "included" in the final damages model and accounted for in the same manner in which the Plan accounted for such transfers in FY2008 and 2009. *Id.*; E.5301.

Mr. Reese's model showed conclusively that most retirees have fared and are expected to fare better under Ordinance 10-306's guaranteed COLAs than under the previous variable benefit. E.5343–5470.

C. The court appropriately rejected Appellants' damages model as neither credible nor persuasive.

As the circuit court appropriately concluded, "[f]or a constellation of reasons," the model Appellants' actuaries presented was simply not credible or persuasive. E.5109–11. Appellants' "damages theory is unsupported by historic fact and is unaccompanied by persuasive explanation why the court should go along with these assumptions" and, moreover, it purported "to place the prevailing Class members in a considerably better

position than had the Plan not been modified,” which would have been a “windfall.” E.5112. The court applied the very standard Appellants baselessly claim it ignored.

The court’s credibility determinations were well-founded and entirely within its province as the finder of fact. “Of course, the credibility of the witnesses [is] a matter for the trial court, as fact finder, not the appellate court, to resolve.” *State v. Raines*, 326 Md. 582, 590–91 (1992) (reversing the Court of Special Appeals in pertinent part for “conducting its own independent credibility analysis and in rejecting the trial court’s finding of facts”). *See also Tshiani v. Tshiani*, 436 Md. 255, 269 (2013) (“The credibility of witnesses is a determination left to the trier of fact, and, on appellate review of a bench trial, we give due regard to the opportunity of the trial court to judge the credibility of the witnesses.”) (citation and internal quotation omitted).

Instead of asking for reversal of the circuit court’s credibility determinations, Appellants claim, without support, that their actuaries’ opinions were “reasonable” or “grounded in logic.” *See, e.g.,* Appellants’ Br. 27. But the answer to this contention is the same: the court found otherwise, as was its prerogative as the finder of fact. The court’s factual findings are subject to clear error review, Rule 8-131(c), and they must be sustained on appeal if supported by “any competent material evidence” in the record, *Figgins v. Cochrane*, 403 Md. 392, 409 (2008), which, as shown above, they certainly are.

The inconsistencies in the actuarial arguments Appellants present to this Court confirm the correctness of the trial court’s conclusion. At a basic level, Appellants cannot reconcile their claim in 2010 that the Plan was on the verge of failing with their

contention at trial and on appeal that, for purposes of calculating damages, everything was just fine.

Appellants complain, for example, that purported underfunding left insufficient funds in the reserves, which in turn impaired variable benefits. Appellants' Br. 17. Pages later, they assert that "[b]efore (and after) 10-306, the Trustees each year performed a calculation called the 'true-up' to ensure the retiree reserves were fully funded." *Id.* at 22. Similarly, at the same time that Appellants assert the Plan's actuary was refusing to certify the Plan given its dire condition in the fall of 2009, *id.* at 26, they contend that he had projected even with the 6.8% assumed rate of return the Plan would gradually move to fully funded status. *Id.* at 25.¹² Appellants' experts' strategy was to adopt assumptions that increased the City's contribution and, therefore, the variable benefits, regardless of the Plan's actual terms. The court correctly rejected that approach.

Appellants' emphasis on true-up at pages 22–24 of their brief only confirms this goal and the fundamental problems confronting the Plan in 2010: More and more funds needed to be shifted (on an accounting basis) from the PAF to the reserves to pay for the increasing cost of the variable benefit; as a result, the PAF's negative balance only became more negative. Appellants incorrectly assert the trial court "held" that trueing-up never occurred. Br. 22. That is a mischaracterization. Again, Appellants blame the court for their own failure of proof. The court stated that "for reasons not made clear to the

¹² Similarly, Appellants acknowledge that "[b]y far, the largest funding increase [in their damages model] results from reducing the statutory interest rate on the retiree reserves from 6.8% to 5.0%," Br. 27, but assert at the same time that "the 5.0% funding assumption only affects the VB to the extent the retiree reserves were underfunded." *Id.* at 26, n.6.

satisfaction of the court, Messrs England and Lowman’s model includes attributing those extra contributions to the retirees’ reserves ... until they are fully funded,” referring to the extra contributions resulting from Appellants’ erroneous assumptions that (i) the assumed rate of return was changed to 5.0% and (ii) hundreds of millions of dollars in tech bubble losses would be recognized more quickly than required by § 36(j). E.5110. Further, the court identified the particular portion of Mr. Lowman’s testimony that concerned it, namely that Mr. Lowman assumed, in addition to these extra contributions, all of the Actives’ own contributions would be transferred to the Retirees’ reserves for purposes of increasing variable benefits. *Id.* citing E.1241–42. Neither Article 22 nor Plan practice support such an assumption.

Appellants attempt to convert the accounting true-up into an additional funding obligation and, again, the court correctly rejected that attempt. As noted *supra*, subsections 36(d)(2)–(5) detail the mechanism for determining the City’s annual contribution to the Plan and section 36(d)(7) explains the “transfer” that is recorded on an accounting level from the PAF to the PRF when someone retires. E.2053.

Appellants incorrectly assert that “transfer” in subsection 36(d)(7) should be read as a requirement that the City make an additional *contribution* when the PAF holds less than the amount to be transferred. This interpretation is inconsistent with the other terms of subsection 36(d) and, thus, with principles of contract interpretation. Subsections 36(d)(2) through (d)(5) say nothing about adding a third component to the City’s contribution to account for transfers from the PAF to the PRF. And for good reason: To the extent the amount in the PAF is inadequate, that amount is *already* accounted for as

part of the unfunded actuarial liability described in § 36(d)(4); further, to the extent the City's total contribution is insufficient to cover the payment of benefits in the then-current year, § 36(d)(5) *already* requires this contribution to be increased to cover any deficiency. The interpretation of § 36(d)(7) that Appellants advance adds a requirement above and beyond these provisions, resulting in a conflict with the contractual terms that Maryland law does not permit. *See Cochran v. Norkunas*, 398 Md. 1, 17 (2007).

Moreover, Appellants' interpretation of § 36(d)(7) is inconsistent with the Plan's practice, including in years when the value of the PAF was less than the § 36(d)(7) transfer amount, including the two years preceding FY2010. The valuation reports for both FY2008 and 2009 reflect transfers from the PAF to the PRF related to member retirements, which left the PAF with a negative balance. E.2385, E.2430. The City's contributions for both years, however, were based on the two components specified in subsections 36(d)(2)–(d)(5). As shown in both actuarial reports for those years, the calculation of the payment against the Plan's unfunded actuarial liability *encompasses* the negative value in the PAF; there is no additional contribution required to account for the fact that the PAF has a negative book value. *See* E.2378, 2387, 2389, 2422, 2432, 2434. Appellants' argument that the damages model should have assumed some different practice is simply wrong. As the circuit court correctly held, § 36(d)(7) does not require a literal or actual transfer of assets; rather it is an end of the year "accounting adjustment." E.1421–25; E.5248–50.

Finally, Appellants take issue with the court's rejection of the conversion rate they used in calculating the actual variable benefit increase awarded to individual members.

As an initial matter, Appellants wrongly contend that the conversion rate they used was “statutory.” Br. 27–28. The statute actually directs that

[a]ny benefit increase provided under this section shall be funded on a single-premium paid-up annuity basis. For this purpose, ‘single-premium paid-up annuity basis’ has the common actuarial meaning of spreading the amount available to provide a benefit over the lifetime of an individual in the form of an annuity.

Art. 22, § 36A(e). Consistent with that directive, the Board adopted a practice of investing those funds in an immunized portfolio, which largely contains bonds. *See* E.620–24. The actuary calculated variable benefit increases using the investment advisor’s advice regarding the market rate for bonds or similar products and a corresponding discount rate. *See* E.2277, E.2316, E.2356. As a result, the variable benefit increase awarded effective January 1, 2006 was calculated using a 5.0% conversion factor, E.2277; the increase awarded effective January 1, 2007 was calculated using a 5.4% conversion factor, E.2316; and the increase awarded effective January 1, 2008, was calculated using a 5.25% conversion factor. E.2356.

In 2009, Mr. Lowman, on the unions’ behalf, questioned this practice in a letter to the Plan’s director, and asserted that the conversion rate should be 6.8%, not the lower rate that the Plan’s actuary and the investment advisors recommended. E.1266–68. The Plan’s actuary expressly disagreed. E.1270–72; E.3955–56. The circuit court properly found that the Plan actuary’s position on the proper conversion rate was correct.

The trial court’s rejection of Appellants’ counter-contractual assumptions was completely proper. As demonstrated in its decision and in the underlying record, there

was substantial and persuasive record evidence supporting its decision to reject Appellants' damages model and adopt the City's approach instead.

III. The City did not breach a contract with any category of Plan member in enacting Ordinance 10-306.

Although the circuit court's damages analysis was correct, the court should not have proceeded that far, because it should not have found liability. After correcting for Appellants' actuaries' flawed calculations, the actual benefits before and after Ordinance 10-306 are comparable, and the Ordinance was justified by countervailing equities for the public welfare in any event—including the urgent need to repair a Plan that Appellants and all other relevant actors agreed in 2010 was actuarially unsound. Under such circumstances, Maryland and federal law allow the City to make reasonable changes to the Plan. The circuit court properly found no breach as to the Actives, and this Court should find there was no breach as to the Retirees or Retirement-Eligibles.

A. Maryland and federal law provide municipalities with a reserved power to modify pension contracts in limited circumstances.

Maryland law is clear that pension contracts are not immutable. To the contrary, “[t]he rights conferred by a pension plan are contractual in nature, although under certain circumstances they may be modified by the unilateral action of the employer.” *Quesenberry v. Washington Suburban Sanitary Comm’n*, 311 Md. 417, 423 (1988) (citing with approval *City of Frederick v. Quinn*, 35 Md. App. 626, 634 (1977)); *Davis v. City of Annapolis*, 98 Md. App. 707, 715 (1994). In *Saxton v. Board of Trustees of Fire & Police Employees Retirement System of City of Baltimore*, 266 Md. 690, 694 (1972), this Court recognized that “[i]n all states municipal corporations may make reasonable

modifications of a pension plan at any time before the happening of the defined contingencies[.]”

In *Saxton*, the City Code had provided a special death benefit for the widow of any firefighter who died as a result of injuries that he suffered in service. 266 Md. at 693. Later, however, the City changed the Code to provide a benefit only if the firefighter remained “in service” at the time of his death. *Id.* at 692. Saxton died as a result of injuries suffered in service, but he had retired, and hence was no longer “in service,” at the time of his death. *Id.* The Court determined that Mrs. Saxton was not entitled to the benefit of the more liberal earlier plan. Reasoning that “[t]he right to a pension depends upon the controlling statutory provisions,” *id.* at 694, and that “the claimant must satisfactorily perform and meet all conditions precedent,” *id.*, the Court upheld the conclusion that Mrs. Saxton was not entitled to a special death benefit under the operative version of the statute. *See id.* “The ground rules here, to put it quite simply, were changed prior to the date when Lieut. Saxton sustained his injuries.” *Id.* The Court found nothing objectionable in the City’s decision to change the conditions precedent to receiving a benefit before Lieut. Saxton met the condition.

The Court of Special Appeals followed *Saxton* in *Quinn* and rejected the “rigid” position that a municipality could not modify or repeal the provisions of a preexisting pension plan. 35 Md. App. at 628. The City of Frederick originally adopted a noncontributory pension plan for its police officers but replaced it with one that required employee contributions. *Id.* A number of older officers sued for breach of contract, claiming they were entitled to benefits under the noncontributory plan the city had

repealed. In vacating a judgment in the officers' favor, the court rejected what it called the "strict contract theory" that pension rights vest upon employment and are thereafter "immune from prospective legislative impairment," *id.* at 629, which is the very theory Appellants have advanced in this case. Instead, the court determined:

The contractual or vested rights of the employee in Maryland are subject to a reserved legislative power to make reasonable modifications in the plan, or indeed to modify benefits if there is a simultaneous offsetting new benefit or liberalized qualifying condition. Each case where a changed plan is substituted must be analyzed on its record to determine whether the change was reasonably intended to preserve the integrity of the pension system by enhancing its actuarial soundness, as a reasonable change promoting a paramount interest of the State without serious detriment to the employee. In short, the employee must have available substantially the program he bargained for and any diminution thereof must be balanced by other benefits or justified by countervailing equities for the public's welfare.

Id. at 630–31. The *Quinn* court emphasized that the "pension plan is not immutable and the government-employer need not keep its provisions precisely intact." *Id.* at 630. The court found the contrary position "bemusing"—the "picture of a citizen whose contractual strength is so formidable that the government which employs him can neither terminate nor vary the terms of the employment contract ... Such rigid interpretation is the inevitable pitfall of seeking pigeonholes with labels as substitutes for logic and common sense." *Id.*

In this case, the circuit court appropriately followed *Quinn* as binding authority, but the reasoning supporting *Quinn* is sensible policy on its own merit and is consistent

with federal Contract Clause¹³ jurisprudence, which developed starting around the same time as *Quinn*. A number of later federal cases also have concluded that Maryland and federal law give governmental employers a “reserved power” to make reasonable prospective changes. *Maryland State Teachers Ass’n v. Hughes*, 594 F. Supp. 1353, 1362 (D. Md. 1984) (Miller, J.), *aff’d*, No. 84-2213 (4th Cir. Dec. 5, 1985), *cert. denied*, 475 U.S. 1140 (1986); *Baker v. Baltimore County*, 487 F. Supp. 461, 467–71 (D. Md. 1980) (Kaufman, J.). *See also Howell v. Anne Arundel County*, 14 F. Supp. 2d 752, 756 (D. Md. 1998) (Davis, J.) (rejecting the premise that upon the commencement of employment there is a constitutional barrier to any prospective modification to a public pension plan). This follows the federal Contract Clause standard that states may modify even their own contracts where “reasonable and necessary to serve an important public purpose.” *U.S. Tr. Co. of New York v. New Jersey*, 431 U.S. 1, 25 (1977). *See also Balt. Teachers Union, Am. Fed’n of Teachers Local 340, AFL-CIO v. Mayor & City Council of Baltimore*, 6 F.3d 1012, 1022 (4th Cir. 1993) (holding reduction in active employees’ salaries was a permissible impairment of contract). Indeed, in *Quinn* the court remanded “for the trial judge to obtain and review the substituted plan to determine factually whether it was either necessary or reasonable when substituted.” 35 Md. App. at 634. Thus, although the circuit court here was following *Quinn*, its factual findings comport with federal law as well, which also would compel judgment for the City.

Federal and Maryland courts have recognized that pension contracts are simply different from other municipal obligations, and have deemed the notion that “a contract

¹³ U.S. Const., Art. I, § 10, cl. 1.

of this type is irrevocable” to be “preposterous[.]” *Hughes*, 594 F. Supp. at 1362. A contract dealing with pension plans or employee compensation “is not one as to which one legislature can bind subsequent legislatures for work and services to be performed by State employees ... *in the future.*” *Id.* (italics in original). Thus, “the State has reserved the power to amend or alter pension contracts, and that reserved power is part of each pension plan which a legislature enacts, whether explicitly or not.” *Id.* (internal quotations omitted); *see also Baker*, 487 F. Supp. at 468 (county pension plan); *Davis*, 98 Md. App. at 716–18 (municipal pension plan). In *Hughes*, Judge Miller extensively analyzed changes made to two state pension systems, and held the changes violated neither the Contract Clause nor the state reserved powers doctrine under *Quinn*. 594 F. Supp. at 1371–72.

Applying either the Contract Clause or the similar *Quinn* framework, courts have repeatedly rejected the argument that public pension rights become irrevocably vested upon employment and that a public employer has no power to modify its pension plan to an employee’s detriment. Public employers may exercise their reserved legislative powers to increase contribution levels, *Baker*, 487 F. Supp. at 469; *see Quinn*, 35 Md. App. at 629; extend retirement dates, *Baker*, 487 F. Supp. at 469; modify other benefits, including cost of living increases, before members become retirement-eligible, *Howell*, 14 F. Supp. 2d at 754; and alter the conditions precedent for other benefits at any time before the condition occurs, *Saxton*, 266 Md. at 694, without breaking contractual obligations to their employees.

The changes made in Ordinance 10-306 and the circumstances under which they were made are entirely consistent with the principles enunciated in *Saxton*, *Quinn*, and the federal cases cited above, which have worked well as established Maryland law for nearly 50 years.

B. *Harford County v. Town of Bel Air* is irrelevant.

Appellants rely on *Harford County v. Town of Bel Air*, 348 Md. 363 (1998), for the proposition that “municipal contracts are not subject to modification based on the public interest,” Appellants’ Br. 31, which is not at all what that decision stands for.

Harford County concerned a county or municipality’s lack of immunity from suit in contract actions, 348 Md. at 372–81, which the City has never asserted as a defense, and does not mention the reserved powers doctrine, much less overrule it. The opinion casts no doubt on *Quinn*, which the Court had cited without any sign of disapproval in *Bd. of Trustees of Employees’ Ret. Sys. of City of Baltimore v. Mayor & City Council*, 317 Md. 72, 100 (1989), and with apparent approval in *Quesenberry*, 311 Md. at 423. To the contrary, the Court expressly disapproved of two other Court of Special Appeals decisions, without mentioning *Quinn*. 348 Md. at 380 n.8. The type of contracts at issue (waste disposal) or discussed (construction) in *Harford County* are fundamentally different from pension plans that purport to tie a municipality’s hands for decades to come—depending on life expectancies, 70 years or more from the first day of each member’s employment (under Appellants’ theory)—and which threaten its ability to provide core services to its citizens. Given their “multifaceted” nature, as they are based on “actuarial assumptions which may or may not turn out to be accurate,” pensions are

simply different from other government contracts. *Hughes*, 594 F. Supp. at 1371. Finally, Appellants' suggestion that the City enacted Ordinance 10-306 because it believed "in the light of changed conditions, that [it had] made a bad deal," Appellants' Br. 31, is directly contrary to the circuit court's factual findings. E.5057-58.

C. There was no breach of contract because Ordinance 10-306 made only prospective changes and, even if retrospective, provided comparable benefits or was justified by countervailing equities for the public welfare.

Federal and Maryland law permit prospective modifications of pension and other governmental contracts. If a law has only "prospective effect," it is valid under the Contract Clause and the analysis ends there. *Hughes*, 594 F. Supp. at 1360. Ordinance 10-306 was entirely prospective, and the court erred in finding otherwise as to the Retirees and Retirement-Eligibles, as well as in holding that the conclusion the changes were retrospective ended the inquiry. Under the Contract Clause and Maryland law, if a change is deemed "retrospective," that only means that the analysis must proceed to whether the change is reasonable and necessary to serve an important public purpose, *id.* at 1361, or, in the words of *Quinn*, "balanced by other benefits or justified by countervailing equities for the public's welfare." 35 Md. App. at 631. The circuit court was absolutely correct in finding the changes Ordinance 10-306 made were reasonable and justified and properly found no breach of contract as to the Actives. But, based on the same findings the court also should have found no breach as to the Retirees and Retirement-Eligibles. This Court should hold that the City did not breach a contract with any Plan member.

1. Ordinance 10-306 was entirely prospective, and the court should have found no liability as to any Plan members.

“In all states municipal corporations may make reasonable modifications of a pension plan at any time before the happening of the defined contingencies.” *Saxton*, 266 Md. at 694. As this Court explained regarding statutory changes more generally, a legislative body may act prospectively by repealing rights that have not vested and, “to be vested, a right must be more than a mere expectation based on the anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand.” *Dabbs v. Anne Arundel Cty.*, 458 Md. 331, 364 (2018).

Under this definition, all of the changes affecting the Actives and the modification of *future* variable benefit increases for Retirees and Retirement-Eligibles were prospective. Again, Ordinance 10-306 had no effect on basic benefits or previously awarded variable benefit raises.

a. Any pension changes for Actives were clearly prospective.

Under a Contract Clause analysis, Actives, who had not yet qualified for retirement (and who might never attain the conditions precedent to retirement), do not even have standing to complain about any change in the conditions or terms of particular retirement benefits. *See Howell*, 14 F. Supp. 2d at 755. The federal district court and the court below both properly rejected Appellants’ argument that § 42 somehow creates an irrevocable contract with every member on the first day of employment that can never be changed, which is really the strict contract theory rejected in *Quinn*. 35 Md. App. at 630.

Regulation of public employee compensation, including pensions, is not a matter “as to which one legislature can bind subsequent legislatures for work and services to be performed by State employees and teachers *in the future*,” and interpreting such a contract as “irrevocable” would render it void *ab initio*. *Hughes*, 594 F. Supp. at 1362 (emphasis in original). *See also Montgomery County v. Bigelow*, 196 Md. 413, 423 (1950) (“The legislature cannot by statute ‘preclude’ the repeal of any statute by a subsequent legislature.”).

Recognizing this, Appellants do not challenge the circuit court’s determination that Ordinance 10-306 made prospective changes for the actives. Instead, they argue only that the changes “diminished or impaired” their benefits under § 42. But, if the changes were prospective the City was empowered to make them regardless of whether they constituted an impairment and, as set forth below, there was no impairment.

b. Forward-looking replacement of the uncertain variable benefit with a guaranteed COLA also was a prospective change for Retirees and Retirement-Eligibles.

The only change made to Retirees’ and Retirement-Eligibles’ pensions was a change in the way future COLAs were to be calculated. Ordinance 10-306 prospectively replaced the variable benefit—which was not guaranteed and which could potentially be awarded (or not) in the future based on stock market performance—with a guaranteed tiered COLA based on age. Basic benefits and previously awarded variable benefits were not affected for Retirees and Retirement-Eligibles. Future variable benefits were entirely contingent on market performance and were not vested rights. In this Court’s words in *Saxton*, the “defined contingencies”—the declaration and calculation of a variable benefit

in the future—had not yet happened. 266 Md. at 694. Article 22 makes clear that there is nothing “guaranteed” about future variable benefits, and that, notwithstanding §§ 37 and 42, “any benefit increase provided under this section is not and does not become an obligation of the City.” § 36A(e)(ii). Accordingly, the circuit court erred in finding the modification for future increases was a retrospective change, and the court should have found there was no breach of contract.

Maryland counties and municipalities have the prerogative to legislatively modify or even eliminate rights that are contingent and not yet vested. *Cf. Dabbs*, 458 Md. at 367–68 (upholding county’s repeal of right to refunds of development impact fees paid to the county which the county had not yet declared payable and which would only be payable if the county had not spent the money within six years). Future variable benefits were entirely dependent on future investment performance—which, unlike the spending in *Dabbs*, is entirely outside the City’s control. As noted, courts have recognized an even greater need for flexibility to address changed circumstances in the pension context in particular. *Hughes*, 594 F. Supp. at 1360, 1371. “A pension system need not be actuarially unsound before a legislature may move to change the system and the benefits it provides its members,” because a contrary rule would “jeopardize the pension benefits of current and future retirees, ... and would impose an irrational limitation on the legislature’s police power.” *Id.* at 1368.

As Ordinance 10-306 had no effect on any benefit that had “vested” for any Retiree or Retirement-Eligible—it affected only future potential variable benefits—it was prospective. In any event, as noted above, under the Contract Clause or the reserved

powers doctrine, the Ordinance would be valid even if retrospective because it was both reasonable and necessary and balanced by comparable benefits or justified by countervailing equities for the public good. This is what the *Quinn* court meant when it stated that even the “contractual or vested rights of the employee” are subject to the reserved legislative power and remanded for consideration of whether the plan it deemed as “retroactively divesting the interest of the employees” was “either necessary or reasonable when substituted.” 35 Md. App. at 627, 630–31, 634.

Given the changes’ prospective nature, the circuit court’s findings regarding the comparability of the variable benefit and the tiered COLA, the need to reform the Plan to resolve is actuarial unsoundness, and the City’s multiple fiscal crises, the Court should have found no breach of contract and no liability as to the Retirees and Retirement-Eligibles.

2. Ordinance 10-306 left Actives with the substantial equivalent of the benefits they had before.

As is true with Appellants’ other assertions, their argument as to whether the City breached a contract with the Actives bears little resemblance to the evidence and argument they presented at trial, because their trial strategy failed. Appellants’ trial theories—that, notwithstanding the sharp political downsides of angering the public safety unions, the City seized on the 2010 fiscal crisis as an “opportunity” to reduce benefits, that the City’s real motivation was to safeguard its bond rating, or that the City had somehow created the crisis—were ultimately confirmed to be speculation without any evidentiary foundation, and the court properly rejected them. E.5057–62. Instead,

Appellants now rely on present value calculations in their actuaries' second report that were plagued by the same inflated funding assumptions as their other calculations. Appellants' Br. 34 (citing E.4125), and which the circuit court properly found unreliable. E.5060–67. Appellants wrongly ask this Court to accept their simplistic comparison of a flawed calculation of raw expected pension liabilities pre- and post-Ordinance 10-306 without considering the differences in benefits or improvements in long-term actuarial soundness that Ordinance 10-306 actually achieved.

- a. Appellants' actuaries' attempt to present the variable benefit as having value for Actives relied on a 4.3% interest assumption that was nowhere close to the 6.8% assumption Article 22 actually prescribed.**

To prove a purported diminution in value of benefits for Actives, Appellants' actuaries asked the Plan's actuary (Cheiron) to calculate the net present value of benefits before and after the Ordinance's enactment. The assumptions they asked Cheiron to assume for the variable benefit (namely, the regular interest rate for post-retirement assets) for the pre-10-306 scenario, however, was 4.3%—nowhere close to the 6.8% assumption prescribed in Article 22 at § 30(9). E.887; E.1280–81. When asked why they chose that assumption, Appellants' actuary Mr. England testified that “[w]e’re suggesting that the actuary at some point would likely suggest that. The 4.3 we used because that’s what we expect the reality to be *without regard* to what the assumption is that’s in the plan.” E.890 (emphasis added). Appellants' actuary Mr. Lowman was more blunt: “I’m trying to value the benefits they were offered. So I’m not sure why I would use the discount rate in the Code.” E.1284. He confirmed that he “rejected” the assumed rate of

interest in Article 22. E.1285.

This was no small matter. The assumed rate of return directly affects the Plan's funding level, which in turn affects the earnings available for variable benefits. *See, e.g.*, E.875, E.917. And the purported difference in value between the variable benefit and the age-based COLA constitutes 85% of the diminution in value that Appellants alleged. E.1546–47. The circuit court properly rejected Appellants' positions as speculative conclusions not supported by the evidence. E.5060–62.

b. Ordinance 10-306's other changes had minimal effects.

The remainder of the changes in Ordinance 10-306 had either minimal or no effect on the named Plaintiffs or the average Plan member, as the circuit court correctly found. E.5067–73. By Appellants' actuaries' own estimate, 85% of the purported loss in value relates to *future increases* in benefits, which demonstrates the other changes the City Council enacted were minimal. As the court determined in multiple factual findings, E.5067–72, the Ordinance made no change to accrual rates, and changes to service requirements and the method of calculating average final compensation (“AFC”) had no effect or a very small effect on the average Plan member. *Id.*

Fire Captain Lake, the Plaintiff who was not grandfathered, testified that he has no claim for the change in AFC calculation because he expects to “stagnate as a captain” with no appreciable change in salary. E.415–16.¹⁴ Although Captain Lake had plans to

¹⁴ As Mr. Reese calculated, even assuming annual pay increases, for the average Active, the difference in value because of the increased AFC period is about 2%, E.1547–48, and that assumes the City is able to grant raises.

retire upon reaching twenty years of service,¹⁵ he agreed that he was not typical in this respect and that, to his knowledge, as of June 2010, most firefighters stayed in active service for about 28 years to allow for full participation in DROP.¹⁶ E.413–14. Indeed, 59% of retirees retire with at least 25 years of service. E.1556–57; E.4336–37. And, as a result of retiring after 25 years, Captain Lake’s basic pension benefit will include an extra 10% of his AFC (for a total of 60%). E.414–15.

Police Sergeant Cherry, who was in the “grandfathered” group of Actives, has no claim at all aside from the variable benefit. As a grandfathered member, Sergeant Cherry could have left after 20 years with a full pension, but like most members he chose not to do so. E.457–59.

In the face of these facts, Appellants’ actuaries presented “illustrations” of the potential impact of the statute. But those illustrations assumed that an Active would retire at the worst possible time—maximizing his or her potential damages as opposed to mitigating them. E.1224–25. Such illustrations have no application in a breach of contract case and the court properly disregarded them.

As to increased contribution levels, even the unions’ actuary, Mr. Lowman, told the City Council: “Raise employee contributions. *We were the first one to suggest that.*” E.2851 (emphasis added). Indeed, the unions’ written “six-point plan” called for

¹⁵ The length of service requirement had decreased from 25 years to 22 years to 20 years before Ordinance 10-306, as a result of union lobbying. E.590.

¹⁶ The Deferred Retirement Option Program allows retirement-eligible members to continue working for salary at the same time the City deposits the pension they would have received into a DROP account. E.5004–05. This has resulted in members routinely receiving lump sum payments from the City in the range of \$100,000 or more. E.591.

elimination of the variable benefit as well as an increase in employee contributions. E.2931. Captain Lake was aware that the unions proposed increasing contributions, and he was willing to do that. E.416. Despite Appellants' attempts at trial to dismiss the unions' proposed solutions to the pension funding crisis as an unconsummated "deal," the unions' proposals indicate even they recognized that increased employee contributions were reasonable under the circumstances. Courts have upheld legislation increasing employee contribution requirements, especially where, as here, they are balanced by other changes increasing a plan's actuarial soundness. *Baker*, 487 F. Supp. at 469.

3. Any reduction or diminution of benefits was balanced by comparable other benefits "or justified by countervailing equities for the public welfare."

Everyone agreed in 2010 that the Plan was actuarially unsound and "needed to be fixed." E.5028–30. The circuit court had little choice but to find "the Plan was actuarially unsound" and "the Variable Benefit was unsustainable as a method of providing post-retirement benefit increases." E.5031. The court properly found Ordinance 10-306 was "reasonably intended to preserve the integrity of the pension system by enhancing its actuarial soundness." E.5057–67. The urgent need to "fix" the Plan and the City's dire financial straits in 2010 provided more than sufficient justification for the modifications that were made.

Before Ordinance 10-306, the City's actual and projected Plan contributions were spiraling out of control. Although nationally the average ratio of active to retired employees in a pension plan was about two to one, the Plan had more Retirees than Actives and, without sufficiently strong inflows of contributions from Actives, the system

faced real strain, especially in the face of rising benefit payments to Retirees. E.1724–25; E.1729–30; E.4672–76. While employee contributions remained “flat” at 6% of pay, the City’s contributions had grown from under 20% of payroll in FY2005 to over 30% by FY2010 and, if the assumed rate of return had been lowered to 5% and the variable benefit were kept in place, the City’s contribution was poised to leap to nearly 60% of covered payroll in FY2011. E.1729; E.4674. In dollars, this meant the City’s contribution would jump from \$80 million in 2010 to over \$160 million in FY2011 if the City Council adopted the recommended 5% assumption and made no other changes. E.1731. This problem was structural and was projected to grow to a significant degree for at least five years before it would begin to flatten out to a “growth rate more commensurate with other costs and revenues.” E.1731–32; E.4675. The City was already at the point of cutting basic and core services, as stipulated, E.54, and “would have had to cut deeper right away ... very likely back into the public safety, police and fire type services,” if no changes were made. E.1780.

The City was at an inflection point in terms of its long-term future. While the population of the surrounding counties had increased, the City’s population had declined by one third since the 1960s, resulting in a weaker tax base, tougher economic competition with the surrounding suburbs, and higher concentrations of poverty and blight. E.1738. City residents already had the highest tax burden in the state. E.1748–50; E.4683–84.

Raising property tax rates was not the answer, because “the City’s tax rates on a comparative basis were so high”—more than twice that of Baltimore County—“that you

would risk some adverse if not even perverse consequences from further increasing those extraordinarily high rates.” E.1758–60; E.4684–88. As a relatively poor urban center, Baltimore has “bigger problems” than other communities but fewer resources. E.1777. Given the immediate and long term realities of shrinking revenues, exceedingly low tax capacity, and the need to remain competitive with surrounding jurisdictions, coupled with Baltimore’s aging infrastructure, the additional service cuts the City faced in the spring of 2010 were “just not a sustainable picture.” E.1770.

Baltimore had reached a crossroads and was nearing the point of “service insolvency.” E.1930–32. A city need not wait for bankruptcy or receivership, or for a pension plan to become actuarially unsound, before taking action. *Hughes*, 594 F. Supp. at 1368–69. On this record, there is no serious question that the City could not raise taxes beyond the \$50 million it raised in 2010, nor make additional cuts in core services to account for the demands of the Plan. To avoid further inroads into its ability to function as a City—to protect the public welfare—the City modified the Plan in a manner that affected Appellants’ benefits as little as possible. This is precisely the sort of change that Maryland law allows as part of the City’s reserved legislative powers. Indeed, one legislature cannot tie the hands of future legislatures in dealing with new challenges. *U.S. Tr.*, 431 U.S. at 23; *Hughes*, 594 F. Supp. at 1360, 1362. Unlike private businesses, states and municipalities are “vested with the responsibility of protecting the health, safety, and welfare of [their] citizens,” *United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 342–43 (2007), and they must have the freedom to exercise that role.

Ordinance 10-306 was more than justified by countervailing equities for the public welfare or, alternatively, was reasonable and necessary to serve an important public purpose. The circuit court should have found no liability as to any Plan member.

Conclusion

This Court should affirm the circuit court's decision that the City has no liability to the Actives. This Court should reverse the ruling that the City is liable to the Retirees and Retirement-Eligibles, but the Court should not disturb the circuit court's decision regarding the method of determining any damages to be awarded those Plan members in the event liability is upheld.

Respectfully submitted,

Dated: November 16, 2020

/s/ James P. Ulwick

James P. Ulwick (CPF No. 7701010016)

Jean E. Lewis (CPF No. 0002070001)

Louis P. Malick (CPF No. 1112140197)

KRAMON & GRAHAM, P.A.

One South Street, Suite 2600

Baltimore, Maryland 21202

(410) 752-6030

(410) 539-1269 (facsimile)

julwick@kg-law.com

jlewis@kg-law.com

lmalick@kg-law.com

*Counsel for Appellee/Cross-Appellant
Mayor and City Council of Baltimore*

Certification of Word Count and Compliance With Rule 8-112

1. This brief contains 12,980 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ James P. Ulwick

James P. Ulwick (CPF No. 7701010016)

Certificate of Service

I HEREBY CERTIFY that on November 16, 2020, this Brief of Appellee/Cross-Appellant Mayor and City Council of Baltimore was filed and served via the Court's MDEC system and that copies of the Brief were sent by electronic mail on November 16, 2020, and two copies of the Brief will be sent by U.S. Mail on November 17, 2020, to the following:

Charles O. Monk, II, Esquire
Paul M. Heylman, Esquire
Geoffrey M. Gamble, Esquire
Kayleigh T. Keilty, Esquire
Saul Ewing Arnstein & Lehr LLP
500 East Pratt Street, 8th Floor
Baltimore, Maryland 21202

Counsel for Appellants Robert F. Cherry, Jr., Thomas S. Lake, Robert J. Sledgeski, Christopher Houser, Charles Williams, Baltimore City Fraternal Order of Police, Lodge #3, Inc., and Baltimore City Firefighters' IAAF, Local # 734

and

Dwight W. Stone, II, Esquire
Miles & Stockbridge
100 Light Street
Baltimore, Maryland 21202

Robert D. Klausner, Esquire
Klausner, Kaufman, Jensen & Levinson
7080 NW 4th Street
Plantation, Florida 33317

Counsel for Appellants Baltimore Fire Officers, Local 964, International Association of Firefighters

/s/ James P. Ulwick

James P. Ulwick (CPF No. 7701010016)

Appendix

**Baltimore City Code, Article 22, Sections 29 through 49
(as of December 31, 2009)**

ARTICLE 22
RETIREMENT SYSTEMS

(Current through December 31, 2009)

Published by
BALTIMORE CITY DEPARTMENT OF LEGISLATIVE REFERENCE
Avery Aisenstark, Director
2009

Copyright © 2009
The Mayor and City Council of Baltimore
Department of Legislative Reference
All rights reserved

For information or to order – call, write, or fax:

Department of Legislative Reference
626 City Hall
Baltimore, Maryland 21202
Tel: (410) 396-4730 ☒ Fax: (410) 396-8483

TABLE OF SUBTITLES

Employees' Retirement System
Elected Officials' Retirement System
Fire and Police Employees' Retirement System
Contractual Provisions
Investment Advisors
Police Department, Special Fund
General Provisions

TABLE OF SECTIONS

EMPLOYEES' RETIREMENT SYSTEM

- § 1. Definitions.
- § 2. Name and date operative.
- § 3. Membership.
- § 4. Service creditable.
- § 5. Administration; Board of Trustees.
- § 6. Benefits.
- § 7. Management of funds.
- § 8. Method of financing.
- § 9. Class C membership.
- § 10. Guaranty.
- § 11. Exemption from assignment and execution.
- § 12. Protection against fraud; validating overpayments.
- § 13. Limitation of other statutes.
- § 14. Social Security Act.
- § 15. *{Vacant}*
- § 16. Additional opportunity for Class A and Class B members to obtain credit.
- § 17. Post-retirement benefit increases to certain retirees and beneficiaries.
- § 17.1. Post-retirement benefit increases on or after July 1, 2007.

ELECTED OFFICIALS' RETIREMENT SYSTEM

- § 17A. Definitions.
- § 18. Name and date operative.
- § 19. Membership.
- § 20. Military service creditable.
- § 21. Board of Trustees.
- § 22. Benefits.
- § 23. Management of Funds.
- § 24. Method of financing.
- § 25. Exemption from assignment and execution.
- §§ 26 - 28. *{Vacant}*

FIRE AND POLICE EMPLOYEES' RETIREMENT SYSTEM

- § 29. Name and date operative.
- § 30. Definitions.
- § 31. Membership.
- § 32. Service creditable.
- § 33. Administration.
- § 34. Benefits.
- § 35. Management of Funds.
- § 36. Method of financing.
- § 36A. Post-retirement benefit increases to certain retirees and beneficiaries.
- § 36B. Deferred Retirement Option Plan.
- § 36C. Deferred Retirement Option Plan 2.
- § 37. Guaranty.
- § 38. Exemption from assignment and execution.
- § 39. Protection against fraud; validating overpayments.
- § 40. Limitation of other statutes.
- § 41. Hearings.
- § 41A. Subpoena powers.

CONTRACTUAL PROVISIONS

- § 42. Contractual relationship.

INVESTMENT ADVISORS

- § 43. Employment; duties.

POLICE DEPARTMENT, SPECIAL FUND

- § 44. Widows' benefits.
- § 45. Military service credit.

GENERAL PROVISIONS

- § 46. Scope of subtitle.
- § 47. Definitions.
- § 48. Contemporaneous membership in systems.

FIRE AND POLICE EMPLOYEES' RETIREMENT SYSTEM**§ 29. Name and date operative.**

The "Fire and Police Employees' Retirement System of the City of Baltimore", hereinafter called the "Retirement System", is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances and death benefits under the provisions of this subtitle for such officers and employees of the Department of Aviation, of the Police Department and of the Fire Department of Baltimore City as are included in the membership as provided in § 30 of this subtitle. The retirement system so created shall begin operation as of July 1, 1962.

(City Code, 1966, Art. 22, §29; 1976/83, art. 22, §29.) (Ord. 62-1285.)

§ 30. Definitions.

In this subtitle, unless a different meaning is plainly required by the context, the following words and phrases have the meanings indicated:

- (1) "Retirement System" shall mean the Fire and Police Employees' Retirement System of the City of Baltimore as defined in § 29 of this subtitle.
- (2) (a) (1) "Employee" means any officer or employee of the Police Department or Fire Department of Baltimore City, except as otherwise provided in this definition, whose compensation is paid by the Mayor and City Council of Baltimore, by whatever authority appointed.
- (2) "Employee" does not include any officer or employee of these departments for whose benefit the Mayor and City Council of Baltimore makes contributions under the Social Security Act of 1935.
- (b) However, any school crossing guard who was a member of this system on July 1, 1976, shall remain a member of this system as long as said member continues to be employed by the City of Baltimore in a job performing duties substantially similar to those previously performed by school crossing guards employed by the Baltimore City Police Department. Furthermore, on or before January 1, 1980, said member may voluntarily elect to transfer his or her membership to the Employees' Retirement System of the City of Baltimore. Notwithstanding anything to the contrary contained in paragraph (2) of this section, said school crossing guards who remain as members of this system, shall not be disqualified from membership in this system by subsequently being required to make contributions to the Social Security System.
- (c) In addition, any Police Department meter monitors or linemen who were members of this system on February 9, 1978, shall remain members of this system as long as said members continue to be employed by the City of Baltimore in a job performing duties performed by meter monitors or linemen employed by the Baltimore City Police Department. Furthermore, on or before May 3, 1980, said members may voluntarily elect to transfer their membership to the Employees' Retirement System of the City of Baltimore. Notwithstanding anything to the contrary contained in paragraph (2) of this section, said Police Department meter monitors or linemen who remain as members of this system shall not be disqualified from membership in this system by subsequently being required to make contributions to the Social Security System.

- (d) In all cases of doubt, the Board of Trustees shall decide who is an employee within the meaning of this subtitle.
- (e) (1) “Employee” includes the following personnel:
- (A) all persons who:
 - (i) on or before July 25, 1972, were employed as uniformed firefighters or uniformed police officers by the former City of Baltimore Department of Aviation; and
 - (ii) have worked without interruption for, and continue to be employed by, the State of Maryland in the capacity of uniformed firefighters at Baltimore-Washington International Airport or as uniformed police officers;
 - (B) all persons employed as uniformed police officers:
 - (i) who became employees of the Maryland Aviation Administration Police Force and members of this system on or after July 26, 1972, and on or before June 30, 1977; and
 - (ii) who have worked without interruption for, and continue to be employed by, the State of Maryland in the capacity of uniformed police officers; and
 - (C) all persons employed as uniformed firefighters:
 - (i) who became employees of the State Aviation Administration or Maryland Aviation Administration Fire Rescue Service and members of this system on or after July 26, 1972, and on or before September 30, 1993; and
 - (ii) who have worked without interruption for, and continue to be employed by, the State of Maryland as uniformed firefighters at Baltimore-Washington International Airport.
- (2) “Employee” does not include any police or fire personnel of the State of Maryland for whose benefit the State of Maryland makes contributions under the Social Security Act of 1935.
- (3) “Member” shall mean any person included in the membership of the system as provided in § 31 of this subtitle.
- (4) “Board of Trustees” shall mean the Board provided in § 33 of this subtitle to administer the retirement system.
- (5) “Panel of hearing examiners” shall mean the panel of hearing examiners provided for in § 33(l) of this subtitle, to hear claims involving ordinary disability, special disability, special death, and any related matters.

- (6) "Service" shall mean service as an employee as described in paragraph (2) of this subsection, and paid for by the City of Baltimore, while a member of the Fire and Police Employees' Retirement System; and any service purchased, repurchased or transferred, by appropriate deposit or redeposit of funds plus interest, to cover such periods, or any service credited under any other section of this subtitle and under Maryland State Law.
- (7) "Prior Service" shall mean service rendered prior to January 1, 1926, for which credit is allowable under § 32(a) of this subtitle.
- (8) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance or other benefit as provided by this subtitle.
- (9) "Regular interest" for the Annuity Savings Fund shall mean interest at 5½% per annum compounded annually. "Regular interest" for the Annuity Reserve Fund and the Pension Reserve Fund shall mean interest at 7% per annum compounded annually. For valuation purposes, regular interest shall mean 8¼% prior to commencement of benefit payments and 6-8/10% after commencement of benefit payments. "Regular interest" for the purposes of determining actuarial equivalents shall mean interest at 5% per annum compounded annually.
- (10) "Accumulated contributions" shall mean the sum of all the amount deducted from the compensation of a member and credited to his individual account in the Annuity Savings Fund together with regular interest thereon as provided in §§ 35 and 36 of this subtitle.
- (11) "Average final compensation" shall mean the average annual compensation, pay or salary earnable by a member for the 3 consecutive years of service as an employee during which his earnable compensation was highest, or if he had less than 3 years of service then the average annual compensation, pay or salary earnable by him during his total years of service. Provided, however, for members who retire on or after July 1, 1986, and before July 1, 1988, "average final compensation" shall mean the average annual compensation, pay or salary earnable by a member for the 2 consecutive years of service as an employee during which his earnable compensation was highest, provided the member had at least 2 years of service in that grade, or if he had less than 2 years of service then the average annual compensation, pay or salary earnable by him during his actual year(s) of service. Provided further, however, for members who retire on or after July 1, 1988, "average final compensation" shall mean the average annual compensation, pay or salary earnable by a member for the 18 consecutive months of service as an employee during which his earnable compensation was highest.

In no event shall the retirement benefits of a member, as a result of the implementation of the definition of "average final compensation" enacted by Ordinance 88-123, effective July 1, 1988, be less than the benefit said member would have been entitled to prior to July 1, 1988. In no event shall the retirement benefits of a member, as a result of the implementation of the definition of "average final compensation" enacted by Ordinance 91-086, effective July 1, 1991, be less than the benefit said member would have been entitled to prior to July 1, 1991. "Earnable" shall include all usual compensation, in whatever manner paid, such as lodging, subsistence, etc. In cases where compensation is not all paid in money, the Board of Trustees shall fix the value of that part of the compensation not paid in money.

- (12) "Annuity" shall mean payments for life derived from the "accumulated contributions" of a member.
- (13) "Pensions" shall mean payments for life derived from money provided by the City of Baltimore.

- (13a) All retirement allowances or other benefits which are calculated on an annual basis shall be payable for each day in a year in such periodic installments as may be determined from time to time by the Board of Estimates to be in conformance with prevailing payment practices for active municipal employees and such daily allowances shall be computed by dividing the annual allowance by 365.
- (14) “Retirement” shall mean withdrawal from active service with a retirement allowance granted under the provisions of this subtitle.
- (15) “Retirement allowance” shall mean the sum of “annuity” and the “pension”.
- (16) “Annuity reserve” shall mean the present value of all payments to be made on account of any annuity or benefit in lieu of any annuity computed upon the basis of such mortality tables as shall be adopted by the Board of Trustees and regular interest.
- (17) “Pension reserve” shall mean the present value of all payments to be made on account of any pension or benefit in lieu of any pension computed upon the basis of such mortality tables, as shall be adopted by the Board of Trustees, and regular interest.
- (18) “Actuarial equivalent”, for purposes of determining the amount of an optional retirement benefit under this subtitle, means a benefit of equivalent value when calculated using regular interest for actuarial equivalent purposes and the UP-84 mortality table set forward 1 year, except that in the case of disability retirements under this subtitle, the table is set forward 7 years.
- (19) “Break in service” is the period of time between the date when a member terminates employment covered by a former system, as defined in § 32(i)(1)(B) or § 32(k)(1)(ii) of this subtitle, and the date the member begins City employment in a position covered by this System.
(City Code, 1966, art. 22, §30; 1976/83, art. 22, §30.) (Ord. 62-1285; Ord. 64-425; Ord. 70-874; Ord. 72-237; Ord. 73-420; Ord. 74-552; Ord. 76-186; Ord. 77-378; Ord. 79-973; Ord. 79-1022; Ord. 79-1126; Ord. 86-731; Ord. 86-762; Ord. 86-766; Ord. 87-1156; Ord. 88-005; Ord. 88-123; Ord. 91-786; Ord. 95-466; Ord. 98-290A; Ord. 00-049; Ord. 03-576.)

§ 31. Membership.

The membership in the Retirement System shall consist of the following:

- (1) (a) Any person who becomes an employee as herein defined after the date of establishment shall become a member of the Retirement System as a condition of employment.
- (b) A member may not make contributions to, receive any pension or retirement allowance from, or accrue any service credit in any other pension or retirement system of the City of Baltimore while at the same time accruing service credit in this system, except for membership in, obligations under, and benefits from the Baltimore City Municipal Deferred Compensation Plan.

- (c) Notwithstanding paragraph (b) of this subsection (1), and pursuant to § 48 of this article, the following shall become members of this system and accrue service credit in this system while employed in a permanent full-time or permanent part-time position covered by this system:
- (i) members of another City system who were eligible to begin receiving retirement benefits from that system but who chose to postpone receipt of those benefits and change employment to a position covered by this system (including former members of the Employees' Retirement System with entitlement to deferred vested pension benefits from that system, who ceased all permanent full-time or permanent part-time employment covered by that system); or
 - (ii) retirees who were receiving retirement benefits from another City system but who chose to suspend receipt of those benefits and accept reemployment in a position covered by this system.
- (2) Any person who is an employee on the date of establishment and who is on that date and has been a member of the Employees' Retirement System of the City of Baltimore, or any other pension or retirement fund supported wholly or partly by the City of Baltimore, shall become members as of that date of establishment unless within a period of 30 days next following, such employee shall file with the Board of Trustees, on a form prescribed by the Board, a notice of his election not to be covered in the membership of the Retirement System and a duly executed waiver of all present and prospective benefits which would otherwise inure to him on account of his participation in the Retirement System.
- (3) An employee whose membership in the Retirement System is contingent on his own election and who elects not to become a member may thereafter apply for and be admitted to membership, but no such employee shall receive service credit unless he becomes a member on or before July 1, 1964.
- (4) For those employees who are members of the system as of June 30, 2003, membership in the system ceases if the member:
- (i) in any period of 6 consecutive years after last becoming a member is absent from service more than 2 consecutive years;
 - (ii) withdraws his accumulated contributions;
 - (iii) becomes a beneficiary; or
 - (iv) dies.
- (5) For those employees who become members of this system on or after July 1, 2003, membership in the system ceases if the member:
- (i) separates from employment covered by this system;
 - (ii) retires; or

(iii) dies.

(City Code, 1966, art. 22, §31; 1976/83, art. 22, §31.) (Ord. 62-1285; Ord. 64-100; Ord. 74-552; Ord. 77-168; Ord. 03-576.)

§ 32. Service creditable.

(a) *Statement of service.*

Under such rules and regulations as the Board of Trustees shall adopt, each member who was an employee at any time during the year immediately preceding the date of establishment shall file a detailed statement of all service rendered by him before the date of establishment for which he claims service credit, including all retirement systems service granted or credited to him under any other pension or retirement system supported wholly or in part by the City of Baltimore.

(b) *Verification of statements.*

Subject to the above restrictions and to such other rules and regulations as the Board of Trustees may adopt, the Board of Trustees shall verify as soon as practicable after the filing of such statement of service, the service therein claimed.

(c) *Service certificates.*

Upon verification of the statement of service, the Board of Trustees shall issue service certificates certifying to each member the length of service rendered before the date of the establishment of the Fire and Police Employees' Retirement System with which he is credited either as service or prior service. So long as membership continues, a service certificate shall be final and conclusive for retirement purposes as to such service; provided, however, that any member may, within 1 year from date of issuance or modification of such certificate, request the Board of Trustees to modify or correct his service certificate. When membership ceases, such service certificate covering the service and prior service shall become void. Should the employee again become a member, such employee shall enter the system as an employee not entitled to service credit, except as provided in § 34(g)(1) and § 34(k)(2) of this subtitle.

(d) *Computation of service.*

The Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to a year of service, but in no case shall more than 1 year of service be credited for all service in 1 calendar year, nor shall the Board of Trustees allow credit as service for any period of more than 1 month's duration during which the employee was absent without pay.

(e) *Military personnel – rights to benefits, membership, and service credit during employment.*

(1) *Scope of subsection.*

This subsection applies only to a member of this system who:

- (i) on account of military service, as defined in paragraph (9) of this subsection, is on unpaid leave of absence from paid City employment;

- (ii) does not withdraw any of his or her accumulated contributions, unless he or she redeposits the sum withdrawn as provided in paragraph (2) of this subsection;
 - (iii) within 1 year after he or she leaves military service, or any longer period during which his or her employment rights are protected by federal law, is employed by the City of Baltimore as a regular and permanent employee;
 - (iv) does not take any employment, other than employment described in item (iii) of this paragraph or temporary employment, after the member:
 - (A) applied for reemployment in his or her former classification or position in the City service; and
 - (B) was refused immediate reemployment for causes beyond his or her control; and
 - (v) applies for service credit with the system.
- (2) *Redeposit of accumulated contributions; payment methods, deadline; pro rata credit.*
- (i) If a member of this system who is absent from employment for military service withdraws any of his or her accumulated contributions and redeposits into the system the sum withdrawn, with regular interest at the annuity savings fund rate from the date of withdrawal to the date that the redeposit is completed, the member, if otherwise qualified, is entitled to the benefits of this section as if the withdrawal had not been made.
 - (ii) The redeposit of accumulated contributions:
 - (A) may be made by a single payment or an increased rate of contribution; but
 - (B) must be completed before the member's retirement date.
 - (iii) The redeposit of accumulated contributions shall be credited pro rata at the time each payment is made.
- (3) *Retention of status and rights as a member.*

Except as otherwise provided in this subsection, a member of this system who is reemployed under paragraph (1)(iii) of this subsection retains the status and rights as a member during a period of absence from employment for military service.

(4) *Service credit.*

A member of this system shall receive service credit for a period of absence from employment while in military service if:

- (i) the employment of the member under paragraph (1)(iii) of this section is paid employment; and
- (ii) membership in this system is a requirement of employment.

(5) *Transfer of service credit.*

A member of this system who receives service credit for military service under this subsection may transfer the credit to another state or local retirement or pension system.

(6) *Contributions.*

(i) Except as otherwise provided in subparagraph (ii) of this paragraph, a member of this system who is reemployed under paragraph (1)(iii) of this subsection and is otherwise qualified to retain the status and rights of a member during a period of absence from employment for military service, shall be credited with, at the city's sole account and expense:

(A) the contributions, if any, that the City would have made on behalf of the member if the member had not been absent, including DROP contributions; and

(B) the contributions that the member would have made on his or her own behalf if the member had not been absent, including DROP contributions.

(ii) On a member's terminating City employment, the member is not entitled to withdraw any part of the contributions credited to his or her account under this paragraph, including the annuity portion attributable to City contributions made under this paragraph, except in the case of death while in City service or retirement from City service.

(iii) The Board of Trustees shall refund to a member any contributions made to the system during a period of absence from employment for military service when the member is otherwise exempted under this paragraph from paying contributions into the system.

(iv) On termination of a member's employment during or after a leave of absence for military service, the member, member's beneficiary, or member's estate is entitled to a refund of the member's accumulated contributions, plus interest, in lieu of any other system benefit, excluding contributions made by the City under subparagraph (i) of this paragraph.

(7) *Benefits prohibited during absence.*

A member of this system, the member's beneficiary, or the member's estate is not entitled to line-of-duty disability benefits or line-of-duty death benefits arising from the member's death or disability during a period that the member is absent from employment for military service.

(8) *DROP benefits.*

Except as otherwise provided in this subsection, a member of this system who is actively reemployed under paragraph (1)(iii) of this subsection and is otherwise qualified to retain the status and rights of a member during a period of absence from employment for military service is entitled to all of the rights and privileges relating to the Deferred Retirement Option Plan (DROP) under Section 36B of this subtitle otherwise afforded to a member who is actively employed, including:

(i) after being reemployed on returning from military service, the right to elect retrospectively to participate in DROP or to terminate DROP participation, as of a date during the period of the member's absence from employment;

(ii) the right to accumulate DROP contributions and benefits participation during the period of the member's absence from employment; and

(iii) the right to be credited with post-DROP employment during the period of the member's absence from employment.

(9) *"Military service" defined.*

(i) In this subsection, "military service" means any service that falls within the term:

(A) "service in the uniformed services", as defined by and interpreted under 38 U.S.C. § 4303(13); or

(B) "military service", as defined by and interpreted under State Personnel and Pensions Article §38-101(d);

(ii) "Military service" embraces all forms of duty, including active duty, active duty for training, initial active duty for training, and inactive duty training (such as drills), under competent authority, on a voluntary or involuntary basis, in the Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service commissioned corps, the Army National Guard, the Air National Guard, the Maryland National Guard, as well as the reserve components of each of these services, and any other category of persons designated by the President or the Governor of the State of Maryland in time of war or national or State emergency.

(10) *Rules and regulations.*

The Board of Trustees may adopt rules, resolutions and regulations to carry out the provisions of this subsection.

(f) *Military service credit.*

Notwithstanding any other provision of this subtitle, upon proper application to the Retirement System, credit for military service, as defined in § 32(e) of this subtitle, shall be granted to any member of this system who has served in the military prior to employment with the City, provided said member has acquired at least 10 years of service and attained the age of 50, or shall have acquired 20 years of service. However, a member shall not be awarded credit if he has received credit for a period of military service under another retirement system, for which retirement benefits have been or will be received by him; however, this exclusion does not apply to any such credit provided through Federal Old-Age and Survivors Insurance (Social Security), or to any benefits provided under Title 3 or Title 10, Chapter 67, §§ 1331 through 1337 of the U.S. Code. In addition, the military service credit herein provided shall not exceed 3 years. The City shall make all necessary contributions to the pension and annuity funds for the funding of military service credit. The provisions of this section shall apply to all retirees and beneficiaries of the Retirement System who are receiving periodically paid benefits on the effective date of this ordinance, regardless of

their date of retirement, provided that at the time of retirement the retiree met the age and service requirements stated above.

(g) *Repurchase of previous Employees' Retirement System service.*

- (1) Notwithstanding anything to the contrary contained herein, any past Employees' Retirement System service credit that was repurchased prior to October 15, 1987, by any member or retiree who was a member of this system before July 1, 1979, shall be deemed to be a valid credit of service in this system for such member or retiree.
- (2) Notwithstanding anything to the contrary contained herein, beginning October 15, 1987, any past Employees' Retirement System service may be repurchased by any member who was a member of this system before July 1, 1979, by paying to the Fire and Police Employees' Retirement System, by a single payment or by an increased rate of contribution, the contributions which he had previously withdrawn from the Employees' Retirement System, together with interest from the date of withdrawal to the date that the repurchase is completed. Service shall be credited pro rata at the time each payment for such service is made.
- (3) Notwithstanding anything to the contrary contained herein, beginning October 15, 1987, any past Employees' Retirement System service may be repurchased by any retiree who was a member of this system before July 1, 1979, who retired on or after October 15, 1987, and before January 1, 1989, from this system by paying to the Fire and Police Employees' Retirement System by a single payment which shall be completed prior to June 30, 1989, the contributions which he had previously withdrawn from the Employees' Retirement System, together with interest from the date of withdrawal to the date that the repurchase is completed. Upon completion of said repurchase, said retiree will receive credit for such additional service and will be entitled to receive retroactive to his original date of retirement any additional retirement benefits which become due or payable.

(h-1) *Repurchase of previous Fire and Police Employees' Retirement System service – Employees again becoming members on or before June 30, 2003.*

(1) *Scope of subsection.*

This subsection (h-1) applies to any member who, within 60 months of his or her last date of separation from this system, again becomes a member of this system on or before June 30, 2003.

(2) *In general.*

A member who lost service credit previously earned in this system due to separation from employment may repurchase that service if the member:

- (i) resumes service covered by this system within 60 months from the date on which he or she last separated from service;
- (ii) files an application to purchase the previous service; and
- (iii) pays for that previous service:

(A) all member contributions and interest previously withdrawn from this system;
plus

(B) interest at the annuity savings fund rate, from the date of withdrawal to the date that the payment is completed.

(3) *Payment methods, deadline.*

The payment for previous service:

(i) may be made by a single payment or an increased rate of contribution; but

(ii) must be completed before the member's retirement date.

(4) *Pro rata credit.*

The previous service shall be credited pro rata at the time each payment for the service is made.

(h-2) *Repurchase of previous Fire and Police Employees' Retirement System service – Employees again becoming members on or after July 1, 2003.*

(1) *Scope of subsection.*

This subsection (h-2) applies to any employee who again becomes a member on or after July 1, 2003.

(2) *In general.*

A member who lost service credit previously earned in this system due to separation from employment may repurchase that service if the member:

(i) files an application to purchase the previous service within 1 year of his or her last date of entry into this system; and

(ii) pays for that previous service:

(A) an amount equal to the product of:

1. the member's actual earnable compensation for the position covered by this system at the member's date of application for this purchase, multiplied by
2. the number of years or part of a year of service to be purchased, multiplied by
3. 6%; plus

(B) interest on that product calculated at this system's current annuity savings fund rate from the date of re-entry into this system to the date the payment is completed.

(3) *Payment methods, deadline.*

The payment for previous service:

- (i) may be made by a single payment or an increased rate of contribution; but
- (ii) must be completed before the earlier of:
 - (A) 10 years from the member's date of re-entry into this system; or
 - (B) the member's retirement date.

(4) *Pro rata credit.*

The previous service shall be credited pro rata at the time each payment for the service is made.

(h-3) *Repurchase of Previous Fire and Police Employees' Retirement System service – Transitional rule for members as of June 30, 2003.*(1) *Scope of subsection.*

This subsection (h-3) applies to any employee who is member as of June 30, 2003, but who resumed service more than 60 months after his or her last date of separation from this system.

(2) *In general.*

A member who lost service credit previously earned in this system due to separation from employment and who resumed service more than 60 months after his or her last date of separation from employment may repurchase that lost service if the member:

- (i) files an application to purchase the previous service no later than December 31, 2004; and
- (ii) pays for that previous service:
 - (A) an amount equal to the product of:
 1. the member's actual earnable compensation for the position covered by this system at the date of the member's application for this purchase, multiplied by
 2. the number of years or part of a year of service to be purchased, multiplied by
 3. 6%; plus
 - (B) interest on that product calculated at this system's current annuity savings fund rate from the date of the member's application to the date the payment is completed.

(3) *Payment methods, deadline.*

The payment for previous service:

- (i) may be made by a single payment or an increased rate of contribution; but
- (ii) must be completed before the earlier of:
 - (A) 10 years from the date of the member's application to purchase the previous service; or
 - (B) the member's retirement date.

(4) *Pro rata credit.*

The previous service shall be credited pro rata at the time each payment for the service is made.

(i) *Transfers of service – Persons becoming members on or before June 30, 2003.*(1) *Definitions.*

(A) In this subsection, the following words have the meanings indicated.

(B) "Former system" means an actuarially funded retirement or pension system of:

- (i) Baltimore City, other than this system;
- (ii) the State of Maryland; or
- (iii) a political subdivision of the State of Maryland.

(C) "Actuarially funded retirement or pension system" means a defined benefit retirement system that makes regular payments computed to be sufficient to provide the reserves needed to fund the benefits payable to the system's members on retirement.

(2) *Members joining on or after July 1, 1994, and on or before June 30, 2003.*

(A) An employee who becomes a member of this system on or after July 1, 1994, and on or before June 30, 2003, may transfer service previously acquired in a former system if:

- (i) the member begins employment covered by this system within 90 days of terminating employment covered by the former system ;
- (ii) the member files an application with this system to transfer that service within 1 year of entering this system;
- (iii) the member's former system provides verification to this system of the member's transferred service; and

(iv) on transferring credit from the member's former system, the member would no longer be eligible to receive a present or future benefit from the former system for the service transferred.

(B) If the member transfers service into this system from a Baltimore City retirement system, the member must pay for that transferred service an amount equal to:

(i) the product of:

1. the member's actual earnable compensation for each year or part of a year of service to be transferred, multiplied by
2. this system's member contribution rate in effect at the time that the transferred service was acquired in the former system, plus

(ii) interest on that product calculated at this system's annuity savings fund rate in effect at the time that the transferred service was acquired in the former system to the date the payment for the transferred service is completed.

(C) If the member transfers service into this system from a system other than a Baltimore City retirement system, the member shall pay for the transferred service an amount equal to:

(i) the product of:

1. the member's actual earnable compensation for the position covered by this system as of the member's date of entry into this system, multiplied by
2. the number of years or part of a year of service to be transferred, multiplied by
3. 12%, plus

(ii) interest on that product calculated at this system's current annuity savings fund rate from the member's date of entry into this system to the date the payment for the transfer of service is completed.

(D) The amount payable for transferred service may be made to this system by a single payment or by an increased rate of contribution, but payment for the transferred service must be completed before the earlier of:

(i) 10 years from the member's date of entry into this system; or

(ii) the member's retirement date.

(E) The transferred service shall be credited pro rata at the time each payment for the service is made. In no event may credit be granted to a member for transferred service for which payment has not been received before the member's retirement.

(3) *Transfers of service for members joining on or before June 30, 1994.*

- (A) An employee who becomes a member of this system on or before June 30, 1994, may transfer service previously acquired in a former system if:
- (i) the member begins employment covered by this system within 30 days of terminating employment covered by the former system;
 - (ii) the member files an application with this system to transfer that service within 1 year of entering this system, except for a transfer of service from a Baltimore City retirement system, in which case the transfer is automatic;
 - (iii) the member's former system provides verification to this system of the member's transferred service; and
 - (iv) on transferring credit from the member's former system, the member would no longer be eligible to receive a present or future benefit from the former system for the service transferred.
- (B) (i) This subparagraph (B) applies if the member transfers service into this system from a former system that is contributory.
- (ii) The member shall pay for the former service transferred into this system an amount equal to:
1. the member's accumulated contributions and interest in the former system, plus
 2. interest to the date the payment for the transferred service is completed.
- (iii) The amount payable for the transferred service may be made to this system in a single payment or by an increased rate of contribution, but payment for the transferred service must be completed before the member's retirement date.
- (iv) The transferred service shall be credited pro rata at the time each payment for the service is made. In no event may credit be granted to a member for transferred service for which payment has not been received before the member's retirement.
- (C) (i) If the member transfers service into this system from a former system that is noncontributory, the member has the option specified in this subparagraph (C).
- (ii) The member may pay the full amount of contributions and interest for the service transferred into this system, in an amount equal to:
1. the product of:
 - a. the member's actual earnable compensation for each year or part of a year of service to be transferred, multiplied by
 - b. this system's member contribution rate in effect during the period of service in the former system, plus

2. interest on that product to the date the payment for the transferred service is completed, calculated at the annuity savings fund rate in effect during the period of service in the former system.
- (iii) The member may pay less than the full amount of contributions and interest for the service transferred into this system. In that event, the retirement allowance to which the member or the member's beneficiary would be entitled if all the transferred service had been credited shall be reduced by:
1. the actuarial equivalent of the contributions and interest not made by the member, plus
 2. interest on the amount calculated under subparagraph (C)(ii) to the member's retirement date, calculated at this system's annuity savings fund rate in effect during that period.
- (iv) If the member retires on a service retirement within 5 years after transferring into this system, the benefits payable with respect to the transferred service credit not paid for under subparagraph (C)(iii) of this paragraph (3) may not be greater than the benefits that would have been payable by the former system with respect to that service if the member had remained in the former system.
- (4) *Transitional rule for certain members joining on or before June 30, 1994.*
- (A) This paragraph (4) applies to a member who joined this system on or before June 30, 1994, with service in a former system, but who failed to transfer that service into this system because the member:
- (i) incurred a break of more than 30 days but less than 91 days between the employment covered by the member's former system and the employment covered by this system; or
 - (ii) failed to submit an application to transfer service from the former system within 1 year of joining this system.
- (B) A member described in subparagraph (A) may elect to transfer service in a former system into this system by:
- (i) on or before June 30, 1999, submitting a completed application to transfer that service to this system;
 - (ii) purchasing the former service under the applicable provisions of paragraph (2)(B) or (C) of this subsection; and
 - (iii) complying with all requirements of paragraph (2)(A), (D), and (E) of this subsection, except that the payment for the transferred service must be completed before the earlier of:

1. 10 years from the date this system receives the member's application to transfer service; or
2. the member's retirement date.

(5) *Transferred service deemed earned in this system.*

- (A) This paragraph (5) does not apply to transfers of noncontributory service governed by paragraph (3)(C)(iv) of this subsection.
- (B) For purposes of determining benefit eligibility and calculation of benefits, on payment by a member for the transferred service and the credit of that service by this system, the transferred service shall be treated the same as all other service acquired in this system, whether or not the member retires more than 5 years after transferring into this system.

(6) *Transfers of service for certain paramedics.*

Paragraphs (1) through (5) of this subsection do not apply to the transfer of service by any Baltimore City Fire Department paramedic who became a member of this system on July 1, 1994, and who elected to transfer service into this system under the formula set by the Stipulation of Settlement in *Balcerowicz v. Mayor and City Council of Baltimore* and *Nalley v. Mayor and City Council of Baltimore*.

(7) *Special rule for members as of June 30, 2000.*

- (A) An employee who becomes a member of this System on or before June 30, 2000, may transfer service previously acquired in a former system if:
- (i) the member has incurred a break in service of less than 366 days before beginning employment covered by this System;
 - (ii) the member files an application with this System to transfer that service on or before December 31, 2000;
 - (iii) the member's former system provides verification to this System of the member's transferred service; and
 - (iv) on transferring credit from the member's former system, the member no longer would be eligible to receive a present or future benefit from the former system for the service transferred.
- (B) A member described in subparagraph (A) may elect to transfer service from a former system into this system by:
- (i) purchasing the former service under the applicable provisions of paragraph (2)(B) or (C) of this subsection; and
 - (ii) complying with all requirements of paragraph (2)(D) and (E) of this subsection, except that the payment for the transferred service must be completed before the earlier of:

1. 10 years from the date this system receives the member's application to transfer service; or
2. the member's retirement date.

(8) *Transitional rule for members as of June 30, 2003.*

(i) *Transfers authorized.*

An employee who becomes a member of this system on or before June 30, 2003, may transfer service previously acquired in a former system, as defined in subsection (k)(1) of this section, if:

- (A) the member incurred a break in service of less than 90 days before beginning employment covered by this system;
- (B) the member files an application with this system to transfer that service on or before December 31, 2004;
- (C) the member's former system provides verification to this system of the member's transferable service; and
- (D) on transferring credit from the member's former system, the member no longer would be eligible to receive a present or future benefit from the former system for the service transferred.

(ii) *Limit of years transferable.*

- (A) If federal or out-of-State service from the former system was acquired or earned on account of employment in a uniformed position, the member may transfer up to 10 years of that service.
- (B) If federal or out-of-State service from the former system was acquired or earned on account of employment in a civilian position, the member may transfer up to 5 years of that service.
- (C) There is no limitation on transfers of service credit from an in-state, non-federal former system under this transitional rule.

(iii) *Payment methods, deadline.*

A member may elect to transfer service under this paragraph (8) by:

- (A) purchasing the former service under the applicable provisions of subsection (k)(2)(c) or (d) of this section; and
- (B) complying with all requirements of subsection (k)(2)(e) and (f) of this section, except that the payment for the transferred service must be completed before the earlier of:

1. 10 years from the date of the member's application to transfer service; or
2. the member's retirement date.

(j) *Purchase of non-credited City employment.*

(1) *Purchase allowed.*

Any member of this system may purchase service credit for any regular and permanent employment with the City of Baltimore if:

- (A) the employment did not result in the member's being credited for service in any pension or retirement system; and
- (B) had the employment resulted in the member's being credited for service in another pension or retirement system, that credit would have been otherwise transferable into this system under § 32(i) of this article.

(2) *Amount of payment.*

To purchase this service credit, the member must pay an amount equal to:

- (A) the product of:
 - (i) the member's actual earnable compensation for the position for each year or part of a year of employment to be purchased, multiplied by
 - (ii) this system's member contribution rate in effect at the time the employment occurred, plus
- (B) interest on that product calculated at this system's annuity savings fund rate in effect at the time that the purchased employment occurred to the date the payment for the employment is completed.

(3) *Method of payment.*

The amount payable may be made to this system by a single payment or by an increased rate of contribution, but payment for the employment must be completed before the earlier of:

- (A) 10 years from the date this system receives the member's application to purchase service; or
- (B) the member's retirement date.

(4) *Pro rata credit for former employment.*

The purchased employment shall be credited pro rata at the time each payment for the service is made. In no event may credit for service be granted to a member for purchased employment for which payment has not been received by this system before the member's retirement date.

(k) *Transfers of service – Persons becoming members on or after July 1, 2003.*

(1) *Definitions.*

- (i) In this subsection, the following words have the meanings indicated.
- (ii) “Former system” means an actuarially funded contributory or non-contributory federal, state, or local governmental defined benefit retirement or pension system located within the United States.
- (iii) “Uniformed position” means a fireman’s or policeman’s position held by a transferring employee.
- (iv) “Fireman’s position” means a position held by an employee of a federal, state, or local fire department whose services bear a substantial and direct relationship to extinguishing fires or protecting lives or property endangered by fires.
- (v) “Policeman’s position” means a position held by an employee of a federal, state, or local law enforcement agency who is regularly engaged in enforcing the public peace and whose duties include the power of arrest.
- (vi) “Civilian position” means a position held by a transferring employee that was not a uniformed position.

(2) *In general.*

(A) *Transfers authorized.*

An employee who becomes a member of this system on or after July 1, 2003, may transfer service previously acquired in a former system if:

- (i) the member begins employment covered by this system within 90 days of terminating employment covered by the former system;
- (ii) the member files an application with this system to transfer that service within 1 year of membership in this system;
- (iii) the member’s former system provides verification to this system of the member’s transferable service; and
- (iv) on transferring credit from the member’s former system, the member would no longer be eligible to receive a present or future benefit from the former system for the service transferred.

(B) *Limit of years transferable.*

- (i) If the service from the former system was acquired or earned on account of employment in a uniformed position, the member may transfer up to 10 years of that service.

- (ii) If the service from the former system was acquired or earned on account of employment in a civilian position, the member may transfer up to 5 years of that service.

(C) *Payment amount - Transfers from City system.*

For service transferred from a Baltimore City retirement system, the member must pay:

- (i) an amount equal to the product of:
 1. the member's actual earnable compensation for the position covered by this system as of the member's date of entry into this system, multiplied by
 2. the number of years or part of a year of service to be transferred, multiplied by
 3. 6%, plus
- (ii) interest on that product calculated at this system's current annuity savings fund rate from the member's date of entry into this system to the date the payment for the transfer of service is completed.

(D) *Payment amount - Transfers from other system.*

For service transferred from a system other than a Baltimore City retirement system, the member must pay:

- (i) an amount equal to the product of:
 1. the member's actual earnable compensation for the position covered by this system as of the member's date of entry into this system, multiplied by
 2. the number of years or part of a year of service to be transferred, multiplied by
 3. 12%, plus
- (ii) interest on that product calculated at this system's current annuity savings fund rate from the member's date of entry into this system to the date the payment for the transfer of service is completed.

(E) *Payment methods, deadline.*

The payment for transferred service:

- (i) may be made by a single payment or an increased rate of contribution; but
- (ii) must be completed before the earlier of:

- (A) 10 years from the member's date of entry into this system; or
- (B) the member's retirement date.

(F) *Pro rata credit.*

The transferred service shall be credited pro rata at the time each payment for the service is made.

(3) *Transferred service deemed earned in this system.*

For purposes of determining benefit eligibility and calculation of benefits, on payment by a member for the transferred service and the credit of that service by this system, the transferred service shall be treated the same as all other service acquired in this system, whether or not the member retires more than 5 years after transferring into this system.

(4) *Special review provision.*

- (A) After the June 30, 2008, actuarial valuation has been completed and presented to the Board of Trustees, the Board shall review with the system's actuary the cost impact to the City of Baltimore of this subsection (k) as applied to service credit transfers from federal and out-of-state retirement or pension systems.
- (B) If the Board of Trustees determines that the provisions of this subsection (k) that allow the transfer of service credit from federal and out-of-state retirement or pension systems should not be continued, the Board shall submit legislation to the Mayor and City Council to rescind those provisions.
- (C) Otherwise, if the Board of Trustees determines that the provisions of this subsection (k) that allow for these transfers should be continued, those provisions will remain in full force and effect and this paragraph (4) will be null and void.

(l) *Purchase of Police Corps training time.*

(1) *Purchase allowed.*

Any member of this system may purchase up to 6 months of service credit for Maryland Police Corps training if the member successfully completed the Maryland Police Corps training program

(2) *Payment amount.*

To purchase this service credit, the member must pay:

- (A) an amount equal to the product of:
 - (i) the member's actual earnable compensation for the position covered by this system as of the member's date of entry into this system, multiplied by

(ii) the number of months or part of a month to be purchased, multiplied by

(iii) 12%, plus

(B) interest on that product calculated at this system's current annuity savings fund rate from the member's date of entry into this system to the date the payment for the transfer of service is completed.

(3) *Payment methods, deadline.*

The payment for service credit:

(A) may be made by a single payment or an increased rate of contribution; but

(B) must be completed before the earlier of:

(i) 10 years from the date of the member's application to purchase service; or

(ii) the member's retirement date.

(4) *Pro rata credit.*

The purchased service shall be credited pro rata at the time each payment for the service is made.

(m) *Purchase of service – Former HABC Police.*

(1) *Definitions.*

(i) *In general.*

In this subsection, the following words have the meanings indicated.

(ii) *Civilian position.*

“Civilian position” means a position held by a former HABC employee that was not an HABC Police position.

(iii) *HABC.*

“HABC” means the Housing Authority of Baltimore City.

(iv) *HABC Pension Plan.*

“HABC Pension Plan” means the non-actuarially funded pension plan covering the former HABC Police.

(v) *HABC Police position.*

“HABC Police position” means a position covered by the HABC Pension Plan held by a former HABC Police employee who was regularly engaged in enforcing the public peace and whose duties included the power of arrest.

(2) *Purchase authorized.*

An employee who becomes a member of this System may purchase service previously acquired in the HABC Pension Plan if:

- (i) the member begins employment covered by this System within 30 days of terminating his or her HABC Police position;
- (ii) the member files an application with this System to purchase that service on or before June 30, 2008;
- (iii) the HABC Pension Plan provides verification to this System of the member’s purchaseable service; and
- (iv) on purchasing credit earned in the HABC Pension Plan, the member would no longer be eligible to receive a present or future benefit from the HABC Pension Plan for the service purchased.

(3) *Limit of years purchaseable.*

- (i) If the service from the HABC Pension Plan was earned on account of employment in an HABC Police position, the member may purchase up to 10 years of that service.
- (ii) The member may not purchase any service from the HABC Pension Plan that was acquired or earned on account of employment in a civilian position.

(4) *Payment amount.*

For service purchased from the HABC Pension Plan, the member must pay:

- (i) an amount equal to the product of:
 - 1. the member’s actual earnable compensation for the position covered by this System at the later of:
 - A. the member’s date of entry into this System, or
 - B. October 31, 2004; multiplied by

2. the number of years or part of a year of service to be purchased; multiplied by
3. 12%; plus

(ii) interest on that product, calculated at this System's current Annuity Savings Fund Rate, from the member's date of entry into this System to the date the payment for the purchase of service is completed.

(5) *Payment methods; deadline.*

The payment for purchased service from the HABC Pension Plan:

- (i) may be made by a single payment or an increased rate of contribution; but
- (ii) must be completed before the earlier of:
 1. 10 years from the date this System receives the member's application to purchase service; or
 2. the member's retirement date.

(6) *Pro rata credit.*

The service purchased from the HABC Pension Plan shall be credited pro rata at the time each payment for the service is made.

(7) *Purchased service deemed earned in this System.*

For purposes of determining benefit eligibility and calculation of benefits, on payment by a member for the service earned in the HABC Pension Plan and the credit of that service by this System, the purchased service may not be treated as "service as a contributing member of this System" as is required for eligibility for normal service retirement in § 34(a)(1), eligibility for the deferred retirement option plan in § 36B(a), or other applicable sections.

(8) *Pre-existing conditions.*

A member is not entitled to disability retirement from this System attributable to an injury or illness that occurred prior to the member's date of entry in this System.

(City Code, 1966, art. 22, §32; 1976/83, art. 22, §32.) (Ord. 62-1285; Ord. 74-552; Ord. 79-1126; Ord. 81-552; Ord. 86-663; Ord. 786-066; Ord. 89-234; Ord. 91-786; Ord. 91-849; Ord. 98-290A; Ord 98-319; Ord. 00-049; Ord. 03-576; Ord. 07-610.)

§ 33. Administration.

(a) *Board of Trustees.*

The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this subtitle, subject to the provisions contained in subsection (l) of this section, are hereby vested in a Board of Trustees which shall

be organized immediately after 3 of the trustees provided for in this section have qualified and taken the oath of office.

(b) *Members.*

The Board consists of 9 trustees, as follows:

- (1) The Comptroller of the City of Baltimore, ex-officio.
- (2) The Police Commissioner, ex officio. The Police Commissioner may designate a representative to attend any meeting of the Board of Trustees in his or her place. This representative must be a member of the Police Command Staff II with administrative responsibilities and must be a member of this system. This representative has the authority to act in the Commissioner's place
- (3) The Chief of the Fire Department, ex officio. The Chief of the Fire Department may designate a representative to attend any meeting of the Board of Trustees in his or her place. This representative must be an Assistant Chief of the Fire Department with administrative responsibilities and must be a member of this system. This representative has the authority to act in the Chief's place.
- (4) 2 citizens of the City of Baltimore who are not employees within the meaning of this subtitle, 1 of whom shall be a responsible officer of a bank authorized to do business within the State of Maryland, or a person with similar experience, to be appointed by the Mayor with the consent of the City Council, as provided in Article IV, § 6 of the City Charter, to serve for terms of 4 years each, provided, however, that immediately following July 1, 1962, the Mayor shall appoint 1 trustee to serve until July 1, 1963, and 1 trustee to serve until July 1, 1965, such trustees to take office at appointments.
- (5) 2 members of the system, one of whom shall be an employee of the Fire Department, the other an employee of the Police Department, to be elected by the membership of the respective departments to which each belongs under such rules and regulations as may be adopted by the Board of Trustees to govern such election, to serve for a term of 4 years; provided, however, that the term of office of the first 2 trustees so elected shall begin immediately following their election and shall expire July 1, 1964, and July 1, 1966, respectively; and provided further, that for the purposes of this subsection (b), members of the system who are not employed by the Fire Department or the Police Department shall be eligible to participate as voters and as candidates in elections of the Board of Trustees. School crossing guards, meter monitors, and police personnel employed at the Baltimore-Washington International Airport shall participate in the Police Department elections. Fire personnel employed at the Baltimore-Washington International Airport shall participate in the Fire Department elections. For other categories of members of the system who are not employees of the Fire Department or the Police Department, the Board of Trustees shall determine in which departmental election they shall participate.
- (5-1) 2 retirees of the system, 1 of whom shall be a Fire Department retiree, and the other a Police Department retiree, to be elected by the retirees of the respective department to which each belonged, said elections to be held concurrently with the election for the employees representative of each respective department, under such rules and regulations

as may be adopted by the Board of Trustees to govern such election, to serve for a term of 4 years; provided, however, that for the purposes of this subsection (b), retirees of the system who are not employed by the Fire Department or the Police Department shall be eligible to participate as voters and as candidates in elections of the Board of Trustees. Retired school crossing guards, retired meter monitors, and police personnel retired from employment at the Baltimore-Washington International Airport shall participate in the Police Department elections. Fire personnel retired from employment at the Baltimore-Washington International Airport shall participate in the Fire Department elections. For other categories of retirees in the system who were not employees of the Fire Department or the Police Department, the Board of Trustees shall determine in which departmental election they shall participate.

(c) *Vacancies.*

If a vacancy occurs in the office of a trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(d) *Compensation.*

The trustees shall serve without compensation, but they shall be reimbursed from the Expense Fund for all necessary expenses that they may incur through service on the Board.

(e) *Oath of office.*

Each trustee shall, within 10 days after his appointment or election, take an oath of office that, so far as it devolves upon him he will diligently and honestly administer the affairs of the said Board, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the retirement system. Such oath shall be subscribed to by the member making it and certified by the Mayor before whom it is taken and shall be immediately filed in the office of the Director of Finance.

(f) *Procedures.*

Each trustee shall be entitled to 1 vote on the Board. 5 members of said Board shall constitute a quorum for the transaction of any business, the exercise of any power, or the performance of any duty authorized or imposed by this subtitle.

(g) *Regulations.*

Subject to the limitations of this subtitle, the Board of Trustees shall, from time to time, establish rules and regulations for the administration of the funds created by this subtitle and for the transaction of its business.

(h) *Officers; employees.*

The Board of Trustees shall elect from its membership a chairman and shall by a majority vote of all its members appoint a secretary. It shall engage such actuarial and other service as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the Board of Trustees, and all other expenses of the Board necessary for the

operation of the retirement system shall be paid at such rates and in such amounts as the Board of Estimates shall approve, and in accordance with appropriations in the annual Ordinance of Estimates.

(i) *Actuarial data.*

The Board of Trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the Retirement System and for checking the experience of the system.

(j) *Records.*

The Board of Trustees shall keep a record of all its proceedings which shall be open to public inspection. It shall publish annually on or before May 1 a report showing the fiscal transactions of the Retirement System for the year ending on the preceding December 31, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the Retirement System. The Board shall submit said report to the Mayor and shall furnish copies thereof to the heads of the various departments for their use and the use of the members employed therein.

(k) *Legal advisor.*

The City Solicitor of the City of Baltimore shall be the legal advisor of the Board of Trustees.

(l) *Panel of hearing examiners.*

- (1) There is a panel of hearing examiners, composed of persons with a demonstrated knowledge and competence in disability claims evaluation. The hearing examiners shall be appointed on a contract basis by the Board of Estimates, and the number and composition of the panel shall be at the discretion of the Board of Estimates. The Board of Estimates shall determine the fees to be paid the hearing examiners and the conditions of their contracts. This panel of hearing examiners shall be the same panel as provided for in § 9(p) of this article.
- (2) If, from time to time, the Board of Estimates decides to increase the number of hearing examiners, it shall notify the Board of Trustees. Within 15 days of that notice, the Board of Trustees may submit a list of recommended candidates. Also, from time to time, the Board of Trustees, working in conjunction with the Board of Trustees of the Employees' Retirement System, shall notify the Board of Estimates whenever a vacancy exists and, together with that notice, may submit a list of recommendations to fill the vacancies. However, in all events, the Board of Estimates has the power to make the final selection of hearing examiners from either a list submitted by the Board of Trustees or independent of the Board of Trustees' recommendations.
- (3) The compensation of the panel members, as well as the compensation of all persons engaged by the panel, and all other expenses of the panel, shall be paid at the rates and in the amounts that the Board of Estimates approves, pursuant to the provisions of the City Charter.

- (4) (i) Any non-line-of-duty disability or line-of-duty disability claimant must apply to the Board of Trustees.
 - (ii) The application must include a medical certification of disability and all supporting medical documentation, on a form prescribed by the Board of Trustees, in which the member must state that she or he has suffered a disability and that the disability prevents her or him from further performance of the duties of her or his job classification.
 - (iii) If the claim is for a line-of-duty disability benefit, the member must also state that the physical incapacity was the result of an injury arising out of and in the course of the actual performance of her or his duty, without willful negligence on her or his part.
 - (iv) Any member who has joined this system on or after July 1, 1979, and who applies for a line-of-duty disability benefit must also state that the disability resulted from an injury that occurred within 5 years of the date of her or his application.
 - (v) The member must also execute a consent form that authorizes the Board of Trustees to obtain all medical records relating to off-duty and line-of-duty accidents or illnesses that the member may have suffered at any time in the past.
- (5) On receipt of a member's application and supporting medical documentation, the Board of Trustees shall have the member medically examined by a physician selected by the Board of Trustees. The medical examination shall include the tests and additional examinations that the physician finds necessary or appropriate.
- (6) On completion of the medical examination and receipt of a written report, including any test results, from the examining physician, the panel of hearing examiners shall schedule a hearing.
- (7) A hearing examiner shall conduct hearings on all matters involving non-line-of-duty disability claims, line-of-duty disability claims, 100% line-of-duty disability claims, line-of-duty death benefit claims, and any related matters arising out of these claims. In addition, any reexamination of the existing retirees on or after July 1, 1979, and any related matter, is under the jurisdiction of the panel of hearing examiners.
- (8) One hearing examiner from the panel shall hear a particular claim for benefits. The hearing examiner shall conduct the hearing in an informal manner, with sufficient latitude to provide a fair and impartial hearing to all of the parties without requiring strict compliance with the rules of evidence. Testimony at the hearing shall be under oath and recorded. The hearing examiner has the power to subpoena and require the attendance of witnesses and the production of papers and documents to secure information pertinent to the hearing, and to examine them.
- (9) Each hearing is in the nature of an adversary proceeding. An attorney from the City Solicitor's office shall represent the Board of Trustees. The member has the right to counsel.
- (10)(i) At the hearing, the member has the burden of proving, by a preponderance of the evidence:

- (A) the nature and extent of his or her disability; and
 - (B) that the disability prevents him or her from the further performance of the duties of his or her job classification.
- (ii) If the matter involves a line-of-duty disability claim, the member has the burden of proving by a preponderance of the evidence that the disability was the result of an injury arising out of and in the course of the actual performance of duty, without willful negligence on the member's part.
 - (iii) If the matter involves a line-of-duty death claim, the claimant has the burden of proving by a preponderance of the evidence that the death:
 - (A) arose out of and in the course of the actual performance of duty; and
 - (B) was not caused by willful negligence on the member's part.
- (11) The hearing examiner shall determine the following:
- (i) whether the member has suffered an injury or illness of such a nature as to preclude the member from the further performance of the duties of his or her job classification;
 - (ii) if the claim is for line-of-duty disability benefits:
 - (A) whether the physical incapacity is the result of an injury arising out of and in the course of the actual performance of duty, without willful negligence on the member's part;
 - (B) whether the disability qualifies under § 34(e) and, for 100% line-of-duty disability benefits, § 34(f-1); and
 - (C) for a member who joined this system on or after July 1, 1979, whether the disability resulted from an injury that occurred within 5 years before the date of the members' application; and
 - (iii) if the claim is for line-of-duty death benefits:
 - (A) whether the death arose out of and in the course of the actual performance of duty;
 - (B) whether the death was not caused by the willful negligence of the member; and
 - (C) whether the death qualifies under § 34(i).
- (12) The hearing examiner shall issue written findings of fact that set forth the reasons for the hearing examiner's determination. If either party to the hearing is aggrieved by the hearing examiner's determination, that party may seek judicial review of the determination by the Circuit Court for Baltimore City. The review shall be sought and heard as provided for in

the Maryland Rules, with the exception that the review shall be heard on the record only, on a right-of-way basis. The final determination of the hearing examiner is presumptively correct and may not be disturbed on review except when arbitrary, illegal, capricious, or discriminatory. A party to the judicial review may appeal the court's final judgment to the Court of Special Appeals in accordance with the Maryland Rules of Procedure.

- (13) Judicial review under this subsection does not stay or hold in abeyance any payment awarded by the hearing examiner. If a court reverses an award of benefits, the court's decision operates to stop payment of any benefits being made to the claimant, pending any further appeal.
- (14) If neither party seeks judicial review within 30 days following the mailing of the hearing examiner's written findings of fact, the hearing examiner's determination is final and binding, subject to the panel of hearing examiners' right to reexamination as provided for in § 34(g).

(m) *Duties of actuary.*

The Board of Trustees shall designate an actuary who shall be the technical adviser of the Board of Trustees on matters regarding the operation of the funds created by the provisions of this subtitle, and shall perform such other duties as are required in connection therewith.

(n) *Tables.*

Immediately after the establishment of the Retirement System the actuary shall make such investigation of the mortality, service and compensation experience of the members of the system as he shall recommend and the Board of Trustees shall authorize, and on the basis of such investigation, he shall recommend for adoption by the Board of Trustees, such tables and such rates as are required in subsection (o)(1), (2), and (3) of this section. The rates to be certified for members who are less than 25 years of age shall not be greater than the rate for age 25. The Board of Trustees shall adopt tables and certify rates, and as soon as practicable thereafter, the actuary shall make a valuation based on such tables and rates of the assets and liabilities of the funds created by this subtitle.

(o) *Investigations.*

In the year 1964, and at least once in each 5-year period thereafter, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the Retirement System, and shall make a valuation of the assets and liabilities of the funds of the system and taking into account the result of such investigation and valuation, the Board of Trustees shall

- (1) adopt for the Retirement System such mortality, service and other tables as shall be deemed necessary;
- (2) certify the rates of contribution payable by members under the provisions of this subtitle, and provide, with respect to Class B members of the Employees' Retirement System of the City of Baltimore, for amortization of the difference between the total amount contributed under the Class B membership and the amount which would have been

contributed had they been Class A members. Provided, however, that any such Class B members may waive the payment of any or all such adjustment contributions, in which case upon retirement any retirement allowance to which he may be entitled shall be reduced by the actuarial equivalent of such payments which have not been made, with interest to date of retirement. The total annuity that would have been made payable to the beneficiary had he not waived payment of the difference between the Class A and Class B contributions shall be used in determining the amount of the supplemental pension payable under § 34(b)(6);

(3) certify the rates of contribution payable by the City of Baltimore on account of members at various ages.

(p) *Annual valuation.*

On the basis of such tables as the Board of Trustees shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the system created by this subtitle.

(q) *Indemnification of persons serving in fiduciary capacity.*

(1) *Authorized.*

The City shall indemnify every person who is made, or is threatened to be made, a party to any action, suit, or proceeding, including administrative and investigative proceedings by reason of his service in a fiduciary capacity to the Fire and Police Employees' Retirement System of Baltimore City, in accordance with and subject to the conditions stated in this section.

(2) *"Service in a fiduciary capacity" defined.*

The term "service in a fiduciary capacity", as used in this section, means the exercise of any authority or control or any policy-making function, including acts of commission or omission, concerning the management or administration of the Fire and Police Employees' Retirement System of Baltimore, or the exercise of any authority or control or any policy-making function, including acts of commission or omission, concerning the management or disposition of the assets of the system. It includes membership on the Board of Trustees of the Fire and Police Employees' Retirement System of Baltimore City, membership on the advisory investment committee, and service as Administrator or Deputy Administrator of the Fire and Police Employees' Retirement System, or as a staff member engaged in policy-making functions in the performance of his duties and responsibilities; and it includes the Director of Finance, the custodian of the assets of the Fire and Police Employees' Retirement System as named in the Baltimore City Charter.

(3) *Included expenses.*

If, with respect to a civil, administrative, or investigative action, suit, or proceeding, the person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Fire and Police Employees' Retirement System of Baltimore City, and, with respect to a criminal action, had no reasonable cause to believe his conduct was unlawful, then indemnification shall be against those expenses, including reasonable

attorney's fees, judgments, fines, and accounts paid in settlement which were actually and reasonably incurred by him in connection with the proceeding.

(4) *Effect of termination of any suit or proceeding.*

The termination of any suit or proceeding, in any manner, does not, of itself create a presumption that the person did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Fire and Police Employees' Retirement System, and with respect to a criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(5) *Exceptions to indemnification.*

Indemnification may not be made:

- (i) with respect to any suit, claim, or matter as to which the person was adjudged to be liable for gross negligence or willful misconduct in the performance of his duty to the Fire and Police Employees' Retirement System; or
- (ii) for an independent contractor furnishing services to the Fire and Police Employees' Retirement System; or
- (iii) with respect to any matter occurring prior to June 1, 1978.

(6) *Insurance provided.*

The City shall provide insurance for every person eligible for indemnification under this section against any liability asserted against him or incurred by him arising out of his status as a fiduciary. The City may provide self-insurance for this purpose, in whole or in part, under terms and conditions satisfactory to the Board of Estimates. If the City fails to provide adequate insurance coverage, or if the City fails to provide indemnification pursuant to this section a fiduciary shall not be required to pay amounts attributable to the liability described in this section by reason of the failure of the City to provide the indemnification, and the City shall be held liable therefor.

The City may assert the defense of governmental immunity, or any other defense available to the City, in suits or other actions brought against the City.

(7) *City Solicitor.*

The sole and final determination of eligibility of a person for indemnification with respect to a particular action, suit, or proceeding, and the approval of the reasonableness of all fees, expenses, and settlements, is vested in the City Solicitor.

(r) *Actuarial funding method.*

Effective with the year beginning July 1, 1988, the Retirement System shall be funded using the projected unit credit cost method.

(City Code, 1966, art. 22, §33; 1976/83, art. 22, §33.) (Ord. 62-1265; Ord. 68-273; Ord. 71-1012; Ord. 78-845; Ord. 79-1126; Ord. 86-766; Ord. 87-1149; Ord. 88-123; Ord. 95-560; Ord. 99-521; Ord. 00-050; Ord. 03-576; Ord. 04-672.)

§ 34. Benefits.(a) *Normal service retirement benefits.*(1) *Age and service requirements.*

A member may retire with a normal service retirement if, on his or her last day of City employment, the member meets the following age and service requirements:

- (i) for an employee who became a member of this system on or before June 30, 2003, and who retired on or after June 30, 1989:

- (A) age 50, regardless of years of service; or

- (B) regardless of age, 20 years of service; and

- (ii) for an employee who became a member of this system on or after July 1, 2003:

- (A) age 50, with at least 10 years of service as a contributing member of this system; or

- (B) regardless of age, 20 years of service, at least 10 years of which were as a contributing member of this system.

(2) *Application.*

To retire under this subsection, the member must:

- (i) apply to the Board of Trustees, on a form approved by the Board;

- (ii) set forth the date he or she wants to retire; and

- (iii) submit the application to the Board no less than 30 days nor more than 90 days before the date of retirement.

(b) *Allowance on service retirement.*

Upon retirement from service a member shall receive a service retirement allowance as follows:

- (1) For any member who retires on or before June 30, 1989, the service retirement allowance shall consist of:

- (A) an annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
 - (B) for each year of service, in addition to his annuity, a pension, which shall be equal to 1/100 of his average final compensation for each of the first 25 years of service, less any prior service, and 1/120 of his average final compensation for each year after the first 25 years of service less any prior service; and
 - (C) if he has been credited with prior service, a supplemental pension which shall be equal to 1/50 of his average final compensation multiplied by the number of years of such prior service; and
 - (D) if at the time of retirement the annuity determined in accordance with § 34(b)(1)(A) resulting from the member's contributions for service is less than the pension resulting from the member's years of service determined in accordance with § 34(b)(1)(B), a supplemental pension equal to the difference between the two shall be payable.
 - (E) The additional annuity provided as the result of voluntary contributions permitted under § 36(b)(10) shall be payable and shall not be used in determining this supplemental pension, if any, payable under this subdivision.
- (2) For any member who retires on or after July 1, 1989, and on or before June 30, 1991, the service retirement allowance shall consist of:
- (A) an annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and
 - (B) a pension which, together with his annuity, shall be equal to:
 - 1. 2.25% of his average final compensation for each year of the first 20 years of service;
 - 2. 2.50% of his average final compensation for each year of his next 2 years of service; and
 - 3. 1.67% of his average final compensation for each year of service thereafter.
 - (C) The additional annuity provided as a result of voluntary contributions permitted under § 36(b)(10) shall be payable and shall not be used in determining the pension payable under § 34(b)(2)(B).
- (3) For any member who retires on or after July 1, 1991, the service retirement allowance shall consist of:
- (A) an annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(B) a pension which, together with his annuity, shall be equal to:

1. 2.5% of his average final compensation for each year of the first 20 years of service, plus
2. 1.8% of his average final compensation for each year of service thereafter.

(C) The additional annuity provided as a result of voluntary contributions permitted under § 36(b)(10) shall be payable and shall not be used in determining the pension payable under § 34(b)(3)(B).

(4) For any member who retires on or after June 29, 1993, the service retirement allowance shall consist of:

(A) an annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement; and

(B) a pension which, together with his annuity, shall be equal to:

1. 2.5% of his average final compensation for each year of the first 20 years of service, plus
2. 2% of his average final compensation for each year of service thereafter.

(C) The additional annuity provided as a result of voluntary contributions permitted under § 36(b)(4) shall be payable and shall not be used in determining the pension payable under § 34(b)(4)(B).

(5) Provided further, however, that members and beneficiaries of members who retired before July 1, 1988, and any surviving beneficiary of a member who began receiving benefits before July 1, 1988, shall receive a 2% increase in periodic benefits as of January 1, 1992.

(6) Notwithstanding any other provision of this subtitle to the contrary, any member (other than a member who has elected to participate in the Deferred Retirement Option Plan pursuant to § 36B of this subtitle) who retires effective on or after June 1, 1996, and on or before August 31, 1996, with 35 or more years of service shall receive, in addition to his accumulated service credit, a credit of 6 additional months of service. For purposes of this § 34(b)(6) only the “average final compensation”, as defined in § 30(11) of this subtitle, of any member eligible for this additional service credit shall be calculated as if the member had retired on January 1, 1997 (rather than on his or her actual retirement date) and had earned compensation, pay, or salary during the period between his or her actual retirement date and January 1, 1997, at the salary rate in effect at the time of actual retirement.

(c) *Non-line-of-duty disability retirement benefit.*

(1) *Eligibility requirements.*

A member shall be retired on a non-line-of-duty disability retirement if:

- (i) the member has acquired at least 5 years of service, as determined by the Board of Trustees; and
- (ii) a hearing examiner determines that:
 - (A) the member is mentally or physically incapacitated for the further performance of the duties of the member's job classification in the employ of Baltimore City; and
 - (B) the incapacity is likely to be permanent.

(2) *Application and filing deadline.*

To retire under this subsection, the member must:

- (i) apply to the Board of Trustees, on a form approved by the Board; and
- (ii) submit the application to the Board no later than 1 year following the member's last day of City employment.

(3) *Effective date of non-line-of-duty disability retirement.*

A non-line-of-duty disability retirement under this subsection is effective as follows:

- (i) if the member applied for this retirement before terminating City employment, the retirement is effective as of the first day following the member's last day of City employment; and
- (ii) if the member applied for this retirement after terminating City employment, the retirement is effective 30 days after the date on which the Board received a completed application.

(d) *Allowance on non-line-of-duty disability retirement.*

- (1) Any member who retires on account of non-line-of-duty disability on or before October 15, 1992, shall receive an allowance as follows:
 - (A) an annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and
 - (B) a pension which, together with his annuity, shall provide a total retirement allowance equal to:

1. 2.5% of his average final compensation for each of the first 20 years of service, plus
2. 2% of his average final compensation for each year thereafter.

(C) The additional annuity provided as a result of voluntary contributions permitted under § 36(b)(10) shall be payable and shall not be used in determining the pension payable under § 34(d)(1)(B).

(D) Provided, however, that notwithstanding anything in this subsection to the contrary, if at the time of retirement a member has attained the age of 50 years and has acquired 25 years or more of service, he shall receive as a service retirement allowance computed as provided in paragraphs (b)(1), (2) and (3) of this subsection.

However, if at the time of retirement a member has attained the age of 50 years and has acquired less than 25 years of service, he shall receive an ordinary disability retirement allowance computed as provided in this subsection provided such allowance does not exceed 50% of his average final compensation.

(E) Provided, further, anything in this subsection to the contrary notwithstanding, any member eligible for retirement under the provisions of this subsection (d)(1), regardless of the length of service or the age of such member, shall receive an ordinary disability allowance of not less than 25% of his average final compensation.

(2) Any member who retires on account of non-line-of-duty disability on or after October 16, 1992, and on or before June 30, 2003, shall receive an allowance as follows:

(A) an annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement; and

(B) a pension which, together with his annuity, shall provide a total retirement allowance equal to:

1. 2.5% of his average final compensation for each of the first 20 years of service, plus
2. 1.8% of his average final compensation for each year thereafter.

(C) The additional annuity provided as a result of voluntary contributions permitted under § 36(b)(10) shall be payable and shall not be used in determining the pension payable under § 34(d)(2)(B).

(D) However, any member eligible for retirement under this subsection (d)(2), shall receive a non-line-of-duty disability allowance of not less than 25% of his or her average final compensation.

(3) Any member who retires on account of non-line-of-duty disability on or after July 1, 2003, shall receive an allowance that is the greater of:

(A) 25% of the member's average final compensation; or

(B) a combination of:

1. an annuity that is the actuarial equivalent of the member's accumulated contributions at the time of retirement; and
2. a pension that, together with the annuity, provides a total retirement allowance equal to 2.5% of the member's average final compensation for each of the first 20 years of service, plus 2% of the member's average final compensation for each subsequent year.

(e-1) *Line-of-duty disability benefits.*

(1) A member shall be retired on a line-of-duty disability retirement if:

- (i) a hearing examiner determines that the member is totally and permanently incapacitated for the further performance of the duties of his or her job classification in the employ of Baltimore City, as the result of an injury arising out of and in the course of the actual performance of duty, without willful negligence on his or her part; and
- (ii) for any employee who became a member on or after July 1, 1979, the application for line-of-duty disability benefits is filed within 5 years of the date of the member's injury.

(2) *Application and filing deadline.*

To retire under this subsection, the member must:

- (i) apply to the Board of Trustees, on a form approved by the Board; and
- (ii) submit the application to the Board no later than 1 year following the member's last day of City employment.

(3) *Effective date of retirement.*

A line-of-duty disability retirement under this subsection is effective as follows:

- (i) if the member applied for this retirement before terminating City employment, the retirement is effective as of the first day following the member's last day of City employment; and
- (ii) if the member applied for this retirement after terminating City employment, the retirement is effective 30 days after the date on which the Board received a completed application.

(4) *Application after receipt of DROP or DROP 2 benefits.*

A member who elects to receive DROP benefits under § 36B of this subtitle or DROP 2 benefits under § 36C of this subtitle may not file for line-of-duty disability retirement benefits following the member's retirement unless the member first pays back to the System the member's DROP account distribution, DROP annuity payments, DROP 2 account distribution, or DROP 2 annuity payments, as applicable.

(e-2) *Allowance on line-of-duty disability benefit.*

(1) Any member who retires on account of a line-of-duty disability shall receive a retirement allowance that consists of:

- (i) an annuity that is the actuarial equivalent of the member's accumulated contributions at the time of retirement; and
- (ii) a pension, in addition to the annuity, of 66.667% of the member's average final compensation.

(2) (i) For purposes of computing the pension payable to the member, if the last injury that caused or contributed to the disability occurred while the member was assigned to duties in a higher classification than his or her regular classification, the member's average final compensation shall be based on the maximum rate of pay earnable for the 18 months immediately preceding the injury in the classification in which she or he was performing duties at the time of the injury causing the disability if that computation is higher than the "average final compensation" computed in accordance with the definition of that term in § 30 of this subtitle.

(ii) This paragraph (2) does not apply if the last injury that caused or contributed to disability occurred before July 1, 1971.

(iii) Any member becoming eligible for a line-of-duty disability retirement allowance on or after July 1, 1991, shall have her or his pension computed in accordance with the definition in § 30 of "average final compensation", as in effect on the date she or he becomes eligible for the retirement allowance.

(f-1) *100% line-of-duty disability benefit.*(1) *Eligibility requirements.*

A member shall be retired on a 100% line-of-duty disability retirement if:

- (i) the member is otherwise eligible for a line-of-duty benefit under subsection (e-1) of this section; and
- (ii) the hearing examiner determines that the injury resulted in:
 - (A) extensive brain damage causing total incapacity; or

(B) the loss of or loss of use of any combination of two or more:

1. hands;
2. arms;
3. feet;
4. legs; or
5. eyes.

(2) *Application and filing deadline.*

To retire under this subsection, the member must:

- (i) apply to the Board of Trustees, on a form approved by the Board; and
- (ii) submit the application to the Board no later than 1 year following the member's last day of City employment.

(3) *Effective date of retirement.*

A 100% line-of-duty disability retirement under this subsection is effective as follows:

- (i) if the member applied for this retirement before terminating City employment, the retirement is effective as of the first day following the member's last day of City employment; and
- (ii) if the member applied for this retirement after terminating City employment, the retirement is effective 30 days after the date on which the Board received a completed application.

(4) *Application after receipt of DROP or DROP 2 benefits.*

A member who elects to receive DROP benefits under § 36B of this subtitle or DROP 2 benefits under § 36C of this subtitle may not file for 100% line-of-duty disability retirement benefits following the member's retirement unless the member first pays back to the System the member's DROP account distribution, DROP annuity payments, DROP 2 account distribution, or DROP 2 annuity payments, as applicable.

(f-2) *Allowance on 100% line-of-duty disability retirement.*

(1) Any member who retires on a 100% line-of-duty disability shall receive a retirement allowance that consists of:

- (i) an annuity that is the actuarial equivalent of the member's accumulated contributions at the time of retirement; and

- (ii) a pension that, together with the annuity, equals 100% of the member's regular compensation at the time of retirement.
- (2) For purposes of computing the pension payable to the member, if the last injury that caused or contributed to the disability occurred while the member was assigned to duties in a higher classification than his or her regular classification, the member's compensation shall be based on the maximum rate of pay earnable in the classification in which she or he was performing duties at the time of the injury causing the disability.
- (g) *Reexamination of members retired on account of disability.*
- (1) (i) If a retired member is receiving a disability retirement allowance and has not yet attained age 55, the panel of hearing examiners may require the retired member to undergo a periodic medical examination, but not more often than once in any year, to determine whether he or she has become fit to resume duties in the classification in which he or she was performing duties at the time of retirement.
- (ii) The examining physician shall report her or his findings to the panel of hearing examiners. If the examining physician's opinion is that the retiree is able to resume his or her duties, the applicable departmental physician shall conduct a reexamination of the retiree. If the departmental physician concurs, she or he shall certify to the panel of hearing examiners that the retiree is fit for the further performance of duties in the classification in which he or she was performing duties at the time of retirement. If the physicians do not concur, the panel of hearing examiners shall schedule a hearing to determine the fitness of a retiree to perform his former duties.
- (iii) After the hearing, the panel of hearing examiners shall submit its determination to the head of the department in which the retiree was employed at the time of retirement.
- (iv) A member who has been determined to be fit to resume work continues to receive his or her disability retirement allowance until the time the member is reemployed by the City.
- (2) A disability retiree who has been certified by the panel of hearing examiners as fit for further performance of duties and who is restored to active service shall cease to receive a retirement allowance. He or she shall again become a member of the retirement system and shall contribute at the current rate of contribution. Any previous service credit on the basis of which his or her service was computed at the time of retirement shall be restored in full and, on his or her subsequent retirement, he or she shall be credited with all service as a member.
- (3) If a disability retiree has been certified by the panel of hearing examiners as fit for further performance of duties and refuses to accept an offer of reemployment as an "employee", as that term is defined in § 30(2) of this subtitle, in the classification in which he or she was performing duties at the time of retirement and at a compensation not less than the rate of compensation being paid currently to persons in the same grade and step as the retiree was at the time of retirement, plus the amount of any longevity payments currently being paid for the length of service the retiree had at the time of retirement, all rights in and to his or her pension shall be revoked by the Board of Trustees.

- (4) If a disability retiree refuses to submit to a medical examination required by the panel of hearing examiners, his or her allowance may be discontinued until he or she submits to the examination. If his or her refusal continues for 1 year, all rights in and to his or her pension shall be revoked by the Board of Trustees.

(h) *Non-line-of-duty death benefit.*

(1) *Scope of subsection.*

This subsection (h) applies to a member who dies while actively employed, but whose death does not qualify under subsection (i) as a line-of-duty death.

(2) *Lump-sum death benefit.*

(A) On receipt of a written application and proper proof of the death of a member in service, the Board of Trustees shall pay the lump-sum amount provided in this paragraph (2), but only if no benefits are paid under paragraphs (3) or (4) of this subsection.

(B) The lump-sum payment shall consist of:

- (i) the member's accumulated contributions; plus
- (ii) if the member has acquired 1 or more years of service, 50% of the greater of the member's current annual compensation or the member's average final compensation on the date of the member's death.

(C) The lump-sum amount shall be paid:

- (i) to the member's designated beneficiary;
- (ii) if there is no designated beneficiary or if the designated beneficiary predeceases the member, to the member's surviving spouse;
- (iii) if there is no designated beneficiary and no surviving spouse, to the member's children, in equal shares;
- (iv) if there is no designated beneficiary, surviving spouse, or surviving child, to the member's surviving parents, in equal shares; and
- (v) otherwise, to the member's estate.

(3) *100% survivorship death benefit.*

(A) If the member was eligible for a service retirement allowance on the date of the member's death and a proper application is filed under subparagraph (E) of this paragraph (3), the Board of Trustees shall pay a benefit equal to that which would have been paid to a surviving beneficiary under the 100% survivorship benefit of subsection (k)(1) of this section had the member elected that survivorship benefit in favor of that beneficiary and retired as of the date of death.

(B) The benefit shall be paid:

(i) to the member's designated beneficiary, to continue for life, as long as that designated beneficiary is limited to:

1. the member's surviving spouse to whom the member was married for at least 1 year immediately before the date of the member's death; or
2. the member's surviving parent; or

(ii) if the designated beneficiary is not the member's spouse and the beneficiary predeceases the member, or if there is no designated beneficiary, then to the member's surviving spouse, to continue for life, if the member was married to that spouse for at least 1 year immediately before the date of the member's death.

(C) If a member files with the Board of Trustees a written designation that names someone other than a spouse or parent as beneficiary, and if that beneficiary does not predecease the member, the benefits of this paragraph (3) are not available to the surviving spouse or parent of the member.

(D) The benefit provided by this paragraph (3) is in place of all benefits provided under paragraphs (2) and (4) of this subsection.

(E) To receive the benefit provided under this paragraph (3), the surviving spouse or parent must apply in writing, on forms provided by the Board of Trustees, within 60 days after the death of the member.

(4) *25% plus death benefit.*

(A) If the member had at least 2 years of continuous service before death, without regard to whether the member was eligible for a service retirement allowance on the date of the member's death, and a proper application is filed under subparagraph (G) of this paragraph (4), the Board of Trustees shall pay an annual benefit equal to:

- (i) 25% of the member's regular annual gross compensation on the date of the member's death; plus
- (ii) 1.5% of the member's regular annual gross compensation for each additional year of service beyond the initial 2 consecutive years, up to a maximum benefit of 50% of regular annual gross compensation.

(B) This benefit shall be paid:

(i) to the member's designated beneficiary, as long as that designated beneficiary is limited to:

1. the member's surviving spouse, to continue for life or until remarriage; or

2. the member's minor children, to be paid to each child, in equal shares, until that child is no longer minor, as defined in § 47(h) of this article; or
 - (ii) if the designated beneficiary is not the member's spouse or minor child and that beneficiary predeceases the member, or if there is no designated beneficiary, then to the member's surviving spouse, to continue for life or until remarriage, if the member was married to that spouse for at least 1 year immediately before the date of the member's death; or
 - (iii) if there is no qualifying surviving spouse under subparagraph (B)(i) or (ii), or if the surviving spouse dies or remarries, then to the member's minor children, to be paid to each child, in equal shares, until that child is no longer minor, as defined in § 47(h) of this article.
 - (C) For purposes of this paragraph (4), when a member's child is no longer a minor and consequently ceases to receive benefits under this paragraph (4), each remaining minor child shall begin to receive, in addition to his or her existing benefit, an equal share of the benefit formerly paid to the other child. This process continues until the member's youngest child is no longer a minor.
 - (D) For purposes of this paragraph (4), "regular annual gross compensation" does not include overtime compensation, but does include longevity payments.
 - (E) If a member files with the Board of Trustees a written designation that names someone other than a spouse or minor child as beneficiary, and if that beneficiary does not predecease the member, the benefits of this paragraph (4) are not available to the surviving spouse or minor children of the member.
 - (F) The benefit provided by this paragraph (4) is in place of all benefits provided under paragraphs (2) and (3) of this subsection.
 - (G) To receive the benefit provided under this paragraph (4), the surviving spouse or minor children must apply in writing, on forms provided by the Board of Trustees, within 60 days after the death of the member.
- (5) *Death without beneficiaries, heirs, or estate.*

The amounts that would have been paid under this subsection (h), excluding membership contribution accounts, with interest, forever remain assets of the system if:

- (A) a member dies without designating a beneficiary;
- (B) that member has no heirs, as enumerated in §§ 3-102 through 3-104 of the Estates and Trusts Article of the Maryland Code; and
- (C) no estate for that member is opened within 2 years of the member's death.

(i) *Line-of-duty death benefit.*

(1) *Scope of subsection.*

This subsection applies only to an individual:

- (A) who dies while a member of this system; and
- (B) whose death has been determined by a hearing examiner, as provided in § 33(l) of this subtitle, to have arisen:
 - (i) out of and in the course of the actual performance of duty; and
 - (ii) without willful negligence on the part of the member.

(2) *Line-of-duty death benefit.*

(A) On the receipt of a written application, proper proof of death, and an award by a hearing examiner of a line-of-duty death benefit, the Board of Trustees shall pay:

- (i) a lump-sum refund of the member's accumulated contributions, to be paid as follows:
 - 1. to the member's designated beneficiary;
 - 2. if there is no designated beneficiary or if the designated beneficiary predeceases the member, to the member's surviving spouse;
 - 3. if there is no designated beneficiary and no surviving spouse, to the member's children, in equal shares;
 - 4. if there is no designated beneficiary, surviving spouse, or surviving child, to the member's surviving parents, in equal shares; and
 - 5. otherwise, to the member's estate; and
- (ii) a pension of 100% of the member's current compensation, to be paid as follows, regardless of whom the member designated as beneficiary:
 - 1. to the member's surviving spouse, to continue for life;
 - 2. if there is no surviving spouse or if the surviving spouse dies, to the member's minor children to be paid to each child, in equal shares, until that child is no longer minor, as defined in § 47(h) of this article;
 - 3. if there is no surviving spouse or minor children, to either or both of the member's surviving dependent parents who are designated beneficiaries, to continue for life, in the percentages designated by the member; or

4. if there is no surviving spouse or minor children and if the deceased member did not designate his or her surviving parents as beneficiaries, then to either or both of the member's surviving dependent parents, to continue for life, as the Board of Trustees in its discretion directs.
- (B) For purposes of subparagraph (A)(ii) of this Paragraph (2), "dependent" means the level of dependency required by Internal Revenue Code § 152.
- (C) For purposes of this paragraph (2), when a member's child is no longer a minor and consequently ceases to receive benefits under this paragraph (2), each remaining minor child shall begin to receive, in addition to his or her existing benefit, an equal share of the benefit formerly paid to the other child. This process continues until the member's youngest child is no longer a minor.
- (D) For purposes of this paragraph (2), where a member's line-of-duty death benefit is paid to both of the member's surviving parents and one parent dies, the remaining parent shall then begin receiving, in addition to his or her existing benefit, the benefit formerly paid to the deceased parent.
- (E) If the member's death occurred as the result of an injury sustained while the member was assigned to duties in a higher class than his or her regular job classification, the current compensation described in subparagraph (A)(ii) of this paragraph (2) shall be the maximum level or experience salary scale, taking into account the longevity increments appropriate to the member's length of service, in the classification in which the member was performing duties on the date of the injury causing death.
- (F) (i) If a surviving spouse's line-of-duty death benefits were terminated on or before June 29, 1998, due to remarriage, the surviving spouse's line-of-duty death benefits resume as provided in this subparagraph (F).
- (ii) If line-of-duty death benefits formerly paid to a surviving spouse are being paid to a deceased member's minor child as of June 29, 1998, the surviving spouse will resume receiving those death benefits when the member's youngest child is no longer a minor, as defined in § 47(h) of this article. If the surviving spouse resumes the receipt of benefits under this subparagraph (F) on the youngest child's having discontinued his or her status as a full-time student after attaining age 18, the surviving spouse shall continue receiving that benefit even if that child resumes full-time student status.
- (iii) If the line-of-duty death benefits formerly paid to a surviving spouse are not being paid to a minor child of the deceased member as of June 29, 1998, the surviving spouse will resume receiving those death benefits as of June 30, 1998.
- (3) *Death resulting from pre-July 1, 1971 injuries.*

Paragraph (2) of this subsection (i) does not apply in any case where death occurs as the result of an injury sustained before July 1, 1971.

(4) *Death on account of a line-of-duty injury.*

(A) This paragraph (4) applies to any member who:

- (i) retires under the provisions of § 34(e) of this subtitle;
- (ii) elects to receive maximum benefits without optional modification; and
- (iii) within 5 years of the date of special disability *{line-of-duty disability}* retirement, dies from the last injury that caused or contributed to that retirement.

(B) A member described in subparagraph (A) of this paragraph (4) is considered, for purposes of paragraph (1)(A) of this subsection, to have died as a member in service. Thus, to the extent to which they are entitled, the beneficiaries of the member shall receive line-of-duty death benefits under this subsection (i).

(C) Any accumulated contributions payable to the designated beneficiary of a member whose death is governed by this paragraph (4) shall be reduced by the amount of annuity payments that the deceased member previously received through a special disability pension.

(D) Benefits payable under this paragraph (4) shall be based on the rate of compensation for the grade and step of the deceased member at the date of retirement plus any longevity payments the deceased member was then entitled to receive.

(5) *Death without beneficiaries, heirs, or estate.*

The amounts that would have been paid under this subsection (i), excluding membership contribution accounts, with interest, forever remain assets of the system if:

- (A) a member dies without designating a beneficiary;
- (B) that member has no heirs, as enumerated in §§ 3-102 through 3-104 of the Estates and Trusts Article of the Maryland Code; and
- (C) no estate for that member is opened within 2 years of the member's death.

(6) *Minimum accidental death pension benefit at June 30, 1994.*

(A) This paragraph (6) applies to those beneficiaries who, as of June 30, 1994, are receiving a line-of-duty death benefit in accordance with this subsection (i) and whose total benefit on June 30, 1994, amounts to less than \$15,000 annually.

(B) Line-of-duty death benefits for beneficiaries described in subparagraph (A) of this paragraph (6) shall be increased to no less than the lower of:

- (i) an annual benefit of \$15,000; or

- (ii) an annual benefit equivalent to the June 30, 1994, salary for an active member in the same job classification (e.g., class, grade, level, and longevity) as the member on the date of the member's death.
 - (C) In no event may this paragraph result in a beneficiary's receiving a pension less than the pension the member was receiving on June 30, 1994.
 - (D) For purposes of this paragraph (6), the pension benefit includes any post-retirement benefit increases paid as of June 30, 1994.
 - (E) If any beneficiary receiving an increased minimum pension in 1994 as a result of this paragraph is eligible for a January 1995 post-retirement benefit increase under § 36A of this article, the member's 1995 post-retirement increase shall be calculated as though the beneficiary had received this increased minimum pension benefit on June 30, 1994.
 - (F) Any post-retirement benefit increases paid before June 30, 1994, may not be changed due to any increase in benefits payable as a result of this paragraph (6).
- (j) *Return of accumulated contributions.*

Should a member cease to be an employee except by death or retirement under the provisions of this subtitle, he shall be paid such part of the amount of the accumulated contributions standing to the credit of his individual account in the Annuity Savings Fund as he shall demand; provided, however, that the Board of Trustees may, in its discretion, withhold for not more than 1 year after a member has ceased to be an employee all or part of his accumulated contributions, if after a previous discontinuance of service he withdrew from the Annuity Savings Fund all or part of the amount of his accumulated contributions and failed to redeposit such withdrawn amount in such fund.

(j-1) *Retirement on account of job removal.*

(1) *Scope of paragraph.*

- (i) This paragraph will be applied exclusively upon receipt by the system of a written determination from the agency head of a member of this system, which is countersigned by an appropriate designee of: (1) the Office of the Mayor, (2) the Director of Human Resources, or (3) the Department of Law, confirming consultation by the agency head with each of the three designees and certifying one of the following criteria for a job removal retirement benefit:
 - (A) the member is being laid off without fault on his or her part due to a reduction in force or diminished need for the services performed by the holder of such position and is not being removed for poor performance in the job,
 - (B) in the case of an exempt member working in an "at will" position not covered by civil service, the member is being removed from his or her position without fault on his or her part, at the initiation of his or her agency and pursuant to its absolute discretion, and is not being removed for poor performance in the job,

- (C) the member is being removed from his or her position without fault on his or her part due to physical or mental incapacity,
 - (D) the member is being removed from his or her position without fault on his or her part and the mutual best interests of the agency and the member would be served through the removal insofar as the removal will resolve a personnel or disciplinary dispute between the agency and the member, or
 - (E) the member is being removed from his or her position without fault on his or her part and the mutual best interests of the agency and the member would be served through the removal, the agency head so certifies in good faith, and the member represents in writing to the agency and to the system that, as of the date of the certification, he or she has not been offered, has not accepted, and has not been given assurances of other employment.
- (ii) An agency head's determination and a member's representations under this paragraph shall be maintained as public records, open to public inspection, and are not confidential personnel or retirement records.

(2) *Job Removal Retirement Benefit.*

Should a member be removed from a regular permanent position of the City without fault upon his or her part, or should a member appointed or elected for a fixed term not be reappointed or reelected after the completion of 15 years of service, such member may elect, in lieu of the withdrawal of his accumulated contributions, to be paid a service retirement allowance consisting of:

- (i) an annuity that shall be the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement; and
- (ii) a pension that, together with his or her annuity, shall be equal to:
 - (A) 2.5% of his or her average final compensation for each year of the first 20 years of service at the time of his or her retirement, plus
 - (B) 2% of his or her average final compensation for each subsequent year.

(3) *Eligibility to elect job removal retirement benefit.*

An election to receive a job removal benefit may be made by a member only if, at the time of his or her removal, he or she has completed 15 or more years of service as a contributing member of this system, without taking into account any transferred-in service credit from other retirement systems.

(4) *Preemployment military service credit.*

Effective December 2, 1991, in applying the preemployment military credit provision of §32(f) to a member described in subsection 2, the requirement that the member shall have attained age 50 shall be disregarded. However, any benefit for which the member could be

eligible shall be determined before the military service credit provided for herein is added to the service credit acquired by the member.

(5) *Special effective date.*

Ordinance 91-829 shall also apply to any member who retired under the provision of the above paragraph. Any increased benefits due to such a retired member, shall be paid prospectively from the effective date of this Ordinance. Variable benefits, if any, paid to such a retired member shall not be changed as a result of this Ordinance.

(6) *Return to work of member retired under this subsection.*

Should a member retired under this subsection be restored to active service, his or her retirement allowance shall cease, he or she shall again become a member of the system, and he or she shall contribute thereafter at the rate in effect as of the return to service. Any prior service certificate on the basis of which a member's service was computed at the time of his or her retirement shall be restored to full force and effect and, in addition, upon his or her subsequent retirement he or she shall be credited with all membership service.

(k) *Optional allowances.*

(1) Any member who is entitled to a disability or service allowance under the provisions of this subtitle may elect to receive the maximum amount of such allowance or he may elect to receive the actuarial equivalent of such allowance, computed as of the effective date of retirement, in a lesser amount payable throughout life in accordance with the following provisions:

- Option 1. If the member dies before he has received in annuity payments the present value of his annuity computed as of the time of his retirement, the balance of the annuity reserve remaining unpaid shall be paid to such person, if any, as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees, otherwise to his estate; or
- Option 2. If the member dies before he has received in payments the present value of his retirement allowance as it was at the time of his retirement, the balance shall be paid to his legal representatives or to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees; or
- Option 3. Upon the member's death, his reduced retirement allowances shall be continued throughout the life of and paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or
- Option 4. Upon the member's death, ½ of his reduced retirement allowance shall be continued throughout the life of and paid to such person as he shall have nominated by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

- Option 5. Some other benefit or benefits shall be paid either to the member or to such person or persons as he shall have nominated, provided such other benefit or benefits, together with the lesser retirement allowance, shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance and shall be approved by the Board of Trustees.

Any living retired member shall have the right within 30 days after the effective date of his retirement, and not thereafter, to change his election of the maximum allowance to any one of the options hereinbefore set forth or to change his election of any one of said options to another one of said options, or to change his election from any one of said options to the maximum allowance. Any living retired member shall have the right within 30 days after the effective date of his retirement to change his designation of a beneficiary, but thereafter no such change may be made in connection with any option hereinbefore set forth which provides for the payment of a benefit allowance to, and throughout the life, of the beneficiary designated.

The election of any option or any change in connection therewith shall be made on forms provided for that purpose by the Board of Trustees and filed with the Board.

(2) *{Repealed}*

- (3) Subject to the provisions of (a), (b), (c), (d), and (e) of this paragraph (3), in the event that a member who retires and elects to receive maximum benefits without optional modification later dies and is survived by a spouse to whom the member had been married for at least 1 year immediately prior to retirement, an amount equal to 37½% of the allowance said member was receiving shall be paid to such surviving spouse to continue as long as he or she remains unmarried. If there be no such spouse or if the spouse dies or remarries before the youngest unmarried child of said deceased member shall have either attained the age of 18 years or, in the event said child is a full-time student, before he shall have attained the age of 22 years, then an amount equal to 37½% of the allowance said member was receiving shall be paid to such child or children, divided in such manner as the Board of Trustees in its discretion shall determine to continue for the benefit of such child or children until the last child marries, dies or either attains the age of 18 years or in the event he is a full-time student, attains the age of 22 years.

Provided, however, that the above benefits shall apply only to the following members, surviving spouses and/or children, as the case may be:

- (a) any member who retires on or after July 1, 1970;
- (b) any member who retired prior to July 1, 1970, who is still living as of July 1, 1970, and who elected to receive maximum benefits without optional modification at the time of retirement.
- (c) Any member who retired prior to July 1, 1970, who is still living as of July 1, 1970, and who elected a reduced optional allowance at the time of retirement, shall be entitled to change his election and receive the maximum benefits without optional modification under Article 22, aforesaid, and to have his eligible surviving spouse, child or children, as the case may be, receive the benefits provided for herein.

Anything herein to the contrary notwithstanding, any member who was entitled to the benefits of this paragraph on July 1, 1970, and who has been determined by the Board of Trustees to be a disabled person on that date and who died as a result of such disability before August 30, 1970, without having exercised his rights to change his election as required by the provisions of this paragraph, may have such rights to change his election carried over to his eligible surviving spouse, child or children, as the case may be. Such election by the surviving spouse, child or children, as the case may be, to receive the benefits provided in (c) herein, must be made within 30 days of the effective date of this ordinance and these benefits shall be paid retroactively effective on the day after such member died.

- (d) The eligible surviving spouse, child or children, as the case may be, of a retired member who died prior to July 1, 1970, who is or are receiving a retirement allowance as a result of the fact that the member elected a reduced optional allowance at the time of retirement shall be entitled upon application to receive the adjusted benefits provided for herein notwithstanding the prior election by the member.
- (e) The eligible surviving spouse, child or children, as the case may be, of a retired member who died prior to July 1, 1970, and who had elected to receive maximum benefits without optional modification, shall receive the benefits provided for herein commencing as of July 1, 1970.

In no event will a surviving spouse, child or children receive any benefits under this paragraph (3) if such spouse, child or children received lump sum benefits as a result of election of Options 1, 2 or 5 by the retired member and his subsequent death prior to July 1, 1970. Provided, further, that all increased benefits available hereunder shall become effective as of July 1, 1970, and in no event shall any payment be made for any period prior to July 1, 1970. However, elections or applications provided under this paragraph (3)(c) and (3)(d) made after September 30, 1970, shall not be effective prior to the date of such election or application and no retroactive payments shall be made. Provided, further, that notwithstanding the above provisions, a spouse by a marriage occurring at least 6 months prior to the effective date of this paragraph (3), or a child or children of such marriage, shall be entitled to the benefits provided for herein as if the marriage had occurred 5 years prior to retirement.

- (f) In the event a retired member, who elected to receive maximum benefits under the provisions of this subtitle, dies before he has received in annuity payments a sum equal to the amount of his accumulated contributions at the time of his retirement, and there is no surviving spouse, minor children, mother or father of the deceased member entitled to receive further retirement benefits as a result of his death, the difference between the amount of the deceased member's accumulated contributions at the time of his retirement and the sum of the annuity payments which he has received shall be paid to the deceased member's designated beneficiary, and if no beneficiary has been designated, then said difference shall be paid to his estate.

- (4) Provided, however, that effective January 1, 1987, any beneficiary receiving or thereafter eligible to receive the 37½% survivor's benefit under subsection (k)(3) shall receive 42½% of the member's allowance, in lieu of the 37½% previously provided. Any such increased rate shall be effective beginning January 1, 1987, or from date of eligibility, whichever comes later.
- (5) Effective as of July 1, 1993, in the event that a member who retires and elects to receive maximum benefits without optional modification later dies and is survived by a spouse to whom the member had been married for at least 1 year immediately prior to retirement or at least 5 years prior and/or subsequent to retirement, an amount equal to 50% of the allowance said member was receiving shall be paid to such surviving spouse to continue as long as he or she remains unmarried. If there be no such spouse or if the spouse dies or remarries before the youngest unmarried child of said deceased member shall have either attained the age of 18 years, or, in the event said child is a full-time student, before he shall have attained the age of 22 years, then an amount equal to 50% of the allowance said member was receiving shall be paid to such child or children, divided in such manner as the Board of Trustees in its discretion shall determine to continue for the benefit of such child or children until the last child marries, dies or either attains the age of 18 years or in the event he is a full-time student, attains the age of 22 years. The surviving spouse benefit provided under this paragraph is effective as of July 1, 1993, and is not payable to the surviving spouse of a member who died before July 1, 1993, where such spouse was not previously entitled to a surviving spouse benefit.
- (6) Effective as of July 1, 1993, any beneficiary receiving or thereafter eligible to receive the 42.5% survivor's benefit under subsection (k)(4) shall receive 50% of the member's allowance, in lieu of the 42.5% previously provided under subsection (k)(4). Any such increased rate shall be effective beginning July 1, 1993, or from the date of eligibility, whichever occurs later.

(l) *Pensions offset by compensation benefits.*

(1) *Scope of subsection.*

This subsection applies to an employee or the beneficiary of an employee who:

- (A) became a member of this system after July 1, 1970;
- (B) on account of a disability or death, was awarded a benefit paid by the City under the State Workers' Compensation Law; and
- (C) on account of the same disability or death, was awarded a disability or death benefit from this system.

(2) *Method of offset.*

A member or beneficiary described in paragraph (1) of this subsection (l) shall have the full amount of his or her Workers' Compensation benefit offset against any disability or death benefit payable from this system until the total amount of the Workers' Compensation

benefit has been recovered. This offset shall be calculated using an actuarial method and appropriate annuity factors recommended by the system's actuary and approved by the Board of Trustees.

(3) *Restoration of amount offset.*

On recovery of the full dollar amount of the Workers' Compensation benefit through the offset described in paragraph (2) of this subsection (1), the reduced disability or death benefit payable to a member or beneficiary of a deceased member of this system shall be increased to the full, unreduced amount of the disability or death benefit payable to the member or beneficiary, as appropriate.

(4) *Restoration not to include post-retirement increases.*

The amount by which a reduced disability or death benefit is increased under paragraph (3) of this subsection (1) may not include post-retirement increases on the amount of the reduction that the member or the beneficiary of a deceased member would have been eligible to receive had his or her disability or death benefit not been reduced.

(5) *Transitional rule.*

This system shall restore, as of June 30, 1998, in the manner provided for in paragraph (3) of this subsection (1), any amount offset against the disability or death benefit of any member or beneficiary of a deceased member:

- (A) whose disability or death benefit was reduced by a Workers' Compensation benefit arising out of a disability or death that occurred before June 30, 1998; and
- (B) whose Workers' Compensation benefit has been determined by the system's actuary to be fully recovered before June 30, 1998, according to the method described in paragraph (2) of this subsection (1).

(m) *Offsetting payments; death of retired member within certain periods.*

- (1) If any living retired member changes the type or kind of retirement allowance elected by him as provided in subsection (k)(1), then any payments which may have been made prior to such change are to be taken into account in arriving at the amount to be paid in connection with the retirement allowance finally selected.
- (2) Any member who retires and dies within 30 days after his effective date of retirement and who has been granted a retirement allowance of maximum benefits either for service, ordinary disability, or special disability, or who has elected to receive one of the several optional allowances available in lieu thereof, shall be considered as a member dying in active service and the benefits provided in § 34(h) shall be paid as therein provided.
- (3) Any retirement allowance payments made to any retired member, who dies within 30 days after his effective date of retirement, shall be offset against any amounts payable under the provisions of § 34(h).

(n) *Minimum benefits for retirees and beneficiaries.*

- (1) Subject to the conditions, deductions and limitations hereinafter set forth, any member who has been retired and who is entitled to receive periodically paid retirement benefits, including supplemental payments, on the day immediately preceding the effective date of this ordinance, regardless of what basis was used for calculating the benefits and even though the benefits may have been incorrectly determined, shall receive a minimum total retirement benefit of \$4,000 per annum in lieu of any lesser retirement benefits, including supplemental payments, which such retiree was entitled to receive on the day immediately preceding the effective date of this ordinance.
- (2) Subject to the conditions, deductions and limitations hereinafter set forth, any surviving beneficiary of a member who was retired and subsequently died before the effective date of this ordinance, and who (beneficiary) is entitled to receive periodically paid retirement benefits, including supplemental payments, on the day immediately preceding the effective date of this ordinance, regardless of what basis was used for calculating the benefits and even though the benefits may have been incorrectly determined, shall receive a minimum total retirement benefit of \$2,000 per annum in lieu of any lesser retirement benefits, including supplemental payments, which such beneficiary was entitled to receive on the day immediately preceding the effective date of this ordinance.
- (3) Subject to the conditions, deductions and limitations hereinafter set forth, any beneficiary who becomes eligible for periodically paid retirement benefits as a result of the death of a retired member which death occurs after the effective date of this ordinance, and which retired member was entitled to receive periodically paid retirement benefits, including supplemental payments, on the day immediately preceding the effective date of this ordinance, regardless of what basis was used for calculating the deceased retired member's benefits, and even though the benefits may have been incorrectly determined, said beneficiary of the deceased retired member shall receive a minimum benefit of \$2,000 per annum in lieu of any lesser retirement benefits, including supplemental payments.
- (4) Said minimum benefit of \$4,000 for a retired member provided in paragraph (1) and the minimum benefit of \$2,000 for any surviving beneficiary of a deceased retired member provided for in paragraphs (2) and (3) shall be subject to the following conditions, deductions and limitations:
 - (a) Said minimum benefit of \$4,000 provided for any retired member shall in no event exceed the maximum salary, excluding longevity pay, life, medical and health insurance premiums paid by the City, and other like benefits paid by the City, payable on the effective date of this ordinance, to employees holding positions comparable to the position held by the retired member immediately before his retirement.
 - (b) Said minimum benefit of \$2,000 provided for any beneficiary of a deceased retired member shall in no event exceed ½ the maximum salary, excluding longevity pay, life, medical and health insurance premiums paid by the City, and other like benefits paid by the City, payable on the effective dated of this ordinance, comparable to the position held by the deceased retired member immediately before his retirement.

- (c) In the event that a retired member or deceased retired member had less than 25 years of service, the aforesaid minimum total retirement benefits of \$4,000 payable to a retired member and the minimum total retirement benefits of \$2,000 payable to any beneficiary of any deceased retired member, shall be reduced, pro rata, by each year and the decimal proportion of a year of service less than 25 years.
- (d) In the event that any unmarried retired member or any married retired member and his spouse have earned income or are entitled to receive social security benefits, or both, the total minimum retirement benefits of \$4,000 provided for a retired member shall be reduced by the sum of both the earned income and social security entitlement of any unmarried retired member or any married retired member and his spouse, on a dollar-for-dollar basis up to a maximum reduction of \$1,000 per annum.

In the event that a deceased retired member's beneficiary has earned income or is entitled to receive social security benefits, or both, the minimum retirement benefits of \$2,000 provided for a beneficiary shall be reduced by the total of both any earned income and social security entitlement on a dollar for dollar basis up to a maximum reduction of \$1,000 per annum.

Social security entitlement shall include not only social security benefits which are actually being collected by the retired member, spouse or beneficiary, but shall also include the amount that the retired member, spouse or beneficiary first qualified for by reason of age or other circumstances, plus any increases of any kind in social security benefits, even though no application has been actually made for the receipt of these benefits.

Earned income shall mean wages, commissions, or other compensation received by any retired member, spouse or beneficiary for services rendered in the capacity of an employee or self-employed, which was paid to them in consideration for any services rendered. It shall not include interest income, dividend income or any other unearned income which was paid to the recipient without services being rendered.

Every retired member shall submit, before May 1 of each year, on a form approved by the Board of Trustees, a signed statement setting forth the total earned income and the total social security benefit entitlement of the retired member and his spouse, if any, for the immediately preceding calendar year.

Every beneficiary of a deceased member shall submit before May 1 of each year on a form approved by the Board of Trustees, a signed statement setting forth the total earned income and the total social security benefit entitlement of the beneficiary for the immediately preceding calendar year.

The said form and its contents completed by a retired member or a deceased retired member's beneficiary shall be certified and sworn to before a notary public. Should any retired member or a deceased retired member's beneficiary fail to submit said signed statement as required, they shall not be entitled to the aforesaid minimum income benefit provided in this subsection until they have complied. However, they shall be entitled to receive the same benefit as they were entitled to receive on the day immediately preceding the effective date of this ordinance.

- (e) In no event shall any retired member or a deceased retired member's beneficiary receive less than a 5% benefit increase, except those eligible for the aforesaid \$4,000 or \$2,000 minimum benefits, respectively, and those who have not filed the statements in accordance with the provisions of subsection (n)(4)(d), over and above the amount of the total annual retirement benefits, including supplemental payments, that they were entitled to receive under the provisions of this subtitle on the day immediately preceding the effective date of this ordinance.
- (f) The basis to be used in determining the eligibility for and computation of the new minimum total retirement benefits provided by this § 34(n) shall be the total annual retirement benefits, including supplemental payments, on the day immediately preceding the effective date of this ordinance, used to calculate periodic payments due a retired member or a deceased members' beneficiary on the last payroll period immediately preceding the effective date of this ordinance, regardless of the basis used for calculating the benefits and even though the benefits may have been incorrectly determined.

However, if the total annual benefits, including supplemental payments, used in calculating the periodic payments are less than those which would have been paid to the retired member or the deceased retired member's beneficiary if the new definition of "service" under this ordinance were implemented, then the lesser retirement benefits are to be recalculated in conformity with the new definition of "service" as provided for under this ordinance, before determining the eligibility for and computation of the \$4,000 minimum for a retired member and the \$2,000 minimum for a deceased retired member's beneficiary and the 5% minimum guarantee for a retired member or a deceased retired member's beneficiary.

- (g) This subsection shall not be applicable to a beneficiary who received a lump sum benefit instead of a periodically paid retirement allowance.
- (h) The total minimum benefits provided by this subsection shall cease at the time that the retired member or deceased retired member's beneficiary is no longer entitled to receive a periodically paid pension, annuity, or both, under any other subsection of this subtitle. It is further provided that the total minimum retirement benefits guarantee so discontinued, with the exception of paragraph (4)(d) of this subsection, shall not be reinstated upon any subsequent reemployment and eligibility for retirement as a result of such reemployment.
- (i) For purposes of applying this subsection of the ordinance, the minimum benefit of \$2,000 for a surviving beneficiary of a retired member in paragraphs (2) and (3) and (4)(e) is to be paid, subject to the same conditions, deductions, and limitations as are provided for a beneficiary of a retired member, to a widow or a dependent child or children who are receiving periodic payments under the provisions of § 34(h)(4) of this subtitle as a result of the death of a member before the effective date of this ordinance.

(o) *Increase to certain retirees.*

- (1) Notwithstanding anything to the contrary contained in § 34(n), effective with the 1st day of the 1st full pay period after July 1, 1975, any retiree who has 25 years or more of service and who is eligible for the benefits provided for in § 34(n), and who is eligible to receive, as of June 30, 1975, total annual retirement benefits in an amount under \$4,400, subject to the limitations herein, shall be entitled to receive an increase of \$400 over and above the amount that the retiree was eligible for as of June 30, 1975. However, if the \$400 increment would result in the retiree's receiving total retirement benefits in excess of \$4,400, then such retiree shall only be entitled to receive such lesser increase as would result in his or her receiving a total annual benefit of \$4,400.
- (2) Notwithstanding anything to the contrary contained in § 34(n), effective with the 1st day of the 1st full pay period after July 1, 1975, any beneficiary of a member who had 25 years or more of service and who is eligible for the benefits provided for in § 34(n), and who is eligible to receive, as of June 30, 1975, total annual retirement benefits in an amount under \$2,200, subject to the limitations herein, shall be entitled to receive an increase of \$200 over and above the amount that the beneficiary was eligible for as of June 30, 1975. However, if the \$200 increment would result in the beneficiary's receiving retirement benefits in excess of \$2,200, then such beneficiary shall only be entitled to receive such lesser increase as would result in his or her receiving a total annual benefit of \$2,200.
- (3) In the event that a retired member or deceased retired member had less than 25 years of service, the aforesaid \$400 increase payable to a retired member and the \$200 increase payable to any beneficiary of any deceased retired member, shall be reduced, pro rata, by each year and the decimal proportion of a year of service less than 25 years. However, if the reduced pro rata increment would result in the retiree's receiving total retirement benefits in excess of \$4,400, then such retiree shall only be entitled to receive such lesser increase as would result in his or her receiving a total annual benefit of \$4,400, or if the reduced pro rata increment would result in the beneficiary's receiving retirement benefits in excess of \$2,200, then such beneficiary shall only be entitled to receive such lesser increase as would result in his or her receiving a total annual benefit of \$2,200.
- (4) Notwithstanding anything to the contrary contained in § 34(n), any social security entitlement and earned income offsets provided for in § 34(n)(4)(d) shall, after July 1, 1975, not exceed the retiree's or the beneficiaries' offset which was used to calculate § 34(n) benefits on June 30, 1975. Should any such offset in any subsequent year be less than the June 30, 1975 offset, then the retiree or beneficiary shall, upon proper application, be entitled to receive the appropriate increase in § 34(n) benefits, in addition to the increased benefits provided for in this subsection.
- (p) In addition to the benefits provided for in this subtitle, any member who was retired on or before June 30, 1977, and who was receiving a periodically paid retirement benefit under this system shall be entitled to receive an increase in his total retirement benefits including §§ 34(n) and 34(o) adjusted benefits, effective with the 1st full pay period on or after July 1, 1979, in an amount equal to 5% of the total retirement benefits including §§ 34(n) and 34(o) adjusted increases, which said retiree was receiving on June 30, 1977, subject to a maximum increase of

\$260 a year. However, such maximum increase of \$260 shall be reduced, pro rata, by each year and the decimal proportion of a year of the retiree's service which was less than 25 years at the time of the member's retirement.

In addition to the benefits provided for in this subtitle, any beneficiary of a deceased retiree who became a beneficiary on or before June 30, 1977, as a result of the death of a retired member, which death occurred on or before June 30, 1977, and which beneficiary is receiving a periodically paid retirement benefit under this system, shall be entitled to receive an increase in his or her total retirement benefits including §§ 34(n) and 34(o) adjusted benefits, starting with the 1st full pay period on or after July 1, 1979, in an amount equal to 5% of the total retirement benefits including §§ 34(n) and 34(o) adjusted increases, which said beneficiary was receiving on June 30, 1977, subject to a maximum increase of \$130 a year. However, such maximum annual increase of \$130 shall be reduced, pro rata, by each year and the decimal proportion of a year that the original member retiree's service was less than 25 years at the time the member retired.

In addition to the benefits provided for in this subtitle, any beneficiary who becomes eligible for periodically paid retirement benefits as a result of the death of a retired member, which death occurs on or after July 1, 1977, and which member was retired and receiving benefits on or before June 30, 1977, shall be entitled to receive an increase in the total retirement benefits including §§ 34(n) and 34(o) adjusted increases, starting with the 1st full pay period on or after July 1, 1979, (or if the retired member dies after July 1, 1979, then the 1st pay period after the retired member's death) in an amount equal to 5% of the total retirement benefits including §§ 34(n) and 34(o) adjusted increases, which said beneficiary was receiving on June 30, 1979, (or at the time of the retired member's death, if later) subject to a maximum increase of \$130 a year. However, such maximum increase of \$130 shall be reduced, pro rata, by each year and the decimal proportion of a year that the original member retiree's service was less than 25 years at the time of the original member's retirement.

The increases provided for under this section shall not be applicable to any retired member or any beneficiary of a deceased retired member who received a lump-sum benefit instead of a periodically paid retirement allowance. In addition, the benefits provided for in this section shall cease at the time that the retired member dies, or the deceased retired member's beneficiary shall no longer be entitled to receive a periodically paid pension, annuity, or both, under any other section of this subtitle. It is further provided that the increases under this section when so discontinued, shall not be reinstated upon any subsequent reemployment and subsequent eligibility for retirement as a result of such reemployment.

- (q) Beginning July 1, 1982, any member who was retired between July 1, 1962, and July 1, 1973, shall be entitled to have his periodically paid retirement benefit under this system calculated on his average final compensation as defined in § 30(11). The provisions of this section shall apply prospectively from July 1, 1982.
- (r) Beginning July 1, 1984, any beneficiary receiving a periodically paid retirement benefit which is based on the average final compensation of 5 years of a deceased member shall be entitled to have said retirement benefit recomputed on the basis of an average final compensation as defined in § 30(11) for said deceased member. No retroactive payments for any such increased benefits shall be made to any eligible beneficiaries.

(r-1) *Special transitional rules for certain line-of-duty disability applicants.*

- (1) A member or former member who applies for a line-of-duty disability benefit under subsection (e-1) of this section or for a 100% line-of-duty disability benefit under subsection (f-1) of this section is entitled to the benefit, without regard to the 5-year statute of limitations set by subsection (e-1)(1)(ii) of this section, if the applicant:
 - (i) files a completed application with the Board of Trustees on or after January 3, 2005, and on or before April 1, 2005; and
 - (ii) is found by a hearing examiner to be otherwise eligible for the benefit by having met all other criteria set by law.
- (2) If a retired or former member was denied a line-of-duty disability benefit because a hearing examiner found that he or she had not filed the application within 5 years of his or her injury, the retired or former member is nonetheless entitled to the line-of-duty disability benefit if she or he:
 - (i) files a new completed application with the Board of Trustees on or after January 3, 2005, and on or before April 1, 2005; and
 - (ii) is found by a hearing examiner to be otherwise eligible for the line-of-duty disability benefit originally applied for by having met all other criteria set by law at the time of his or her original application.

Editor's Note: The preceding subsection (r-1) was added by Ordinance 04-889. Section 2 of that Ordinance further provided:

[A]ny increased benefits payable to a retired or former member who applies for and is granted line-of-duty disability benefits under ... § 34(r-1)(2) ... are to be paid prospectively from the date on which the member files his or her new application. Any benefit increases under ... § 36A applicable to a line-of-duty disability benefit granted under § 34(r-1)(2) shall be calculated as if the member had been awarded the line-of-duty disability effective with his or her date of retirement, but the additional § 36A benefit increases shall only be paid prospectively from the date the retired member files his or her new application under § 34(r-1)(2).

(s) *Benefit increases for retirement effective before July 1, 1988.*

- (1) Members, beneficiaries of members, and any surviving beneficiaries of members whose retirement was effective before July 1, 1986, shall receive a 3.7% increase in their retirement benefits as of June 30, 1997, subject to paragraph (3) of this subsection.
- (2) Members, beneficiaries of members, and any surviving beneficiaries of members whose retirement was effective on or after July 1, 1986, and before July 1, 1988, shall receive a 0.2% increase in their retirement benefits as of June 30, 1997, subject to paragraph (3) of this subsection.

- (3) The retirement benefit increases provided under paragraphs (1) and (2) of this subsection shall not apply to members and their beneficiaries who are receiving benefits under § 34(f)(3) or to beneficiaries of members receiving benefits under § 34(h)(4) or 34(i).

(t) *Compliance with Internal Revenue Code § 415.*

Notwithstanding any other provision of this subtitle, no benefits are provided under this subtitle to the extent that they exceed the limitations applicable to governmental plans covering Police and Fire Department employees in Internal Revenue Code § 415 and the regulations adopted under it.

(u) *Compliance with Internal Revenue Code § 401(a)(9).*

- (1) Distributions under this subtitle shall be made in accordance with the regulations adopted under Internal Revenue Code § 401(a)(9), as applicable to this system, including Regulation § 1.401(a)(9)-2, which regulations override any distribution options in this subtitle to the extent of any inconsistency. This subsection is intended to comply with the requirements of Internal Revenue Code § 401(a)(9) to the extent applicable to this system, and shall not be interpreted to impose any requirements on this system or on any member or beneficiary beyond those required to comply with § 401(a)(9). This subsection only specifies the latest permissible time by which distributions must begin and the longest permissible period over which distributions may be made, and in no way precludes any earlier commencement or more rapid distribution provided for in this subtitle.
- (2) Distribution of a member's retirement benefit shall begin no later than the April 1 following the calendar year during which the member both has reached age 70½ and has terminated employment with the City. Distribution shall be made over a period not extending beyond the life of the member or the joint lives of the member and his or her beneficiary.
- (3) If a member dies before distribution of his or her retirement benefit begins, the member's entire benefit shall be distributed within 5 years after death. This requirement is deemed satisfied by any distribution of the member's benefit payable to his or her beneficiary over a period not extending beyond the life or life expectancy of the beneficiary, as long as those distributions begin no later than December 31 of the calendar year following the calendar year of the member's death. However, if the beneficiary is the member's surviving spouse, the date on which the distributions are required to begin is December 31 of the calendar year in which the member would have attained age 70½. This paragraph (3) does not apply if distribution of the member's benefit began before his or her death and the remaining portion of the member's benefit is distributed at least as rapidly as under the method of distribution being used at the date of the member's death. Any amount paid to a child is treated as if it is paid to the surviving spouse when that child reaches the age of majority.

(v) *Compensation limit.*

(1) *General rule.*

The annual compensation of each member taken into account under this subtitle shall not exceed the federal Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") annual

compensation limit. The OBRA '93 annual compensation limit is \$150,000, adjusted for cost of living increases under Internal Revenue Code § 401(a)(17)(B) and subject to the fresh start provisions set forth in paragraph (2) of this subsection. The cost of living adjustment in effect for a calendar year applies to any period not exceeding 12 months over which compensation is determined (the "determination period") beginning in that calendar year. If a determination period consists of fewer than 12 months, the annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the short determination period and the denominator of which is 12. If compensation for any prior determination period is taken into account in determining a member's retirement benefit in the current year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit for that prior determination period. For this purpose, for determination periods beginning before July 1, 1994, the OBRA '93 annual compensation limit is \$150,000.

(2) *Special rule.*

- (A) In this paragraph, "§ 401(a)(17) member" means any member on or after July 1, 1994, whose annual compensation for any year before 1994 exceeded \$150,000.
- (B) This paragraph (2) applies to determine the retirement benefit of a § 401(a)(17) member.
- (C) The retirement benefit of a § 401(a)(17) member shall be the greater of (i) or (ii) below:
 - (i) the member's retirement benefit on June 30, 1994, determined as though the member terminated service with the City on that date, without regard to any amendments to this subtitle enacted after that date and taking into account annual compensation up to the applicable § 401(a)(17) limitation for each year before July 1, 1994; or
 - (ii) the member's retirement benefit, determined without regard to this paragraph (2).

(3) *Increased limit.*

Paragraphs (1) and (2) apply to benefits earned before January 1, 2002. For benefits earned on or after January 1, 2002, a member's annual compensation taken into account under this subtitle may not exceed the amount determined by the Secretary of the Treasury under Internal Revenue Code § 401(a)(17).

(w) *Eligible rollover distribution.*

(1) *Definitions.*

- (A) In this subsection, the following terms have the meanings indicated:
- (B) (i) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee.
- (ii) "Eligible rollover distribution" does not include:

1. 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 10 years or more;
2. any distribution to the extent that it is required under Internal Revenue Code § 401(a)(9); and
3. 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.

(C) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

- (i) an individual retirement account described in Internal Revenue Code § 408(a);
- (ii) an individual retirement annuity described in Internal Revenue Code § 408(b);
- (iii) an annuity plan described in Internal Revenue Code § 403(a);
- (iv) a qualified trust described in Internal Revenue Code § 401(a);
- (v) an eligible deferred compensation plan described in Internal Revenue Code § 457(b) that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of either; or
- (vi) an annuity contract described in Internal Revenue Code § 403(b).

(D) (i) "Distributee" means an employee or former employee.

- (ii) 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 Internal Revenue Code § 414(p), are "distributees" with regard to the interest of the spouse or former spouse.

(E) "Direct rollover" means a payment under this subtitle to the eligible retirement plan specified by the distributee.

(2) *Direct rollovers.*

Notwithstanding any provision of this subtitle that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(City Code, 1966, art. 22, §34; 1976/83, art. 22, §34.) (Ord. 62-1285; Ord. 64-137; Ord. 65-602; Ord. 65-605; Ord. 67-1022; Ord. 67-1080; Ord. 70-874; Ord. 70-875; Ord. 70-953; Ord. 72-177; Ord. 72-237; Ord. 73-418; Ord. 73-420; Ord. 74-552; Ord. 75-975; Ord. 79-1055; Ord. 79-1126;

Ord. 80-111; Ord. 82-809; Ord. 84-021; Ord. 86-731; Ord. 86-762; Ord. 86-766; Ord. 88-123; Ord. 89-232; Ord. 91-786; Ord. 91-849; Ord. 91-829; Ord. 93-251; Ord. 93-262; Ord. 95-525; Ord. 96-042; Ord. 97-164; Ord. 98-290A; Ord. 98-319; Ord. 00-049; Ord. 03-576; Ord. 04-889; Ord. 07-584; Ord. 09-209.)

§ 35. Management of Funds.

(a) *Trustee of funds.*

The Board of Trustees shall be the trustees of the several funds of the Fire and Police Employees' Retirement System of Baltimore created by Article 22 under this subtitle as provided in § 36. The Board of Trustees shall have the power to invest and reinvest such funds in the following types or classes of assets subject to the limitations, if any, as set forth with regard to each type or class of investment.

The Board of Trustees shall have the duty and responsibility of periodically determining investment policies consistent with the capital market environment, and the actuarial characteristics of the Fire and Police Employees' Retirement System and to publish such investment policy guidelines by filing a copy thereof with the Department of Legislative Reference of Baltimore City, and after January 1, 1979, also by publication in the Municipal Journal.

All contributions from time to time paid into the several funds, and the income thereof, without distinction between principal and income, shall be held and administered by the Board of Trustees or its agents in the funds, and the Board shall not be required to segregate or invest separately any portion of the funds.

Provided, however, that nothing in this section shall be deemed to render illegal or to invalidate the making and holding of any investment heretofore made and now remaining in said funds where such investment when made was authorized by law prior to the enactment of this section; and provided further, that nothing herein shall be deemed to prevent the Board of Trustees from accepting, in lieu or substitution of securities representing investments heretofore validly made, other securities not of the kind enumerated but authorized by ordinance as investments for the said Board prior to the enactment of this section, where the Board shall deem such substitution of securities desirable to preserve the investment of the said funds. Subject to the terms, provisions and conditions contained herein, said Trustees shall have full power to hold, purchase, sell, assign, transfer, and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(1) *Sudan investments.*

Editor's Note: This paragraph (1) was added by Ordinance 07-570. Section 3 of that Ordinance provides for the automatic abrogation of these provisions "if the President of the United States rescinds or repeals Executive Order 13067 or the United States Congress lifts all economic sanctions against the Republic of Sudan".

(i) 1. In this paragraph (1), the following words have the meanings indicated.

2. “Company” means any corporation, utility, partnership, joint venture, franchisor, franchisee, trust, entity, investment vehicle, financial institution, or its wholly-owned subsidiary.
 3. “Divestment action” means selling, redeeming, transferring, exchanging, or otherwise disposing or refraining from further investment in certain investments.
 4. “Doing business in Sudan” means maintaining equipment, facilities, personnel, or other apparatus of business or commerce in Sudan, including ownership of real or personal property in Sudan, or engaging in any business activity with the Government of Sudan.
 5. A. “Sudan” means the government in Khartoum, Sudan, that is led by the National Congress Party (formerly known as the National Islamic Front) or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed on in the Comprehensive Peace Agreement for Sudan.
B. “Sudan” does not include the regional government of southern Sudan.
 6. A. “Actively managed separate account” means the accounts of the System that are actively managed at the direction of the Board of Trustees and held in separate accounts.
B. “Actively managed separate account” does not include:
 1. indexed funds,
 2. private equity funds,
 3. hedge funds,
 4. real estate funds, and
 5. other commingled or passively managed funds.
- (ii) Each Investment Manager engaged by the Board will provide to the Board quarterly written reports presenting a list of:
1. securities of companies under management doing business in Sudan, and
 2. securities or instruments issued by Sudan held by the Investment Manager, in which System funds are invested.
- (iii) In preparing reports required in subparagraph (ii) of this paragraph (1), an investment manager shall reference the U.S. Department of the Treasury’s Office of Foreign Assets Control, Institutional Shareholder Services, or other list approved by the Board of Trustees.

- (iv) Consistent with the fiduciary duties of the Board of Trustees under this Article 22, and the provisions of subparagraph (v) of this paragraph (1), the Board of Trustees may take divestment action in actively-managed separate accounts with regard to investments in:
1. any bank or financial institution that makes loans to the Republic of Sudan,
 2. a national corporation of Sudan, and
 3. the stocks, securities, or other obligations of any company doing business in or with Sudan.
- (v) In determining whether to take divestment action under subparagraph (iv) of this paragraph (1) with regard to the investment of funds in actively-managed separate accounts in a company doing business in Sudan, the Board of Trustees may consider the following:
1. revenues paid by a company directly to the government of Sudan,
 2. whether a company supplies infrastructure or resources used by the government of Sudan to implement its policies of genocide in Darfur or other regions of Sudan,
 3. whether a company knowingly obstructs lawful inquiries into its operations and investments in Sudan,
 4. whether a company attempts to circumvent any applicable sanctions of the United States,
 5. the extent of any humanitarian activities undertaken by a company in Sudan,
 6. whether a company is engaged solely in the provision of goods and services intended to relieve human suffering, or to promote welfare, health, education, or religious or spiritual activities,
 7. whether a company is authorized by the federal government of the United States to do business in Sudan,
 8. evidence that a company has engaged the government of Sudan to cease its abuses in Darfur or other regions in Sudan,
 9. whether a company is engaged solely in journalistic activities,
 10. the economic impact of the divestment from the portfolio, and
 11. any other factor that the Board of Trustees deems prudent.

- (vi) If the Board of Trustees takes divestment action under subparagraph (iv) of this paragraph (1) with respect to investments in a company, the Board of Trustees shall direct the investment manager to provide the company with written notice of its decision and reasons for the decision.
- (vii) On or before October 1 of each year, the Board of Trustees shall submit a report to the City Council that provides:
 - 1. all divestment actions taken by the Board in accordance with this paragraph (1),
 - 2. a list of those companies doing business in Sudan and of those securities or instruments issued by Sudan, as reported to the Board by its investment managers under subparagraph (ii) of this paragraph (1), from which the Board has not divested; and
 - 3. other developments relevant to investment in companies doing business in Sudan.

(2) *Northern Ireland investments.*

- (i) On and after the 1st day of the 1st quarter of fiscal year 1994, no monies or funds held under any provision of the Retirement System shall be invested in the stocks, securities or other obligations of any bank or financial institution which makes loans to Northern Ireland, or to a national corporation of Northern Ireland, or in the stocks, securities, or other obligations of any company doing business in or with Northern Ireland, or whose subsidiary or affiliate does business in or with Northern Ireland, unless the bank, financial institution, national corporation of Northern Ireland or any company or that company's subsidiary doing business in or with Northern Ireland has adopted and follows the goals known as the MacBride Principles:
 - 1. increased representation of individuals from under-represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
 - 2. adequate security for the protection of minority employees at the work place and while traveling to and from work;
 - 3. ban of provocative religious or political emblems from the work place;
 - 4. public advertisement of all job openings and special recruitment efforts made to attract applicants from under-represented religious groups;
 - 5. layoff, recall and termination procedures not to favor particular religious groups;
 - 6. abolition of job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religion or ethnic origin;

7. development of training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of minority employees;
 8. establishment of procedures to assess, identify and actively recruit minority employees with potential for further advancement; and
 9. appointment of a senior management staff member to oversee the company's affirmative action efforts and the setting up of timetables to carry out affirmative action principles.
- (ii) Business entities doing business in Northern Ireland shall be identified by reference to the most recent report of Investor Responsibility Research Center, Incorporated concerning Northern Ireland.
- (iii) 1. Notwithstanding the provisions of § 35(a)(2)(i) with respect to corporations doing business in Northern Ireland, the Board of Trustees shall, consistent with sound investment policy, make investments in such a manner as to encourage corporations that, in the Board's determination, pursue a policy of affirmative action in Northern Ireland.
2. Whenever feasible, the Board shall sponsor, cosponsor, and support shareholder resolutions designed to encourage corporations in which the Board has invested to pursue a policy of affirmative action in Northern Ireland.
 3. The provisions of § 35(a)(2) shall not be construed to require the Board to dispose of existing investments.

(b) *{Vacant}*

(c) *Cash on deposit.*

For the purpose of meeting disbursements for pensions, annuities, and other payments, there may be kept available cash on deposit in one or more banks or trust companies located in the City of Baltimore, organized under the laws of the State of Maryland or of the United States, in such amount as the Trustees may by resolution from time to time adopt, not exceeding a sum equal to the estimated disbursements projected for a period of 15 days. The sums on deposit in bank shall be secured by collateral posted by the depositories of such type and amount as the Board of Finance may prescribe, but in no event shall the market value of such collateral be less than 100% of the amount on deposit according to the depositories' records. In exercising this authority for bank deposits, the Trustees shall endeavor to minimize the amount of such deposits, and shall consider appropriate money management techniques, including wire transfers of funds and the zero-balance-fee-for-service method of maintaining bank accounts. In no event shall the bank accounts be used as the basis for, or form part of the basis for fees for the investment administrators or be used to provide supplementary compensation for such investment administrators.

(d) *Securities handling.*

The Director of Finance, as the Custodian designated in the City Charter, may cause any investment in securities held by the Trustees to be registered in or transferred into the name of the Trustees or into the name of such nominee as the Director of Finance may direct, including a nominee partnership created by the Board of Trustees, or the Director of Finance may retain them unregistered and in form permitting transferability, and further may authorize its contractual agents to deposit securities with “clearing corporations” as defined in § 8-102 of State Commercial Law Article for the express purpose of having such clearing corporations act as centralized depositories of such securities, but the books and records of the Director of Finance and its contractual agents shall at all times show that all such investments are part of the several funds of the Fire and Police Employees’ Retirement System. The authority to make use of a clearing corporation shall include the authority to utilize the “book entry” system of the United States Government, and agencies thereof, for which the Federal Reserve Bank is the authorized fiscal agent.

(e) *Conflicts of interest.*

Except as otherwise herein provided, no trustee and no employee of the Board of Trustees shall have any direct interest in the gains or profits of any investment made by the Board of Trustees or their designees, nor as such receive any pay or emolument for his services, except as authorized from time to time by the Board of Estimates. No trustee or employee of the Board shall, directly or indirectly, for himself or as an agent in any manner use said gains or profits, except to make such current and necessary payments as are authorized by the Board of Trustees; nor shall any trustee or employee of the Board of Trustees become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the Board of Trustees.

(f) *Trustee fiduciary liability.*

Neither the Board of Trustees nor any agent, person or other entity acting on behalf of the Board of Trustees shall be liable for the making, retention or sale of any investment or reinvestment made as herein provided, nor for any loss or diminution of the funds, except that due to his or its own gross negligence, willful misconduct or lack of good faith.

(g) *Custodian and supervision of funds.*

The Director of Finance shall be the custodian of the several funds of the Fire and Police Employees’ Retirement System. Supervision of the several funds of the Fire and Police Employees’ Retirement System shall be vested in the Board of Trustees. Subject to the approval of the Board of Estimates, the Board of Trustees may hire and appoint such persons, agents or entities (including corporate fiduciaries) as in its discretion may be required or advisable to enable it to perform such pension fund investment management duties hereunder; provided further, that subject to the approval of the Board of Estimates the Board of Trustees may enter into agency and pension fund investment management agreements with one or more qualified pension fund managers for the purpose of obtaining pension fund investment management for the Fire and Police Employees’ Retirement system and the several funds thereof. Payment for such investment management services shall be made from the resources of the pension fund or funds.

(h) *Prudent investment of funds.*

The Board of Trustees shall discharge its duties, with respect to the investment of the funds of the Fire and Police Employees' Retirement System, solely in the interest of the members and beneficiaries and

(1) for the exclusive purpose of:

(i) providing benefits to members and beneficiaries; and

(ii) defraying reasonable expenses of administering the Retirement System.

(2) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(3) by diversifying the investments of the Retirement Systems' funds so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the provisions of § 35 of this subtitle.

(City Code, 1966, art. 22, §34; 1976/83, art. 22, §34.) (Ord. 62-1285; Ord. 64-137; Ord. 65-602; Ord. 65-605; Ord. 67-1022; Ord. 67-1080; Ord. 70-874; Ord. 70-875; Ord. 70-953; Ord. 72-177; Ord. 72-237; Ord. 73-418; Ord. 73-420; Ord. 74-552; Ord. 75-975; Ord. 79-1055; Ord. 79-1126; Ord. 80-111; Ord. 82-809; Ord. 84-021; Ord. 86-731; Ord. 86-762; Ord. 86-766; Ord. 88-123; Ord. 89-232; Ord. 91-786; Ord. 91-849; Ord. 91-829; Ord. 93-251; Ord. 93-262; Ord. 95-525; Ord. 96-042; Ord. 97-164; Ord. 98-290A; Ord. 98-319; Ord. 07-570.)

§ 36. Method of financing.(a) *Funds of System.*

(1) *Established.*

In this System there are:

(i) an Annuity Savings Fund;

(ii) an Annuity Reserve Fund;

(iii) a Pension Accumulation Fund; and

(iv) a Pension Reserve Fund.

(2) *Credits to Funds.*

The Board of Trustees shall credit the assets of this System to the appropriate fund according to the purpose for which the assets are held.

(b) *Annuity Savings Fund.*

(1) *In general.*

The Annuity Savings Fund consists of the assets for each member's annuity portion of the member's retirement benefit.

(2) *Credits to Fund.*

The Board of Trustees shall credit to each member's individual account in the Annuity Savings Fund:

- (i) the contributions made by the member; plus
- (ii) interest on the member's accumulated contributions, compounded annually at the rate provided for in § 30(9), from the effective date of membership through termination of membership.

(3) *Payments from Fund.*

From the Annuity Savings Fund, the Board of Trustees shall pay the accumulated contributions of a member that, as provided in this § 36:

- (i) are withdrawn by the member; or
- (ii) if a member dies, are paid to the member's estate or designated beneficiary.

(4) *Transfers to Annuity Reserve Fund.*

When a member retires, the Board of Trustees shall transfer his or her accumulated contributions from the Annuity Savings Fund to the Annuity Reserve Fund.

(5) *Compensation rate treated as continuing through pay period.*

To determine the earnable compensation of a member in a payroll period, the Board of Trustees may treat the rate of annual compensation payable to the member on the 1st day of the payroll period as continuing throughout the payroll period.

(6) *less than full pay period.*

No deductions may be made from the earnable compensation of a member either entering or leaving service who has worked less than a full payroll period.

(7) *Contributions required.*

- (i) The member contributions provided for in this section shall be made notwithstanding any resulting reduction in the actual compensation received below the minimum compensation provided for by law for a member.

- (ii) Each member is deemed to have agreed to make the member contributions required by this section and to have received full compensation.
- (iii) Except for the benefits provided under this section, the payment of compensation less any member contribution is a complete discharge of all claims for services rendered by an employee during the time covered by the payment.

(8) *Certification and payment of member contributions.*

- (i) The Board of Trustees shall certify to the Department of Finance the percentage of compensation to be deducted from each member's earnable compensation.
- (ii) As each payroll is paid, the Department of Finance shall certify to the Board of Trustees, the member contributions deducted from the compensation of each member employed.
- (iii) On receipt of the certification from the Department of Finance that a member's contributions have been deducted from the member's compensation, the Board of Trustees shall credit those contributions to the member's account in the Annuity Savings Fund.

(9) *Redeposits.*

Subject to the approval of the Board of Trustees, any member may redeposit, by a single payment or by an increased rate of contributions an amount equal to the total amount that the member previously withdrew, plus regular interest as provided for under § 32.

(c) *Annuity Reserve Fund.*

The Annuity Reserve Fund shall be the fund from which shall be paid all annuities and all benefits in lieu of annuities, payable as provided in this subtitle. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, his annuity reserve shall be transferred from the Annuity Reserve Fund to the Annuity Savings Fund and credited to his individual account therein.

(d) *Pension Accumulation Fund.*

- (1) The Pension Accumulation Fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and other benefits payable from contributions made by the City of Baltimore and from which shall be paid all pensions and other benefits on account of members with prior service credit and lump sum death benefits for all members payable from the said contributions. Contributions to and payments from the Pension Accumulation Fund shall be made as follows:
- (2) On account of each member there shall be paid annually into the Pension Accumulation Fund by the City of Baltimore, for the preceding fiscal year, a certain percentage of the earnable compensation of each member to be known as the "normal contribution," and an additional

percentage of his earnable compensation to be known as the “accrued liability contribution”. The rates per centum of such contributions shall be fixed on the basis of the liabilities of the retirement system as shown by actuarial valuation.

- (3) On the basis of regular interest and of such mortality and other tables as shall be adopted by the Board of Trustees, the actuary engaged by the Board shall make a valuation to determine the required contribution by the City of Baltimore to the Pension Accumulation Fund.

The actuary shall determine a normal cost for each employee which is equal to the amount of annual contribution which is necessary to provide his benefit if such contributions had been made annually from his date of employment to his date of retirement. The total of amounts so determined shall be known as “normal cost contribution”.

- (4) (i) For each employee, the Board of Trustees shall calculate an accrued liability equal to the accumulation of the annual normal cost contribution described in paragraph (3) of this subsection from date of employment to the valuation date on the basis of the actuarial assumptions adopted by the Board of Trustees.
- (ii) The accrued liability calculated in accordance with subparagraph (i) shall be added to the reserve for retirement benefits payable to retired members from the Pension Accumulation Fund to obtain the total accrued liability.
- (iii) The assets of the Pension Accumulation Fund shall be applied against the total accrued liability calculated for all participants to determine the amount of unfunded accrued liability.
- (iv) If the total accrued liability exceeds the assets in the Pension Accumulation Fund, an accrued liability contribution shall be determined as the amount that is sufficient to meet regular interest on the unfunded accrued liability and to amortize the principal of the unfunded accrued liability over the period determined by the Board of Trustees.
- (v) If the assets in the Pension Accumulation Fund exceed the total accrued liability, the excess assets shall be amortized over the period determined by the Board of Trustees to reduce the required contribution by the City of Baltimore.
- (5) The required contribution by the City of Baltimore is the amount equal to the normal cost, plus the accrued liability contribution or less the amortization of the excess assets, as the case may be. However, the aggregate payment by the City must be sufficient, when combined with the amount in the fund, to provide the pensions and other benefits payable out of the fund during the then-current year.
- (6) All pensions and all benefits in lieu of pensions, with the exception of those payable on account of members who received no prior service allowance, and all lump sum death benefits on account of death in active service payable from contributions of the City of Baltimore shall be paid from the Pension Accumulation Fund.
- (7) On the retirement of a member not entitled to credit for prior service, an amount equal to that member’s pension reserve shall be transferred from the Pension Accumulation Fund to the Pension Reserve Fund.

(e) *Pension Reserve Fund.*

The Pension Reserve Fund is the fund from which the pension is paid to members not entitled to credit for prior service and benefits in lieu thereof. If such a beneficiary retired on account of disability is restored to active service with compensation not less than his or her average final compensation at the time of his or her last retirement, the pension reserve thereon shall be transferred from the Pension Reserve Fund to the Pension Accumulation Fund. If the pension of such a disability beneficiary is reduced as a result of an increase in his or her earning capacity, the amount of the annual reduction in his or her pension shall be paid annually into the Pension Accumulation Fund during the period of that reduction.

(f) *Payment of funds.*

- (1) Annually, the Board of Trustees shall certify to the Director of Finance the amount of the City's contribution, as determined by the System's actuary and presented in the System's fiscal year end actuarial valuation report approved and adopted by the Board of Trustees.
- (2) This certification shall be made no later than 90 days before the 1st day of the new fiscal year following the certification, at which date the contribution becomes due to the system.
- (3) The certified amount of the contribution shall be included in the new fiscal year's Ordinance of Estimates.

(g) *{Repealed}*.

(h) *Percent of compensation contributable.*

- (1) Notwithstanding the funding provisions hereinabove set forth in this section, effective with the 1st full payroll period commencing closest to July 1, 1973, the contribution by a member to the retirement system shall equal 5% of his regular compensation, such contribution to continue throughout such member's entire period of service. However, any member in the system prior to July 1, 1967, who elected to continue contributing at his rate of contribution as established prior to July 1, 1967, and to discontinue contributions at age 50, after 25 years of service, shall continue at a rate which is 1% less than his present rate of contribution. Overtime pay shall not be included within the term "regular compensation".

Effective with the 1st full payroll period commencing closest to January 1, 1989, each member who would otherwise contribute 5% of his regular compensation shall contribute 6½% of his regular compensation, such contribution to continue until the 1st full payroll period commencing closest to July 1, 1989, when it shall become 6¾% of his regular compensation; effective with the 1st full payroll period commencing closest to July 1, 1990, each member shall contribute 7% of his regular compensation, such contribution to continue throughout such member's remaining period of service.

- (2) For members in the system prior to July 1, 1967, who elected to discontinue contributions at age 50 in accordance with the preceding paragraph of this § 36(h), effective with the 1st full payroll period commencing closest to January 1, 1989, such member shall contribute 1½% of

his regular compensation, such contribution to continue until the 1st full payroll period commencing closest to July 1, 1989, when it shall become 1¾% of his regular compensation; effective with the 1st full payroll period commencing closest to July 1, 1990, each such member shall contribute 2% of his regular compensation, such contribution to continue throughout such member's remaining period of service.

- (3) Effective with the 1st full payroll period commencing closest to January 1, 1989, the contributions described in this § 36(h) shall be treated as being "picked up" by the City of Baltimore within the meaning of § 414(h)(2) of the Internal Revenue Code of 1986 as amended.

Such picked-up contributions shall not be excluded from "average final compensation" in computing the amount of any retirement allowance under the system or any other benefit paid or payable in connection with the member's employment. Each member shall at all times be fully vested in such contributions.

As soon as administratively practicable, the City shall request a private letter ruling from the Internal Revenue Service to the effect that the contributions so picked up by the City on behalf of members of the retirement system shall be treated as employer contributions described in Code § 414(h)(2) and will not be includable in the member's gross income for federal income tax purposes for the year in which they are contributed. In the event the Internal Revenue Service rules that the City's pick up of contributions does not satisfy the requirements of Code § 414(h)(2), or in the event § 414(h)(2) is repealed, the contribution rates set forth in this § 36(h) shall remain in effect, and the contributions shall no longer be treated as picked up by the City but shall be paid instead directly by the member.

- (4) Effective with the 1st full payroll period commencing after the date of enactment of Ordinance 93-262, each member who would otherwise contribute 7% of his regular compensation according to paragraph (1) above shall instead contribute 6% of his regular compensation, such contribution to continue throughout such member's remaining period of service.

(i) *Optional transfers; supplementary contributions.*

Any employee who on July 1, 1967, is a member of the Employees' Retirement System of the City of Baltimore, or any other pension or retirement fund supported wholly or partly by the City of Baltimore, and is otherwise eligible to be a member of this system, may file with the Board of Trustees on a form prescribed by the Board an election to transfer to the membership of the Retirement System, such election to be filed no later than July 1, 1968, or within 6 months after the appointment of a guardian with respect to the property of an employee who has been determined to be a disabled person whose disability existed on July 1, 1968, provided such election is filed prior to July 1, 1972. An eligible employee who during the aforesaid period files an election to transfer membership to the Retirement System may contribute to such system in excess of the normal contribution as otherwise herein defined the difference between contributions paid by him into the Employees' Retirement System or any other pension or retirement fund supported wholly or partly by the City of Baltimore, and the amount that he would have been required to pay into the Retirement System from July 1, 1962, to the effective date of his transfer to the Retirement System, such difference to be paid to the Retirement

System prior to retirement, with interest to date of payment. In the event that he does not elect to make these additional contributions, any retirement allowance to which he may be entitled shall be reduced by the actuarial equivalent of such contributions which have not been made, together with interest thereon. The total annuity that would have been payable had he been required to make payment of these additional contributions shall be used in determining the amount of the supplemental pension provided under § 34(a)(6).

(j) *Interest and earnings.*

- (1) For the purpose of actuarial valuations, the system's assets shall be carried at current market value and shall be valued on each June 30 valuation date at the then current market value.
- (2) The Board of Trustees shall annually credit regular interest, less the investment management, custodian, and investment advisor costs on the average account balances for the preceding year, to each of the funds. After payment of fees for pension fund management, custodian, and investment advice or services as provided in §§ 35(g) and 43(a), any excess earnings or deficit earnings of the Funds of this system ("Funds" shall exclude the Paid-Up Benefit Fund and the Contingency Reserve Fund) shall be determined by the system's actuary in accordance with an appropriate asset valuation method giving effect to actual earnings of the Funds over the assumed rate of earnings based on the regular interest rate used for valuation purposes.
- (3) Any excess earnings shall be applied by the Board of Trustees in the following order:
 - (i) to provide post retirement benefit increases as provided by § 36A of this subtitle;
 - (ii) to meet the conditions of any asset valuation method then in use by the system;
 - (iii) to meet any requirements, as recommended by the system's actuary, adopted by the Board of Trustees, and, if necessary, approved by the Mayor and City Council, for changes in the assumed rate of regular interest used for valuation purposes or for changes in mortality or other assumptions; and
 - (iv) subject to paragraphs (6) through (11) of this subsection, the remaining excess earnings, if any, may next be applied by the Board of Trustees, at the recommendation of the system's actuary, in such amount or amounts as they determine (a) to decrease the amount to be contributed by the City of Baltimore, and/or (b) to decrease the period over which the unfunded accrued liability will be amortized as provided in § 36(d)(4).
- (4) Any deficit earnings shall be applied by the Board of Trustees in the following order:
 - (i) to meet the conditions of any asset valuation method then in use by the system; and
 - (ii) the remaining deficit earnings, if any, may next be applied by the Board of Trustees, at the recommendation of the system's actuary, in such amount or amounts as they determine:
 - (a) to increase the amount to be contributed by the City of Baltimore, and/or

- (b) to increase the period over which the unfunded accrued liability will be amortized as provided in § 36(d)(4).
- (5) For the purposes of the June 30, 1997, valuation through the June 30, 2000, valuation, the asset valuation method used by the system shall be the valuation method used for the June 30, 1996, valuation.
- (6) Beginning with the June 30, 1996, valuation date, any excess earnings or deficit earnings of the system as of the June 30 valuation date not allocated by the Board of Trustees under paragraphs (1) - (4) (“unallocated earnings”) shall be applied as follows:
 - (i) 1/3 of the unallocated earnings shall be credited or charged to the Benefit Improvement Fund for the exclusive purpose of funding benefit improvements for members and beneficiaries of the system;
 - (ii) 2/3 of unallocated earnings shall be credited or charged to the Employer Reserve Fund for the exclusive purpose of reducing the required annual contributions of the City to the system.
- (7) (i) Effective with unallocated earnings as of June 30, 1997, the first \$10-million of unallocated earnings credited to the Benefit Improvement Fund shall not be available for funding the cost of benefit improvements and the first \$20-million of unallocated earnings credited to the Employer Reserve Fund shall not be available for reducing the City’s annual contributions, but shall instead become permanent, minimum stabilization fund balances restricted in use only for application against future earnings deficits of the system.
 - (ii) Beginning June 30, 2000, unallocated earnings shall first be applied to increase the minimum stabilization fund balances for the Benefit Improvement Fund and the Employer Reserve Fund, according to the following schedule. If the unallocated earnings are insufficient to increase the balances as specified, the unallocated earnings in subsequent years shall first be applied to meet the requirements of this schedule.

Minimum Stabilization Fund Balance Increases
(In Millions)

June 30	Benefit Improvement Fund	Employer Reserve Fund	Cum.Total
1999*	\$10.0	\$20.0	\$ 30.0
2000	15.0	30.0	75.0
2001	3.0	6.0	84.0
2002	3.0	6.0	93.0
2003	2.3	4.7	100.0

*Actual Balances as of June 30, 1999

- (iii) Future earnings deficits shall be applied in the same $\frac{1}{3}$ - $\frac{2}{3}$ ratio as excess earnings, provided that such deficits first be charged against the minimum stabilization fund balances in each of the Benefit Improvement Fund and the Employer Reserve Fund. Any remaining deficits shall then be charged against the unrestricted portions of the Benefit Improvement Fund and the Employer Reserve Fund. In the event that future deficits are applied against these minimum stabilization fund balances, such balances must be replenished before any additional unallocated earnings are credited to the unrestricted portions of the Benefit Improvement Fund and the Employer Reserve Fund.
- (8) Excess earnings credited to the Benefit Improvement Fund shall be used to fund retirement laws providing benefits for members and beneficiaries of the system. The cost of these benefits shall be calculated by the system's actuary and shall be charged against the Benefit Improvement Fund by using an actuarial present value method of costing in conjunction with actuarial assumptions and methods in place as of the effective date of the ordinance creating or improving the benefits, as modified if necessary to reflect changes in expected experience to the Plan on account of the ordinance.
- (9) Any unused balance in the Benefit Improvement Fund or the Employer Reserve Fund shall be carried forward to the next fiscal year. Positive and negative balances in the unrestricted portions of the Benefit Improvement Fund and the Employer Reserve Fund at the June 30 valuation date shall be credited or charged with interest at the rate of 8.25%, compounded annually.
- (10) Notwithstanding paragraphs (6) and (7) of this subsection, \$16.7-million of the unallocated earnings of the system as of June 30, 1996, shall be credited to the Benefit Improvement Fund, and \$33.3-million of unallocated earnings of this system as of June 30, 1996, shall be credited to the Employer Reserve Fund, without establishing the minimum stabilization fund balances in either fund.
- (11) Unallocated excess earnings shall be credited or deficit earnings shall be charged against the Benefit Improvement Fund and the Employer Reserve Fund through the June 30, 2005, valuation date.
- (12) Any balance in the Benefit Improvement Fund or the Employer Reserve Fund at June 30, 2005, whether positive or negative, shall be combined with the minimum stabilization fund balance in each respective fund as of June 30, 2005, to produce a "combined balance" for each respective fund.
- (13) Any positive combined balance in the Benefit Improvement Fund or the Employer Reserve Fund at June 30, 2005, shall continue to earn interest at the rate of 8.25% per annum, compounded annually, and may be used, respectively, to fund benefits or to reduce the City's annual contribution until the balance in each fund is reduced to zero.

- (14) Any negative combined balance in the Benefit Improvement Fund or the Employer Reserve Fund at June 30, 2005, shall be applied by the Board of Trustees in accordance with an appropriate asset valuation method, as recommended by the system's actuary.

(City Code, 1966, art. 22, §36; 1976/83, art. 22, §36.) (Ord. 62-1285; Ord. 67-1080; Ord. 68-234; Ord. 70-874; Ord. 71-1017; Ord. 71-1126; Ord. 73-420; Ord. 74-552; Ord. 88-123; Ord. 93-262; Ord. 97-164; Ord. 99-448; Ord. 00-049; Ord. 03-576.)

§ 36A. Post-retirement benefit increases to certain retirees and beneficiaries.

Each retired member or beneficiary who is receiving periodic benefits under the provisions of the Retirement System is eligible for an increase in the amount of those periodic benefits subject to the following provisions.

(a) *Eligibility.*

- (1) (i) Each member who has retired from active service and each beneficiary of a deceased member who is or will be receiving periodic retirement benefits and who receives periodic benefit payments for 2 or more years is eligible for an increase in the periodic benefit, as determined under this § 36A. The 2-year period shall be calculated beginning with the effective date of the 1st retirement benefit payment paid to either the retired member or the beneficiary of a deceased member and shall be determined on June 30 of each year beginning with June 30, 1983. Years retired as a beneficiary of a former retired member include the years that the member was retired. Eligible members and beneficiaries are also referred to in this section as “persons”.
- (ii) For a member who has retired during or at the conclusion of his or her Deferred Retirement Option Plan (“DROP”) participation period, as defined in § 36B of this subtitle, and for each beneficiary who is or will be receiving periodic retirement benefits as a result of a member who dies during or at the conclusion of his or her DROP participation period, the months of participation in DROP shall be counted toward the eligibility requirement described in subparagraph (i) of this paragraph.
- (iii) For a member who has retired on intermediate DROP benefits or full DROP benefits, his or her months of participation in DROP shall not be counted toward the eligibility requirement described in subparagraph (i) of this paragraph.
- (2) (i) This paragraph (2) applies to members who are no longer employed in a permanent full-time or permanent part-time position with the City and were either:
1. members of this system who were eligible to retire but chose to postpone receipt of retirement benefits to begin employment in a position covered by another City system; or
 2. retirees who were receiving retirement benefits from this system but chose to suspend receipt of those benefits to begin employment in a position covered by another City system.

(ii) Pursuant to § 48 of this article and notwithstanding the waiting period required by this section, members described in subparagraph (i) of this paragraph (2), on ceasing all permanent full-time and permanent part-time employment with the City, shall receive benefits calculated to include all post-retirement increases, in accordance with the rates of increase set by this system, that the member or retiree would have been eligible to receive as a retiree had retirement benefits not been postponed or suspended.

(3) (A) This paragraph (3) applies to a member's surviving spouse who:

- (i) on the member's death, was awarded line-of-duty death benefits;
- (ii) remarried on or before June 29, 1998, and, as a result, stopped receiving these line-of-duty death benefits; and
- (iii) pursuant to § 34(i)(2)(E), has resumed receiving these line-of-duty death benefits effective June 30, 1998.

(B) A surviving spouse described in subparagraph (A) of this paragraph (3) shall receive line-of-duty death benefits calculated to include all post-retirement increases, in accordance with the rates or increases set by this system, that the surviving spouse would have been eligible to receive had line-of-duty death benefits not been terminated.

(b) *Amount of benefit increase.*

As of the end of each fiscal year, a determination shall be made of the amount of increase (if any) of retirement benefit payments which may be payable to eligible persons. The amount of retirement benefit increase shall be calculated with reference to excess investment earnings of the Annuity Reserve Fund and the Pension Reserve Fund only, and according to the method described in subsection (c) below.

After determination of the amount of excess investment earnings available for retirement benefit increases, such excess investment earnings shall be allocated to eligible retired members and beneficiaries according to the following method. The percentage *{by}* which the benefits shall be increased shall be determined by the actuary as the amount that the investment earnings determined in subsection (c) below would be sufficient to fund on a single premium paid up annuity basis using the actuarial valuation assumptions on the June 30 preceding the effective date of the increase.

- (i) Effective as of January 1, 1984, an increase may be payable to each retiree or beneficiary eligible pursuant to subsection (a) of this section as of June 30, 1983.
- (ii) Until the benefit increase objectives set forth in paragraph (iii) below have been met, the allocation to eligible persons shall be made with reference to the number of full continuous years that each person has been receiving retirement benefits from this plan and the amount of each person's benefit being paid as of June 30, 1983. A percentage factor will be determined by the actuary to increase benefits to those eligible. The percent increase in an eligible member's or beneficiary's benefit will equal the percentage factor times full years which the member or beneficiary has been receiving benefits. No fractional years will be used.

(iii) The allocation method set forth in paragraph (ii) above shall apply only until the following benefit increase objectives have been met:

<i>Date benefit payments began</i>	<i>Percent increase</i>
7/1/80 - 6/30/81	1%
7/1/79 - 6/30/80	2%
7/1/78 - 6/30/79	3%
7/1/77 - 6/30/78	4%
7/1/76 - 6/30/77	5%
7/1/75 - 6/30/76	6%
7/1/74 - 6/30/75	7%
7/1/73 - 6/30/74	8%
7/1/72 - 6/30/73	9%
7/1/71 - 6/30/72	10%
7/1/70 - 6/30/71	11%
7/1/69 - 6/30/70	12%
7/1/68 - 6/30/69	13%
7/1/67 - 6/30/68	14%
7/1/66 - 6/30/67	15%
7/1/65 - 6/30/66	16%
7/1/64 - 6/30/65	17%
7/1/63 - 6/30/64	18%
7/1/62 - 6/30/63	19%
before 7/1/62	20%

After the above objectives have been met, the allocation of new excess investment earnings shall be made without reference to the number of years any member or beneficiary has been receiving benefits. The allocation to eligible persons shall then be made by the actuary on an equal percentage basis.

(iv) For each June 30 after June 30, 1983, the determination of the amount of excess investment earnings and allocation of such earnings to eligible persons shall be calculated using the appropriate method outlined in paragraph (ii) or (iii) above with the amount of distribution and the allocation of such amount being calculated as of the end of the fiscal year, with any increase to commence effective as of the following January 1.

The benefit increase payable pursuant to this section shall be payable in the same form as the basic benefit being received by the eligible person.

(c) *Amount of investment income to be used to increase benefits.*

Notwithstanding § 36 as it applies to excess earnings, the amount of excess investment earnings available as of each June 30 for an increase in benefits will be equal to the product of items (i), (ii), and (iii) of this subsection. Each item, except for item (ii), is determined as of each June 30 beginning with June 30, 1983, and any benefit increase becomes effective as of the following January 1. Item (ii) is determined as of the June 30 that is 18 months prior to the effective date of the benefit increase, beginning with June 30, 1982.

- (i) The dollar amount of net excess investment earnings determined on the following basis:

Before the Reserve for Book Value is paid off, net excess investment earnings shall be that portion of total fund earnings between 8% and 10½% of average market value, plus ½ of the fund earnings in excess of 10½%.

After the Reserve for Book Value is paid off, net excess investment earnings shall be that portion of total fund earnings between 7½% and 10% of average market value, plus ½ of fund earnings in excess of 10%.

For purposes of the above calculations, earnings shall be net of investment expenses and include realized and unrealized gains and losses and all other sources of investment gains and losses as shown in the actuary's report. The investment return used in this section shall be based on the annual return as of each June 30, commencing with the year ending June 30, 1983. The average market value for the year shall equal ½ of the market value of the 4 funds as of the beginning of the year plus ½ of the market value of the funds as of the end of the year minus ½ of the earnings during the year. The earnings and market value of the funds for the purpose of this section are assumed to be equal to the values contained in the actuary's report. Any later audit changes shall be ignored.

- (ii) The ratio of the sum of the Annuity Reserve Fund plus the Pension Reserve Fund to the sum of all 4 funds: Annuity Savings Fund, Annuity Reserve Fund, Pension Accumulation Fund, and the Pension Reserve Fund.
- (iii) ¾ on June 30, 1983, for the initial increase (if any) and ¾ for each subsequent year until a Contingency Reserve Fund has been accumulated according to the following method. The remaining ¼ of excess investment earnings as of June 30, 1983, and each succeeding June 30 shall be set aside as a Contingency Reserve Fund until the value of that fund is at least equal to 2½% of the Annuity Reserve Fund and the Pension Reserve Fund as of the end of the most recent June 30. For each year in which the Contingency Reserve Fund is more than 2½% of the Annuity Reserve Fund and the Pension Reserve Fund, the ¾ fraction does not apply and the amount available to increase benefits is the product of items (i) and (ii).

(d) *Paid-Up Benefit Fund and Contingency Reserve Fund.*

- (i) The existence of a Paid-Up Benefit Fund and a Contingency Reserve Fund is specifically authorized, § 36 to the contrary notwithstanding.
- (ii) (A) The Paid-Up Benefit Fund is the primary fund from which all benefit increases provided under this section shall be paid. The Paid-Up Benefit Fund shall be funded with excess investment earnings consistent with subsection (c) of this section.
- (B) For any year in which the investment return of the Paid-Up Benefit Fund exceeds the interest assumption on which the purchase of paid-up benefits is based, that excess shall remain in the fund.
- (C) For any year in which the Paid-Up Benefit Fund experiences higher mortality rates than expected, the excess assets shall remain in the fund.

- (D) On determination of the amount of the excess assets in this Fund by the system's actuary, the Board of Trustees may allocate all or part of the excess assets to provide additional benefit increases to those retirees and beneficiaries eligible for increases under § 36A(a)(1) of this subtitle.
- (iii)(A) The Contingency Reserve Fund is a reserve to insure payment of previously accrued benefit increases for any year in which the Paid-Up Benefit Fund has a deficit or does not meet its investment return assumption. If there is a deficit in the Paid-Up Benefit Fund, the Board of Trustees shall transfer assets from the Contingency Reserve Fund to the Paid-Up Benefit Fund to offset that deficit. The Contingency Reserve Fund shall be funded with excess investment earnings consistent with subsection (c) of this section.
- (B) For any year in which the value of the Contingency Reserve Fund is equal to or exceeds 2½% of the Annuity Reserve Fund and the Pension Reserve Fund, the Board of Trustees shall apply earnings on the Contingency Reserve Fund, in the amount or amounts it determines:
- (1) to decrease the amount contributed by the City of Baltimore; or
 - (2) to decrease the period over which the unfunded accrued liability will be amortized.
- (iv) The Board shall periodically determine investment policies for the Paid-Up Benefit Fund and the Contingency Reserve Fund. These policies must be consistent with the limitations set forth in this section.
- (v)(A) The Board shall segregate or invest separately the assets of the Paid-Up Benefit Fund and the Contingency Reserve Fund in accordance with the standards set forth in § 35(h) of this subtitle.
- (B) The Board is specifically empowered to invest and reinvest the assets of the Paid-Up Benefit Fund and the Contingency Reserve Fund in the medium of paid-up annuity contracts or guaranteed investment contracts purchased from one or more insurance companies, as long as each insurance company has no less than the highest rating from A.M. Best Company or a comparable company.
- (C) If, in the purchase of an annuity contract, the single premium paid-up annuity cost offered by the insurance company results in a cost savings to this System, the Board of Trustees shall apply the amount of that cost savings, in the amount or amounts it determines:
- (1) to decrease the amount contributed by the City; or
 - (2) to decrease the period over which the unfunded accrued liability will be amortized.

(e) *Benefit increases to be paid only from Paid-Up Benefit Fund and Contingency Reserve Fund.*

- (i) Any benefit increase provided under this section shall be funded on a single-premium paid-up annuity basis. For this purpose, “single-premium paid-up annuity basis” has the common actuarial meaning of spreading the amount available to provide a benefit over the lifetime of an individual in the form of an annuity. It is intended that any benefit increase continue for the lifetime of the eligible member and any beneficiary, consistent with any option elected under § 34.
- (ii) The granting of any benefit increase under this section is contingent on the performance of the Retirement System’s investment funds. The continuation of any benefit increase previously accrued under this section is specifically made contingent on the ability of the Paid-Up Benefit Fund and the Contingency Reserve Fund to provide these benefits in the future. §§ 37 and 42 to the contrary notwithstanding, any benefit increase provided under this section is not and does not become an obligation of the City of Baltimore. In the event of any conflict between this section and either or both § 37 or § 42, this section prevails.
- (iii) If the members’ longevity or the performance of this System’s investment funds causes a decline in the value of the Paid-Up Benefit Fund and the Contingency Reserve Fund, with the result that the actuarial value of benefit increases previously accrued under this section exceeds the value of the Paid-Up Benefit Fund and the Contingency Reserve Fund, the Board of Trustees shall reduce or eliminate previously accrued increases on an equal percentage basis, effective as of January 1 following the June 30 on which a deficit exists. An equal percentage reduction shall be made to all benefits granted under this section, regardless of when those increases were granted. If the Paid-Up Benefit Fund and the Contingency Reserve Fund become exhausted or decline in value to the point of having no value, previously accrued increases shall be eliminated in full. Any excess investment earnings available under subsection (c) of this section in a subsequent year shall be used to provide an increase in benefits without restoration of any prior reduction or elimination of benefit increases previously accrued.

(f) *Paid-Up Benefit Fund to provide increase in widow’s and children’s benefit.*

Notwithstanding the provisions of subsections (d) and (e) above, \$17.2-million from the Paid-Up Benefit Fund shall be transferred to the Pension Reserve Fund effective June 30, 1993. The purpose of the transfer is to partially fund the benefit improvements made by this Ordinance 93-262. The total \$17.2-million transfer shall reduce the system’s unfunded liability and shall be amortized with interest as a credit to reduce the City’s contribution by \$4.5-million for 4 years (beginning in fiscal year 1995) and at a reduced level dollar credit in the 5th year.

The provisions of subsections (d) and (e) above shall remain in effect even after the changes described here in subsection (f).

(g) *Increase for certain retirees and beneficiaries as of June 30, 2000.*

- (i) Retired members and beneficiaries of retired members who retired on or before June 30, 2000, and any surviving beneficiary of a member who began receiving periodically paid benefits from this System on or before June 30, 2000, will receive a 1% increase in their periodic benefits.

(ii) This increase is effective June 30, 2000, and payable beginning with the first full pay period that follows.

(iii) This increase shall be paid from the Pension Reserve Fund and may not be paid from the Paid-Up Benefit Fund or the Contingency Reserve Fund.

(*City Code, 1976/83, art. 22, §36A.*) (*Ord. 83-954; Ord. 93-262; Ord. 97-168; Ord. 98-319; Ord. 00-049; Ord. 03-576.*)

§ 36B. Deferred Retirement Option Plan.

Effective July 1, 1996, instead of a member's retiring from service and commencing a service retirement allowance under § 34(a) of this subtitle or a member's remaining a member of this system and continuing to earn service credit, a member may elect to become a participant in the Deferred Retirement Option Plan ("DROP") and defer the commencement of the member's retirement benefit, subject to the following provisions.

(a) *Eligibility.*

- (i) Any active employee who becomes a member of this system on or before June 30, 2003, and who has acquired at least 20 years of service as of December 31, 2009, is eligible to participate in the DROP provided by this § 36B by making an election in the manner prescribed in paragraph (iii) of this subsection.
- (ii) Any active employee who becomes a member of this system on or after July 1, 2003, and who, in addition to having acquired at least 20 years of service as of December 31, 2009, has acquired at least 10 years of service as a contributing member of this system as of June 30 {*December 31*}, 2009, is eligible to participate in the DROP by making an election in the manner prescribed in paragraph (iii) of this subsection.
- (iii) An eligible member may elect to participate in the DROP by filing a written application on a form approved by the Board of Trustees, stating the date, not less than 30 days nor more than 90 days after the application is filed, the member desires the election to take effect.
- (iv) The effective date of the DROP participation period for a member is always on the first of the month.
- (v) Any member in service who terminates employment, retires, or dies becomes ineligible to elect to participate or to continue participation in the DROP.
- (vi) The election to participate in the DROP and the election to claim any benefit under this § 36B must be made on forms provided for that purpose by the Board of Trustees and filed with the Board.
- (vii) The application requirements of § 34 of this subtitle apply to the applicable service and disability retirement and death benefits provided by this section.
- (viii) Any member who does not meet the eligibility requirements of this § 36B as of December 31, 2009, will not be entitled to the benefits of this section effective January 1, 2010.

(b) *Term of DROP participation period.*

A member's DROP participation period shall be a single term of 3 consecutive years commencing from the effective date provided in subsection (a), provided that a member's DROP participation period shall terminate if a member becomes ineligible to participate or to continue participation in the DROP under subsection (a) or elects to discontinue participation in the DROP under subsection (c)(2).

(c) *Status of DROP participants.*

(1) *During DROP participation period.*

- (i) Notwithstanding any other provision of this subtitle to the contrary, a member shall remain a member of the System during the DROP participation period, provided, however, that the member shall not be credited with service during such period, and that, except with regard to the calculation of a member's intermediate DROP retirement benefit under subsection (f)(2), compensation, pay or salary earned during that period shall be disregarded in calculating the member's average final compensation.
- (ii) A member who becomes a participant in the DROP shall continue to make the contributions that are required under § 36(h) of this subtitle for members earning service credit. These contributions shall be accumulated in a subaccount within the Annuity Savings Reserve, but shall be credited with interest compounded annually in the same manner and at the same interest rate as though the contributions had been accumulated in the member's DROP account as provided under subsection (d). Contributions that are required under § 36(h) of this subtitle of any member entitled to protection of retirement benefits and credits on account of military service under § 32(e) of this subtitle, shall be paid by the system into the member's subaccount on his or her behalf for the duration of his or her absence from employment on account of military service.
- (iii) The contributions described in the preceding paragraph shall be treated as being "picked up" by the City of Baltimore within the meaning of § 414(h)(2) of the Internal Revenue Code of 1986, as amended. The contributions described in the preceding paragraph shall not be considered "accumulated contributions", as defined in § 30(10) of this subtitle.

(2) *After DROP participation period.*

- (i) Any member who becomes a participant in the DROP may retire or terminate service, and thereby discontinue participation in the DROP, at any time during the DROP participation period or may retire or terminate service at the conclusion of that period.
- (ii) A member may elect to discontinue participation in the DROP and resume earning service credit in the system only as of the 1st or 2nd anniversary of the effective date of the member's DROP participation period.
- (iii) The election to discontinue participation shall be made on forms provided for that purpose by the Board of Trustees and shall be filed with the Board no less than 30 days not more than 90 days before the effective date of the discontinuance of participation.

- (iv) The additional accrual rate (recovery rate) provided by subsection (f)(2) or (g)(2) of this section may only be applied to the member's completed years of DROP participation.
- (v) A member who continues employment at the conclusion of a full, 3-year DROP participation period shall resume earning service credit in the system.
- (vi) A member who becomes ineligible to participate in the DROP pursuant to subsection (a) or who elects to discontinue participation in the DROP pursuant to this subsection (c)(2) may not elect to again participate in the DROP.

(3) *Upon reemployment after retirement.*

Notwithstanding § 31(1) of this subtitle, if a member retires and begins receiving a DROP retirement benefit under subsection (e), (f), or (g), and is then reemployed, all retirement benefit payments to the reemployed member shall be suspended until the member's subsequent retirement. Upon subsequent retirement or death, the member shall be eligible to receive benefits under subsection (l).

(d) *DROP account.*

A separate DROP account shall be maintained in the Pension Accumulation Fund for the benefit of each member who becomes a participant in the DROP. The member's DROP account shall consist of:

- (1) for each full year of a member's DROP participation period, an amount equal to the annual service retirement allowance the member would have received under § 34(a) and (b) had the member retired from service and commenced receiving the maximum retirement allowance under the service retirement provisions of this subtitle on the effective date of the DROP participation period;
- (2) for each partial year of a member's DROP participation period, an amount equal to a member's prorated annual service retirement allowance; and
- (3) interest compounded annually at a rate equal to 8.25% from the effective date of the DROP participation period through a member's termination of service.

Notwithstanding a member's failure to properly apply for preemployment military service credit under § 32(f) of this subtitle, calculation of "service retirement allowance" as used in this subsection (d) shall include a member's preemployment military service credit benefit.

(e) *Basic DROP retirement benefit.*

Notwithstanding § 34(b) of this subtitle, any member who retires during or at the conclusion of a DROP participation period shall receive "a basic DROP retirement benefit" equal to:

- (1) the service retirement allowance the member would have received under § 34(b) had the member retired from service and commenced a service retirement allowance on the effective date of the DROP participation period;

- (2) the balance in the member's DROP account at the time of retirement, payable pursuant to the member's election under subsection (n) of this section; and
- (3) the balance in the member's Annuity Savings Reserve subaccount accumulated under subsection (c) of this section, payable pursuant to the member's election under subsection (n) of this section.

(f) *Intermediate DROP retirement benefit.*

Notwithstanding § 34(b) of this subtitle, any member who resumes earning credit for service following the end of a DROP participation period and who retires less than 18 months later shall receive an "intermediate DROP retirement benefit" equal to:

- (1) the amount described in subsection (e)(1) of this section;
- (2) 3.5% of the member's "average final compensation" (as defined in § 30(11) of this subtitle) for each year of service credit, not to exceed 18 months, earned by the member through continuous employment immediately following the end of the DROP participation period. For purposes of this subsection (f)(2) and consistent with the 1st paragraph of subsection (c)(1) of this section, "average final compensation" includes compensation earned during the DROP participation period;
- (3) 2% of the member's "average final compensation" for each year of service not already included in the calculation of the member's service retirement allowance under paragraph (1) or (2) of this subsection (f), such as for service purchased or transferred to this system during or after the DROP participation period; and
- (4) the sum of paragraphs (2) and (3) of subsection (e) of this section, payable pursuant to the member's election under subsection (n) of this section.

For purposes of calculating this "intermediate DROP retirement benefit", partial years of service credit are prorated.

(g) *Full DROP retirement benefit.*

Notwithstanding § 34(b) of this subtitle, any member who resumes earning credit for service following the end of a DROP participation period and who retires 18 or more months later shall receive a "full DROP retirement benefit" equal to:

- (1) the full service retirement allowance, as of the member's actual date of retirement, available to the member under § 34(b) of this subtitle, excluding from the calculation of this retirement allowance the member's service while a participant in the DROP;
- (2) 1.5% of the member's "average final compensation" (as defined in § 30(11) of this subtitle) for each year of service credit, not to exceed 4 years, earned by the member through continuous employment immediately following the end of the DROP participation period; and

- (3) the sum of paragraphs (2) and (3) of subsection (e) of this section, payable pursuant to the member's election under subsection (n) of this section.

For purposes of calculating this "full DROP retirement benefit", partial years of service credit are prorated.

(h) *Non-line-of-duty disability benefit.*

Notwithstanding § 34(d) of this subtitle, any member who retires on account of non-line-of-duty disability:

- (1) during or at the conclusion of a DROP participation period, shall receive a non-line-of-duty disability benefit equal to the "basic DROP retirement benefit" provided under subsection (e) of this section;
- (2) less than 18 months following the conclusion of a DROP participation period, shall receive a non-line-of-duty disability benefit equal to the "intermediate DROP retirement benefit" provided under subsection (f) of this section; and
- (3) 18 or more months following the conclusion of a DROP participation period, shall receive a non-line-of-duty disability benefit equal to the "full DROP retirement benefit" provided under subsection (g) of this section.

(i) *Line-of-duty disability benefit.*

Any member who retires on account of line-of-duty disability under § 34(e-1) or (f-1) of this subtitle during or after a DROP participation period shall receive the line-of-duty disability benefits provided under § 34(e-1) or (f-1) in place of any DROP benefits provided by this § 36B (including any balance in the member's DROP account and Annuity Savings Reserve subaccount), as though the member had never participated in the DROP.

(j) *Non-line-of-duty death benefit.*

Notwithstanding § 34(h) of this subtitle, the non-line-of-duty death benefit payable on the death of a member who dies during or after a DROP participation period shall equal the non-line-of-duty death benefit provided in § 34(h), plus the balance of the member's DROP account and Annuity Savings Reserve subaccount at the time of death, subject to the following:

- (1) for a member who dies during or at the conclusion of a DROP participation period, § 34(h)(3) shall be applied by assuming that the member had elected to have a service retirement allowance calculated under subsection (e)(1) of this section paid under Option 3 of § 34(k)(1) of this subtitle;
- (2) for a member who dies less than 18 months following the conclusion of a DROP participation period, § 34(h)(3) shall be applied by assuming that the member had elected to have a service retirement allowance calculated under subsection (f)(1), (2), and (3) of this section paid under Option 3 of § 34(k)(1) of this subtitle;

- (3) for a member who dies 18 or more months following the conclusion of his DROP participation period, § 34(h)(3) shall be applied by assuming that the member had elected to have a service retirement allowance calculated under subsection (g)(1) and (2) of this section paid under Option 3 of § 34(k)(1) of this subtitle;
- (4) for a recipient electing to receive non-line-of-duty death benefits under § 34(h)(1) and (2) of this subtitle, the balance of the deceased member's DROP account and Annuity Savings Reserve subaccount shall be payable in one lump sum;
- (5) for a recipient electing to receive non-line-of-duty death benefits under § 34(h)(3) of this subtitle, the balance of the deceased member's DROP account and Annuity Savings Reserve subaccount shall be payable pursuant to the election of the recipient under subsection (n) of this section; and
- (6) for a recipient electing to receive non-line-of-duty death benefits under § 34(h)(4) of this subtitle, the balance of the deceased member's DROP account and Annuity Savings Reserve subaccount shall be payable pursuant to the election of the recipient under subsection (n) of this section.

(k) *Line-of-duty death benefit.*

(1) *Scope of subsection.*

This subsection applies only to an individual:

- (A) who dies while a member of this System, during, at the conclusion of, or following a DROP participation period; and
- (B) whose death has been determined by a hearing examiner, as provided in § 33(l) of this subtitle, to have arisen:
 - (i) out of and in the course of the actual performance of duty; and
 - (ii) without willful negligence on the part of the member.

(2) *Line-of-duty death benefit.*

On the receipt of a written application, proper proof of death, and an award by a hearing examiner of a line-of-duty death benefit as provided for in paragraph (1) of this subsection, the Board of Trustees shall pay either:

- (A) the death benefit payable on the death of a member under subsection (j) of this section; or
- (B) the line-of-duty death benefit payable under § 34(i) in lieu of any DROP benefits provided by this section, including any balance in the member's DROP account and Annuity Savings Reserve subaccount, as though the member had never participated in the DROP.

(3) *Special election rule.*

The election to receive a line-of-duty death benefit under either paragraph (2)(i) or (ii) {*paragraph (2)(A) or (B)*} of this subsection shall be made:

- (A) by the member's surviving spouse;
- (B) if there is no surviving spouse, by the legal guardian of the member's minor child or children;
- (C) if there is no surviving spouse or minor children, by either or both of the member's surviving dependent parents who are designated beneficiaries;
- (D) if there is no surviving spouse or minor children and if the deceased member did not designate a surviving parent as beneficiary, by either or both of the member's surviving dependent parents (as that term is defined in § 34(i)(2)(B)); or
- (E) if there is no surviving spouse, minor children, or dependent parents, by the member's designated beneficiary or beneficiaries.

(l) *Benefits for reemployed DROP participants.*

- (1) Notwithstanding § 34(b), (d), (e-2), and (f-2) of this subtitle, if a member receives retirement benefits under subsection (e), (f), or (g) of this section, is subsequently reemployed in a position covered by this subtitle, and subsequently retires on account of service or disability, the member shall resume receiving the benefits under subsection (e), (f), or (g) that had been suspended at the time of the member's reemployment, plus 2% of the member's average final compensation for each year of service credit earned by the member during the period of reemployment. For purposes of this paragraph (1), if a member retires less than 18 months after his or her reemployment, "average final compensation" includes compensation earned immediately prior to his or her initial retirement. This retirement benefit shall also apply to a member who is disabled as a result of an injury in the line of duty.
- (2) Notwithstanding § 34(h) and (i) of this subtitle, if a member receives benefits under subsection (e), (f), or (g) of this section, is subsequently reemployed in a position covered by this subtitle, and subsequently dies, the death benefit payable upon the death of the member shall equal the death benefit payable under § 34(h), except that § 34(h)(3) shall be applied by calculating the member's service retirement allowance under paragraph (1) of this subsection paid under Option 3 of § 34 (k)(1) of this subtitle. This death benefit shall also apply to a member whose death arose in the line of duty.

(m) *Post-retirement increases.*

- (1) For a member who retires during or at the conclusion of a DROP participation period, the member's DROP participation period shall be counted toward the eligibility requirement for post-retirement benefit increases under § 36A of this subtitle.

- (2) However, if a member resumes earning service credit following the conclusion of a DROP participation period, then the DROP participation period shall not be counted toward the eligibility requirement for post-retirement increases.
- (3) Post-retirement benefit increases for former DROP participants shall be applied prospectively only (i.e., no increase shall be provided to make up for any post-retirement benefit increases that the member would have received if the member had retired from service in lieu of electing to participate in the DROP).
- (4) If a member elects under subsection (n) to receive the balance of his or her DROP account in the form of periodic payments, those payments shall be eligible for post-retirement benefit increases under § 36A of this subtitle, upon satisfaction by the member of the eligibility requirements of § 36A(a), as modified by this subsection (m).

(n) *Form of payment of DROP account balance.*

- (1) The election of the form of payment of the DROP account balance shall be made on forms provided by the Board of Trustees and shall be filed with the Board.
- (2) A member or a beneficiary, if entitled to benefits payable under subsection (j) of this section, may elect to receive his or her DROP account balance and Annuity Savings Reserve subaccount in either:
 - (i) a lump sum, which can be:
 - (A) transferred in total or in part to 1 or more financial institutions or pension plans in accordance with § 34(w) of this subtitle, or
 - (B) paid in total or in part directly to the member or beneficiary; or
 - (ii) an annuity, to increase the member's retirement benefit, which is the actuarial equivalent of the DROP account and the Annuity Savings Reserve subaccount and which shall be:
 - (A) paid in the same form of periodic payments that the member or beneficiary elected for the receipt of the retirement or death benefit; and
 - (B) paid in the same manner as the member's Annuity Savings Reserve subaccount, on the death of the retired DROP participant.
- (3) If a lump sum payment is elected under paragraph (2)(i) of this subsection, that payment shall be made as soon as administratively feasible after the member's retirement, termination, or death.
- (4) Any benefit payment made directly to the member, the member's beneficiary, or an alternate payee (as defined in § 38(d) of this subtitle) shall be subject to Federal and Maryland state income tax withholding if applicable.

- (5) If an alternate payee is entitled to receive a portion of the member's DROP account and Annuity Savings Reserve subaccount, the alternate payee must file an application with the System for his or her share. Distribution of the DROP account and Annuity Savings Reserve subaccount shall be made in the same form of payment as that elected by the member or beneficiary.

(o) *Conflicts in elections for death benefits.*

In the event of conflicting death benefit elections under this subtitle, an election for line-of-duty death benefits made by an eligible surviving spouse overrides an election for non-line-of-duty death benefits made by a designated beneficiary.

(p) *Guaranty of DROP benefits.*

- (1) During the fiscal year beginning July 1, 2004, the Board of Trustees shall determine the past and future cost of the DROP using the actuarial assumptions in effect on June 30, 1995. The past and future cost of the DROP shall be calculated by the enrolled actuary retained by the Retirement System, in consultation with the enrolled actuary retained for that purpose by the members, acting through their elected representatives.
- (2) To the extent that the past and future cost of DROP, as determined during fiscal year 2005, exceeds the unallocated interest surplus as of June 30, 1995, available to fund the DROP for active members as of July 1, 1996, plus accrued interest thereon, plus actuarial gains, net of actuarial losses, arising from experience in variance from actuarial assumptions in effect on July 1, 1995, then the City of Baltimore shall have the option of enacting legislation to reduce such excess cost, but only with respect to members eligible to enter the DROP after the effective of such legislation, and not with respect to members who are participating in the DROP as of the effective date of any such legislation. Any such legislation enacted to reduce the excess cost of the DROP shall have no effect on any other benefit payable under the Retirement System apart from the DROP.
- (3) If, after fiscal year 2005, the City of Baltimore shall enact legislation in order to reduce excess cost of the DROP, then such cost reduction legislation shall not be considered to be in violation of § 37 or § 42. § 37 and § 42 to the contrary notwithstanding, the City of Baltimore does not guaranty the payment of DROP benefits to members entering the DROP after July 1, 2004, if the actuarial calculation in fiscal year 2005 determines that there is excess cost in providing DROP benefits. In the event of any conflict between § 37 or § 42 and this section, the terms of this section shall prevail.
- (4) If the actuarial calculation made in fiscal year 2005 confirms that there is no excess cost to the DROP, then this subsection shall automatically become null and void, and of no further effect.

(City Code 1976/83, art. 22, §36B.) (Ord. 96-042; Ord. 97-164; Ord. 00-049; Ord. 03-576; Ord. 09-209.)

§ 36C. Deferred Retirement Option Plan 2.(a) *Scope of section.*

Effective January 1, 2010, a member who is making regular mandatory contributions pursuant to § 36(h) and who is not eligible for the DROP benefits of § 36B may elect to become a participant in this Deferred Retirement Option Plan 2 ("DROP 2"), subject to the following provisions.

(b) *Definitions.*

- (1) In this § 36C, the following terms have the meanings indicated.
- (2) "DROP 2" means the benefits established under this § 36C.
- (3) "DROP 2 start date" means the first day of a member's DROP participation period.
- (4) "DROP 2 end date" means the last day of a member's DROP participation period.
- (5) "DROP 2 participation period" means a minimum period of 1 year and a maximum period of 3 consecutive years during which the member makes regular contributions and during which DROP 2 contributions and benefits are accumulated on behalf of the DROP 2 participant.
- (6) "DROP 2 participant" means a member who has elected to be covered by the benefits of this § 36C.
- (7) "Interest" means the regular interest rate for the Annuity Savings Reserve as defined in § 30(9) of this subtitle.
- (8) "Early DROP 2 service retirement" means retirement after a member completes at least 1 year of DROP 2 participation and retires during or at the conclusion of the member's DROP 2 participation period.
- (9) "Mid DROP 2 service retirement" means retirement after the conclusion of a member's DROP 2 participation period with the following years of service acquired through employment covered by this System immediately following the member's DROP 2 participation period:
 - (A) for police members, less than 3½ years of service, and
 - (B) for fire members, less than 5 years of service.
- (10) "Complete DROP 2 service retirement" means retirement after the conclusion of a member's DROP 2 participation period with the following years of service acquired through employment covered by this System immediately following the member's DROP 2 participation period:
 - (A) for police members, 3½ or more years of service,
 - (B) for fire members, 5 or more years of service.

(c) *Eligibility and application.*

- (1) Notwithstanding § 30(6) of this subtitle, the service credit requirements for DROP 2 eligibility are as follows:
 - (A) A member of this System as of December 31, 2009, must acquire 20 or more years of service, whether through employment covered by this System or by transfer-in, purchase, or military service pursuant to § 32 of this subtitle.
 - (B) An employee who becomes a member of this System on or after January 1, 2010, must acquire 20 or more years of service through continuous employment as a contributing member of this System. However, service credit for pre-employment military service will be counted for the 20 years of continuous employment requirement as long as the member meets the requirements of § 32(f) for pre-employment military service.
- (2) An eligible member may elect to participate in DROP 2 by:
 - (A) filing a written application on a form approved by the Board of Trustees,
 - (B) filing the application not less than 30 days nor more than 90 days before the member's DROP 2 start date, and
 - (C) selecting the member's DROP 2 start date.
- (3) The election to participate in DROP 2 and the election to claim any benefit under this § 36C must be made on forms provided for that purpose by the Board of Trustees and filed with the Board.
- (4) A member's DROP 2 start date must always be the 1st day of a calendar month.
- (5) Any member in service who terminates employment, retires, or dies becomes ineligible to elect to participate or to continue participation in DROP 2.
- (6) Any member who retires or terminates employment before the 1st anniversary of the member's DROP 2 start date is not entitled to any benefits under this § 36C and is only entitled to benefits under § 34 of this subtitle, calculated as if the member did not participate in DROP 2.
- (7) The beneficiary of any member who dies before the 1st anniversary of the member's DROP 2 start date is not entitled to benefits under this § 36C and is only entitled to benefits under § 34 of this subtitle, calculated as if the member did not participate in DROP 2.
- (8) Unless stated within this § 36C, the application requirements of § 34 of this subtitle apply to the applicable service retirement, disability retirement, and death benefits provided by this section.

- (9) Notwithstanding § 34(e-1)(2)(ii) and § 34(f-1)(2)(ii), a member who elects to receive DROP 2 benefits under this § 36C may not file for line-of-duty disability or 100% line-of-duty disability retirement benefits following the member's retirement unless the member first pays back to the System the member's DROP 2 account distribution or DROP 2 annuity payments.
- (10) A member who participates or has participated in the DROP provided by § 36B may not participate in the DROP 2 under this § 36C.
- (11) A member who becomes ineligible to participate in DROP 2 pursuant to this subsection (c) or a member who was eligible to have participated in either the DROP provided by § 36B or this DROP 2, but did not participate and instead retired or terminated employment, may not elect to participate in DROP 2 if reemployed in a position covered by this System.
- (12) A DROP 2 participant who retires with a benefit under this section is subject to restrictions of this article concerning contemporaneous membership in more than one City of Baltimore retirement system.

(d) *Participation period, membership status, and service credits.*

- (1) A member's DROP 2 participation period shall be a single term of a minimum of 1 year and a maximum of 3 consecutive years beginning with the member's DROP 2 start date, as provided in subsection (c)(4) of this section.
- (2) A member's DROP 2 participation period terminates if a member becomes ineligible to participate or to continue participation in DROP 2 pursuant to subsection (c) of this section.
- (3) A member must remain an active member of this System during the member's DROP 2 participation period.
- (4) A member may not earn service credit for employment during the member's DROP 2 participation period.
- (5) Notwithstanding paragraph (4) of this subsection, a DROP 2 participant may continue making voluntary contributions for the purchase of additional service credits as provided by § 32 of this subtitle and subsection (f)(6) of this section.
- (6) A member who continues employment covered by this System at the conclusion of his or her DROP 2 participation period resumes earning service credit in this System.

(e) *Election to discontinue DROP 2 participation.*

- (1) A member may elect to discontinue participation in DROP 2 and resume earning service credit in the System only as of the 1st or 2nd anniversary of the member's DROP 2 start date.
- (2) The election to discontinue DROP 2 participation must be made on a form provided for that purpose by the Board of Trustees and filed with the Board no less than 30 days nor more than 90 days before the member's DROP 2 discontinuation effective date.

- (3) A member who elects to discontinue DROP 2 participation may not elect to again participate in DROP 2.

(f) *Member contributions by DROP 2 participants.*

- (1) A member who becomes a DROP 2 participant must continue to make the regular mandatory member contributions required by § 36(h) of this subtitle for members earning service credit.
- (2) The regular mandatory member contributions required under § 36(h) and made during the member's DROP 2 participation period:
 - (A) shall be accumulated in a subaccount within the Annuity Savings Reserve and shall be credited to the member's DROP 2 account, established under subsection (g) of this section; and
 - (B) are not considered "accumulated contributions", as defined in § 30(10) of this subtitle.
- (3) The contributions described in paragraph (1) of this subsection shall be treated as being "picked up" by the City of Baltimore within the meaning of § 414(h)(2) of the Internal Revenue Code, as amended.
- (4) Contributions that, under § 36(h) of this subtitle, are required of any member entitled to protection of retirement benefits and credits on account of military service under § 32(e) of this subtitle, shall be paid on behalf of the member by the System into the member's DROP 2 account should the member be absent from employment on account of military service during the member's DROP 2 participation period.
- (5) Contributions required to be made by the member during the DROP 2 participation period shall be credited with interest, compounded annually, as provided in subsection (g) of this section.
- (6) During a member's DROP 2 participation period, the member may continue to make voluntary contributions for the purchase or the transfer-in of service credits under § 32 of this subtitle. Voluntary contributions may not be credited to the member's DROP 2 account.
- (7) A member who continues employment at the conclusion of her or his DROP 2 participation period shall continue making required mandatory member contributions. These contributions shall be credited to the member's annuity savings account and shall be "accumulated contributions".

(g) *DROP 2 Account.*

- (1) A DROP 2 account shall be maintained for each member who becomes a DROP 2 participant. The account shall comprise:
 - (A) DROP 2 member contributions, which shall be maintained in the Annuity Savings Reserve, and

- (B) DROP 2 benefits, which shall be maintained in the Pension Accumulation Reserve.
- (2) The member contributions credited to the DROP 2 account are the contributions described in subsection (f) of this section and are credited to the DROP 2 account, plus interest.
- (3) (A) The benefits credited to the DROP 2 account are as follows:
- (i) for each full 12-month period ending June 30 during a member's DROP 2 participation period, an amount equal to the annual service retirement allowance that the member would have received under § 34(b)(4) of this subtitle had the member retired from service and began receiving the maximum service retirement allowance under the provisions of this section and this subtitle on the member's DROP 2 start date, plus interest; plus
 - (ii) for each full month of a member's DROP 2 participation period that does not fall within item (i) of this paragraph (3)(A), an amount equal to one-twelfth of the member's annual benefit calculated in accordance with item (i), plus interest; plus
 - (iii) for each day of a month not falling within item (i) or (ii) of this paragraph (3)(A), an amount equal to one three hundred sixty-fifths of the member's annual benefit calculated in accordance with item (i), plus interest.
- (B) Notwithstanding paragraph (3)(A)(i) of this section or § 32(f) of this subtitle, if a member fails to properly apply for credit for pre-employment military service and to supply to this System the proper and complete documentation for the member's pre-employment military service prior to the member's DROP 2 participation start date, that credit may not be included in the calculation of the member's "service retirement allowance", as used in this subsection (g), to calculate the member's DROP 2 benefits for credit to the member's DROP 2 account.
- (C) Notwithstanding paragraph (3)(B) of this section, a member who, subsequent to the member's DROP 2 start date, properly applies for credit and provides this System the proper and complete documentation for pre-employment military service will have credit for his or her pre-employment military service, as provided in § 32(f) of this subtitle, included in the calculation of the member's retirement pension under subsections (h), (i), and (j) of this section.
- (4) Should a member not make a required mandatory contribution for a pay period during the member's 3-year DROP 2 participation period, except in the case of a member who is on leave due to military service, DROP benefits shall not be credited to the member's DROP 2 account for that same pay period.
- (5) Interest shall be credited and compounded annually to the member's DROP 2 account at the DROP 2 interest rate:
- (A) utilizing the same methodology as used to credit interest on the member's non-DROP annuity savings account, and

(B) from the start date of the member's DROP 2 participation period through the member's date of termination from employment covered by this System.

(h) *Early DROP 2 service retirement benefit.*

(1) *Employment and service requirements.*

A DROP 2 participant may retire with an early DROP 2 service retirement benefit if, on the member's last day of employment covered by this System, the member:

- (A) completes a minimum 1-year of his or her DROP 2 participation period;
- (B) does not resume earning service credit for employment covered by this System; and
- (C) retires during or at the conclusion of his or her DROP 2 participation period.

(2) *Application.*

To retire with an early DROP 2 retirement benefit under this subsection (h), a DROP 2 participant must:

- (A) apply to the Board of Trustees on a form approved by the Board;
- (B) set forth his or her retirement date; and
- (C) submit the application to the Board no less than 30 days nor more than 90 days before the date of retirement.

(3) *Maximum allowance on Early DROP 2 service retirement.*

The maximum Early DROP 2 service retirement benefit shall be a periodically paid allowance, which shall consist of:

- (A) an annuity that is, as of the member's retirement date, the actuarial equivalent of:
 - (i) the member's accumulated contributions as of the member's DROP 2 start date, plus interest; plus
 - (ii) any contributions made on behalf of a member who served in the military service during employment as those contributions would be credited to the member's accumulated contributions according to § 32(e) of this subtitle, plus interest; and
- (B) a pension that, together with the member's annuity, equals:
 - (i) 2.5% of the member's average final compensation, calculated as of the day before the member's DROP 2 start date in accordance with § 30(11) of this subtitle, for each year of the first 20 years of service; plus

- (ii) 2.0% of the member's average final compensation, calculated as of the day before the member's DROP 2 start date in accordance with § 30(11) of this subtitle, for each year of service over 20 years, prorated for partial years, up to but not including the member's DROP 2 start date.

(4) *DROP 2 account payout.*

In addition to receiving a periodically paid early DROP 2 service retirement benefit, a DROP 2 participant retiring under this subsection (h) shall receive the balance in his or her DROP 2 account payable pursuant to the member's election under subsection (o) of this section.

(5) *Optional survivorship elections.*

The benefits payable under this subsection (h) are subject to the member's election of optional forms of payment under § 34(k) of this subtitle.

(6) *Return of voluntary contributions for Early DROP 2 retirements.*

If a member receives an early DROP 2 retirement benefit, voluntary contributions for the purchase or transfer-in of service credits made during the member's DROP 2 participation period:

- (A) may not be used to calculate additional service credits included in the Early DROP 2 service retirement allowance, and
- (B) shall be refunded with interest to the member.

(i) *Mid DROP 2 service retirement benefit.*

(1) *Employment and service requirements.*

A DROP 2 participant may retire with a mid DROP 2 service retirement benefit if, on the member's last day of employment covered by this System, the member:

- (A) completes a minimum 1-year of her or his DROP 2 participation period;
- (B) resumes earning service credit for employment covered by this System immediately following completion of the member's DROP 2 participation period; and
- (C) retires with less than the following required years of service credit acquired through continuous employment as a contributing member of this System immediately following the member's DROP 2 participation period:
 - (i) for a Police Department member, 3½ years; and
 - (ii) for a Fire department member, 5 years.

(2) *Application.*

To retire with a mid DROP 2 retirement benefit under this subsection (i), a DROP 2 participant must:

- (A) apply to the Board of Trustees on a form approved by the Board;
- (B) set forth his or her retirement date; and
- (C) submit the application to the Board no less than 30 days nor more than 90 days before the date of retirement.

(3) *Maximum annual allowance on mid DROP 2 service retirement.*

The maximum annual mid DROP 2 service retirement benefit shall be a periodically paid allowance, which shall consist of:

- (A) an annuity that is, as of the member's retirement date, the actuarial equivalent of:
 - (i) the member's accumulated contributions as of the member's DROP 2 start date, plus interest; plus
 - (ii) the mandatory member contributions made after the member's DROP 2 participation period, plus interest; plus
 - (iii) any voluntary contributions made to purchase additional service credits under § 32 of this subtitle before, during, or after the member's DROP 2 participation period, plus interest; plus
 - (iv) any contributions made on behalf of a member who served in the military service during employment, as those contributions would be credited to the member's accumulated contributions according to §32(e) of this subtitle, plus interest; and
- (B) a pension that, together with the member's annuity, equals:
 - (i) 2.5% of the member's average final compensation, calculated as of the day before the member's DROP 2 start date in accordance with §30(11) of this subtitle, for each year of the first 20 years of service; plus
 - (ii) 2.0% of the member's average final compensation, calculated as of the day before the member's DROP 2 start date in accordance with § 30(11) of this subtitle, for each year of service over 20 years, prorated for partial years, up to but not including the member's DROP 2 start date; plus
 - (iii) 2.0% of the member's average final compensation, calculated as of the day before the member's DROP 2 start date in accordance with § 30(11) of this

subtitle, for each year of service, prorated for partial years, not already included in the calculation of the member's retirement allowance under items (i) and (ii) of this paragraph (3)(b), for service purchased or granted under § 32 during or after the member's DROP 2 participation period; plus

(iv) 1. for a Police Department member, 2.0% of the member's average final compensation, calculated as of the member's date of termination from City employment covered by this System in accordance with § 30(11) of this subtitle, for each full year of service credit, prorated for partial years, up to 3½ years, earned by the member through continuous employment as a contributing member of this System immediately following the end of the member's DROP 2 participation period; or

2. a. for a Fire Department member:

(1) 2.0% of the member's average final compensation, calculated as of the member's date of termination from City employment covered by this System in accordance with § 30(11) of this subtitle, for each full year of service credit, prorated for partial years, up to 5 years, earned by the member through continuous employment as a contributing member of this System immediately following the end of the member's DROP 2 participation period; plus

(2) a Recovery rate, subject to the limitations of subparagraph b, of 6.0% (1.5% for each of 4 years) of the member's average final compensation, calculated as of the member's date of termination from employment covered by this System in accordance with § 30(11) of this subtitle, for each of the 4 years of service credit earned by the member through continuous employment as a contributing member of this System immediately following the end of the member's DROP 2 participation period.

b. The total of the Recovery rate will be limited to:

(1) 2.0%, if the member elected to discontinue participation in DROP 2 after 1 year of DROP 2 participation in accordance with subsection (e) of this section; or

(2) 4.0%, if the member elected to discontinue participation in DROP 2 after 2 years of DROP 2 participation in accordance with subsection (e) of this section.

(4) *DROP 2 account payout.*

In addition to receiving a periodically paid mid DROP 2 service retirement benefit, a DROP 2 participant retiring under this subsection (i) shall receive the balance in his or her DROP 2 account payable pursuant to the member's election under subsection (o) of this Section.

(5) *Optional survivorship elections.*

The benefits payable under this subsection (i) are subject to the member's election of optional forms of payment under § 34(k) of this subtitle.

(j) *Complete DROP 2 service retirement benefit.*(1) *Employment and service requirements.*

A DROP 2 participant may retire with a complete DROP 2 service retirement benefit if, on the member's last day of employment covered by this System, the member:

- (A) completes a minimum 1-year of her or his DROP 2 participation period;
- (B) resumes earning service credit for employment covered by this System immediately following completion of the member's DROP 2 participation period; and
- (C) retires with the following required years of service credit acquired through continuous employment as a contributing member of this System immediately following the member's DROP 2 participation period:
 - (i) for a Police Department member, 3½ or more years; and
 - (ii) for a Fire department member, 5 or more years.

(2) *Application.*

To retire with a complete DROP 2 retirement benefit under this subsection (j), a DROP 2 participant must:

- (A) apply to the Board of Trustees on a form approved by the Board;
- (B) set forth his or her retirement date; and
- (C) submit the application to the Board no less than 30 days nor more than 90 days before the date of retirement.

(3) *Maximum annual allowance on Complete DROP 2 service retirement.*

The maximum annual complete DROP 2 service retirement benefit shall be a periodically paid allowance, which shall consist of:

- (A) an annuity that is, as of the member's retirement date, the actuarial equivalent of:
 - (i) the member's accumulated contributions as of the member's DROP 2 start date, plus interest; plus
 - (ii) the mandatory member contributions made after the member's DROP 2 participation period, plus interest; plus

- (iii) any voluntary contributions made to purchase additional service credits under § 32 of this subtitle before, during, or after the member's DROP 2 participation period, plus interest; plus
 - (iv) any contributions made on behalf of a member who served in the military service during employment, as those contributions would be credited to the member's accumulated contributions according to § 32(e) of this subtitle, plus interest; and
- (B) a pension that, together with the member's annuity, equals:
- (i) 2.5% of the member's average final compensation, calculated as of the member's date of termination from employment covered by this System in accordance with § 30(11) of this Subtitle, for each year of the first 20 years of service; plus
 - (ii) 1. for a Police Department member, 2.0% of the member's average final compensation, calculated as of the member's date of termination from employment covered by this System in accordance with § 30(11) of this subtitle, for each year of service over 20 years, prorated for partial years, but excluding from this calculation the member's employment covered by this System during the member's DROP 2 participation period; or
 - 2. a. for a Fire Department member:
 - (1) 2.0% of the member's average final compensation, calculated as of the member's date of termination from employment covered by this System in accordance with § 30(11) of this subtitle, for each year of service over 20 years, prorated for partial years, but excluding from this calculation the member's employment covered by this System during the member's DROP 2 participation period; plus
 - (2) a Recovery rate, subject to the limitations of subparagraph b, of 6.0% (1.5% for each of 4 years) of the member's average final compensation, calculated as of the member's date of termination from employment covered by this System in accordance with § 30(11) of this subtitle, for each of the 4 years of service credit earned by the member through continuous employment as a contributing member of this System immediately following the end of the member's DROP 2 participation period.
 - b. The total of the Recovery rate will be limited to:
 - (1) 2.0%, if the member elected to discontinue participation in DROP 2 after 1 year of DROP 2 participation in accordance with subsection (e) of this section; or

- (2) 4.0%, if the member elected to discontinue participation in DROP 2 after 2 years of DROP 2 participation in accordance with subsection (e) of this section.

(4) *DROP 2 account payout.*

In addition to receiving a periodically paid complete DROP 2 service retirement benefit, a DROP 2 participant retiring under this subsection (j) shall receive the balance in his or her DROP 2 account payable pursuant to the member's election under subsection (o) of this section.

(5) *Optional survivorship elections.*

The benefits payable under this subsection (j) are subject to the member's election of optional forms of payment under § 34(k) of this subtitle.

(k) *DROP 2 non-line-of-duty disability benefit.*

Notwithstanding § 34(d) of this subtitle, any member who retires on a non-line-of-duty disability after becoming a DROP 2 participant and who meets the qualifications of subsection (h), (i), or (j), shall receive a DROP 2 retirement benefit pursuant to that subsection.

(l) *DROP 2 non-line-of-duty death benefits.*

- (1) The non-line-of-duty death benefit payable on the death of a member who dies either during or after the member's DROP 2 participation period shall be determined by the beneficiary eligibility and benefit provisions of § 34(h) of this subtitle and shall be subject to the following.
- (2) A beneficiary who elects to receive lump-sum non-line-of-duty death benefits under § 34(h)(2) of this subtitle shall receive the deceased member's DROP 2 account only if:
 - (A) the member participated in DROP 2 for a minimum of 1 year; and
 - (B) the beneficiary elects to receive the DROP 2 account in a lump sum.
- (3) A beneficiary who elects to receive 100% survivorship non-line-of-duty death benefits under § 34(h)(3) of this subtitle shall receive DROP 2 benefits as follows:
 - (A) If the DROP 2 participant dies within the 1st year of DROP 2 participation, the beneficiary is only entitled to benefits under § 34(h)(3) and is not entitled to any benefits accumulated in the member's DROP 2 account.
 - (B) If the DROP 2 participant dies after the first year of DROP 2 participation, the death benefit payable shall:
 - (i) be determined as if the member had retired on the date of death and had elected to receive benefits under subsection (h), (i), or (j), as applicable;

- (ii) be paid under the 100% survivorship option of § 34(k) of this subtitle; and
 - (iii) include the balance of the deceased member's DROP 2 account as of the date of the member's death, and be payable pursuant to the election of the beneficiary under subsection (o) of this section.
- (4) A beneficiary who elects to receive the 25% plus non-line-of-duty death benefits under § 34(h)(4) of this subtitle shall receive DROP 2 benefits as follows:
- (A) If the member dies within the 1st year of the DROP 2 participation period, the beneficiary is only entitled to benefits under § 34(h)(4) and is not entitled to any benefits accumulated in the member's DROP 2 account.
 - (B) If the DROP 2 participant dies after the 1st year of the DROP 2 participation period, but during the 2nd or 3rd year of the DROP 2 participation period, the death benefit payable shall:
 - (i) be determined using the member's earnable compensation on the day before the member's DROP 2 start date;
 - (ii) be paid under the 25% plus non-line-of-duty death benefits under § 34(h)(4) of this subtitle; and
 - (iii) include the balance of the deceased member's DROP 2 account as of the date of the member's death, and be payable pursuant to the election of the beneficiary under subsection (o) of this section.
 - (C) If the member dies after the member's DROP 2 participation period, the death benefit payable shall:
 - (i) be determined using the member's earnable compensation on the date of the member's death, and
 - (ii) include the balance of the deceased member's DROP 2 account as of the date of the member's death, and be payable pursuant to the election of the beneficiary under subsection (o) of this section.
- (m) *Drop 2 benefits excluded by line-of-duty disability benefits and line-of-duty death benefits.*
- (1) A member who is otherwise eligible for benefits under this § 36C and who applies for and retires on a line-of-duty disability retirement benefit under § 34(e-1) or (f-1) of this subtitle is not entitled to receive any benefits under this § 36C.
 - (2) A member who is otherwise eligible for benefits under this § 36C and who applies for and retires on a service retirement or non-line-of-duty disability retirement may not apply for line-of-duty disability retirement benefits under § 34(e-1) or (f-1) of this subtitle after the member's last day in employment covered by this System, unless the retired member first pays back to the System the member's DROP 2 account distribution or DROP 2 annuity payments.

(3) Beneficiaries applying for and receiving line-of-duty death benefits under § 34(i) of this subtitle are not entitled to DROP 2 benefits under this § 36C.

(n) *Conflicts in elections for death benefits.*

In the event of conflicting death benefit elections under § 34 of this subtitle, an election for line-of-duty death benefits made by an eligible spouse under § 34(i) overrides an election for non-line-of-duty death benefits made by a designated beneficiary.

(o) *Form of payment of DROP 2 account balance.*

(1) The election of the form of payment of the member's DROP 2 account balance shall be made on forms provided by the Board of Trustees and shall be filed with the Board.

(2) A member or a beneficiary, if entitled to benefits payable under § 36C(l), may elect to receive his or her DROP 2 account balance in either:

(A) a lump sum, which can be:

(i) transferred in total or in part to 1 or more financial institutions or pension plans in accordance with § 34(w) of this subtitle; or

(ii) paid in total or in part directly to the member or beneficiary; or

(B) an annuity, to increase the member's retirement benefit, which is the actuarial equivalent of the DROP 2 account and which shall be:

(i) paid in the same form of periodic payments that the member or beneficiary elected for the receipt of the retirement or death benefit; and

(ii) paid in the same manner as the member's Annuity Savings Reserve account, on the death of the retired DROP 2 participant.

(3) If a lump-sum payment is elected under paragraph (2)(A) of this subsection, that payment shall be made as soon as administratively feasible after the member's retirement, termination, or death.

(4) Any benefit payment made directly to the member, the member's beneficiary, or an alternate payee (as defined in § 38(d) of this subtitle) shall be subject to Federal and Maryland state income tax withholding if applicable.

(5) If an alternate payee is entitled to receive a portion of the member's drop 2 account, the alternate payee must file an application with the System for her or his share. Distribution of the DROP 2 account shall be made in the same form of payment as that elected by the member or beneficiary.

(p) *DROP 2 benefit recipients and post-retirement increase eligibility.*

Eligibility for post-retirement increases payable under § 36A of this subtitle shall be determined pursuant to § 36A(a)(1)(i).

(q) *Retirement benefits for reemployed DROP 2 retiree.*

- (1) Notwithstanding § 31(1) of this subtitle, if a member retires and receives a DROP 2 account distribution or DROP 2 annuity payments under this § 36C and is subsequently reemployed by the City of Baltimore in a position covered by this system, the member:
 - (A) shall have his or her retirement benefit payments suspended as of the date of the member's reemployment; and
 - (B) shall again begin to earn current service credit in this System.
- (2) On the member's subsequent retirement, the member shall resume receiving:
 - (A) the retirement benefits that had been suspended at the time of the member's reemployment; and
 - (B) 2% of the member's current average final compensation as of the member's subsequent retirement date for each year of service credit earned by the member during the period of reemployment, prorated for partial years.
- (3) For purposes of this subsection (q), if a member retires less than 18 months after reemployment, "average final compensation" shall include compensation earned immediately before the member's initial retirement date and shall be calculated in accordance with § 30(11) of this subtitle.
- (4) If a retired member receiving benefits under this § 36C is subsequently reemployed in a position covered by this System and dies during employment as the result of a line-of-duty injury, and if the member's beneficiary is awarded a line-of-duty death benefit by the hearing examiner, the beneficiary shall be paid the line-of-duty death benefit determined as of the member's date of death and payable in accordance with § 34(i) of this subtitle.
- (5) If a retired member receiving benefits under this § 36C is subsequently reemployed in a position covered by this System and dies during employment as the result of a non-line-of-duty illness or injury, and if the member's beneficiary applies for benefits under § 34(h) of this subtitle as a result of the member's death, the beneficiary shall be paid the non-line-of-duty death benefit determined as of the member's date of death and payable in accordance with § 34(h), subject to the following qualifications:
 - (A) For lump-sum benefits payable under § 34(h)(2):
 - (i) the payment of the member's accumulated contributions shall include the member's accumulated contributions as of the previous retirement date, less any annuity payments made during the member's period of retirement, plus

the member contributions made during the member's period of reemployment, with interest credited to the member's date of death; and

(ii) the member's current compensation shall be determined as of the date of the member's death.

(B) For the 100% survivorship benefit payable under § 34(h)(3), the optional benefit shall be determined according to paragraph (2) of this subsection (q) as if the member had retired on the date of death.

(C) For the 25% Plus death benefit payable under § 34(h)(4), the member's compensation on the date of death shall be used to determine the benefit.

(6) If a retired member receiving benefits under this § 36C is subsequently reemployed in a position covered by this System and is awarded a line-of-duty disability retirement by the hearing examiner, the line-of-duty disability retirement benefit payable shall be determined according to paragraph (2) of this subsection as of the member's date of retirement. This line-of-duty disability benefit calculation shall be treated the same for tax purposes as the benefit calculated and paid according to § 34(e)(2) or (f)(2).

(7) For purposes of this subsection (q), any post-retirement benefit increase that the member would have received had the member not returned to employment covered by this System may not be added to this retirement benefit when the member subsequently retires.

(8) On the subsequent retirement of a member who has returned to employment under this subsection (q), the retiring member or beneficiary will again have to meet the post-retirement eligibility requirements of § 36A of this subtitle.

(r) *DROP 2 experience reports and savings tests.*

(1) (A) Beginning with the fiscal year ended June 30, 2011, and continuing until the fiscal year ended June 30, 2022, the enrolled actuary retained by the System shall submit to the Board of Trustees, as part of the annual actuarial valuation report, a DROP 2 experience report.

(B) The DROP 2 experience report shall include:

(i) the DROP 2 participation rates;

(ii) a comparison of actual to expected timing of retirement; and

(iii) the actuary's assessment of the implications of the DROP 2 experience for the City of Baltimore's expectations of contribution reductions, as defined in paragraph (2)(F) of this subsection (r), due to the implementation of the DROP 2 effective January 1, 2010.

(C) The Board of Trustees shall forward the DROP 2 experience report to the Director of Finance.

- (2) (A) Beginning with the fiscal year ended June 30, 2018, and every 4 years following, the enrolled actuary retained by this System shall provide the Board of Trustees with the results of a DROP 2 savings test.
- (B) In the DROP 2 savings test, this System's actuary, in consultation with the enrolled actuary retained by the members acting through their elected representatives, shall determine whether the City of Baltimore's expectations of contribution reductions, as defined in subparagraph (F) of this paragraph (2), have been realized.
- (C) Beginning with the savings test performed as of the fiscal year ended June 30, 2022, if a savings test indicates that the City's expectations of contribution reductions have not been realized, the City of Baltimore will have the option of enacting legislation to modify or terminate the existing DROP 2, but only with respect to members who are not eligible for the DROP 2 on the effective date of that modification or termination and not with respect to members who are participating or who are eligible to participate in the DROP 2.
- (D) Legislation enacted to modify or terminate the DROP 2 may not have any effect on any other benefits payable under the System apart from the DROP 2 benefit.
- (E) Notwithstanding subparagraph (C) of this paragraph (2), it is the intention of the City of Baltimore to maintain a deferred retirement option plan for the members of this System. Should the DROP 2 savings test fail to meet expected contribution reductions, the City will establish at a minimum a cost-neutral deferred retirement option plan for the members of this System.
- (F) For purposes of this subsection (r), the City of Baltimore's expectations of contribution reductions are at least:
- (i) \$2.5 million for the fiscal year beginning July 1, 2010 *{July 1, 2011}* (fiscal year 2012), which reflects the results of the actuarial valuation performed for the fiscal year ended June 30, 2010, the year when the DROP 2 was established; and
 - (ii) \$5 million, as adjusted for payroll increases, for each subsequent fiscal year.

(Ord. 09-209.)

§ 37. Guaranty.

The creation and maintenance of reserves in the Pension Accumulation Fund, the maintenance of annuity reserves and pension reserves as provided for, and regular interest creditable to the various funds as provided in § 35(b) of this subtitle and the payment of all pensions, annuities, retirement allowances, refunds and other benefits granted under the provisions of this subtitle and all expenses in connection with the administration and operation of this Retirement System are hereby made obligations of the City of Baltimore. All income, interest and dividends derived from deposits and investments authorized by this subtitle shall be used for the payment of the said obligations of the said City. Any amounts derived therefrom which, when combined with the

regular amounts, otherwise contributable by the City of Baltimore as provided under the provisions of this subtitle, exceed the amount required to provide such obligations, shall be used to reduce the regular appropriations otherwise required, or to reduce the period of amortization of the unfunded accrued liability, or both, as determined by the Board of Trustees.
(City Code, 1966, art. 22, §37; 1976/83, art. 22, §37.) (Ord. 62-1285; Ord. 70-874.)

§ 38. Exemption from assignment and execution.

(a) *In general.*

- (1) A person may not attach, execute, garnish, or otherwise seize any current or future benefit provided by this system or any money in a fund or an account created by this system.
- (2) All current and future benefits provided by this system and all money in a fund or an account created by this system are unassignable, except as specified in this section.

(b) *Exceptions – Payroll deductions.*

A retiree or beneficiary may elect to have the Board of Trustees deduct from his or her allowance, lump-sum benefit payment, or return of contributions, any payroll deduction or payment authorization authorized by the City for its employees, if the retiree or beneficiary has consented to the deduction in writing on a form approved by the Director of Finance.

(c) *Exceptions – Court orders.*

A court of competent jurisdiction may expressly order that a benefit or payment by the system be assigned pursuant to:

- (1) a decree or order of alimony or child support;
- (2) a domestic relations order as defined in subsection (d) of this section; or
- (3) a court order appointing the assignee as guardian over the property of the member.

(d) *Exceptions – Domestic relations orders.*

A member's court-approved property settlement agreement incident to a divorce decree or a division of marital property pursuant to a court order authorizing the payment of pension benefits to an alternate payee (as defined in the Internal Revenue Code, 26 U.S.C. §414(p)(8), as amended) shall be accepted by the Board as a domestic relations order if that decree or order:

- (1) does not require the system to provide any type or form of benefit or any options not already provided by this subtitle;
- (2) requires the system to provide no more than the total amount of benefits that the member would otherwise receive (determined on the basis of actuarial values);

- (3) specifies the amount or percentage of the member's benefits to be paid by the system to an alternate payee or the manner in which the amount or percentage is to be determined;
- (4) specifies (or, to protect the parties' privacy, requires submission by separate writing of) the name, social security number, birth date, and last known mailing address of the member and of the alternate payee covered by the order and states that it is the responsibility of the alternate payee to keep a current mailing address on file with the system;
- (5) does not grant an alternate payee any of the rights, options, or privileges of a retiree or beneficiary under this subtitle other than an assigned percentage or amount of the member's pension benefit or survivorship benefit;
- (6) does not require the system to commence payment of any type or form of benefit to an alternate payee prior to a member's actual date of retirement or death; and
- (7) does not require the system to treat the alternate payee as a surviving spouse.

(e) *Exceptions – Federal tax liens.*

In satisfaction of a U.S. Internal Revenue Service Notice of Levy for unpaid taxes of a member or beneficiary that has terminated employment, the system may pay all or part of:

- (1) a member's or beneficiary's benefits from the system; or
- (2) a member's refund of accumulated contributions, in which case the non-tax-deferred portion of those contributions shall be deemed to have been paid in satisfaction of the levy before any tax-deferred contributions.

(f) *Exceptions – Power of attorney.*

The system may pay the benefits otherwise due a member or beneficiary to that member's or beneficiary's attorney-in-fact, as agent of the member or beneficiary, if the member or beneficiary properly designated the attorney-in-fact to act as agent under a duly executed durable power of attorney.

(g) *Exceptions – Custodian under Uniform Transfers to Minors' Act.*

The system may pay the benefits otherwise due a minor beneficiary to a custodian validly appointed for the minor under the Maryland Uniform Transfers to Minors Act, Title 13, Subtitle 3, of the Maryland Estates and Trusts Article or similar out-of-state provision.

(h) *Exceptions – Trustee.*

The system may pay the benefits otherwise due a member or beneficiary to the member's or beneficiary's trustee, as trustee of the member or beneficiary, if the trustee was designated trustee of the member or beneficiary under an enforceable *inter vivos* or testamentary trust agreement.

(i) *Exceptions – Representative Payee.*

The system may pay the benefits otherwise due a member or beneficiary to the member's or beneficiary's social security "representative payee" pursuant to The Social Security Act, 42 U.S.C. §405(j), as amended.

(j) *Exceptions – Payments of funeral expenses.*

The system may pay all or part of a death benefit payable on account of the death of a member to a funeral establishment providing funeral services to the deceased member, if the beneficiary of the member has consented to that payment in writing on a form approved by the Board.

(k) *Notice to Board of Trustees.*

An assignment under this section applies only to benefits paid after the Board of Trustees receives:

- (1) written notice of the court decree or order, power of attorney, custodial instrument of designation, trust document, payee representative certification, assignment to funeral establishment, or notice of tax levy; and
- (2) any additional information that the Board of Trustees requires.

(l) *Notice of fraud or misuse.*

If the Board of Trustees, the Social Security Administration, or a court of competent jurisdiction determines that funds paid to any person under this section have been misused, payment of benefits will be promptly revoked.

(m) *Limitation on Board's liability.*

The Board of Trustees is not liable for an improper payment to a person that results from the Board's nonreceipt of:

- (1) written notice of the court decree or order, power of attorney, custodial instrument of designation, trust document, payee representative certification, assignment to funeral establishment, or notice of tax levy; or

- (2) any additional information that the Board required in order to execute the payment.

(*City Code, 1966, art. 22, §38; 1976/83, art. 22, §38.*) (*Ord. 62-1285; Ord. 72-237; Ord. 04-882.*)

§ 39. Protection against fraud; validating overpayments.

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of this Retirement System in any attempt to defraud such system as a result of such act shall be guilty of a misdemeanor, and shall be punishable therefor under the laws of the State of Maryland. Should any change or error in the records result in any member or beneficiary

receiving from the Retirement System more or less than he would have been entitled to receive had the records been correct, the Board of Trustees shall correct such error and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the payment to which said member or beneficiary was correctly entitled shall be paid. Provided, however, that any overpayments of benefits which have been made, or which may be made before the effective date of this ordinance, by the Retirement System as a result of administrative errors, with the exception of overpayments resulting from the fraud or deliberate misrepresentation of a beneficiary or potential beneficiary, are hereby waived to the extent that they have not been recovered by the system prior to that date, and no request or demand for reimbursement thereof shall be made after January 1, 1974, upon any retired member or his beneficiary who shall have received same. No request or demand shall be made upon the Retirement System for the return of any such overpayments which may have been recovered by the system before the effective date of this ordinance.

(*City Code, 1966, art. 22, §39; 1976/83, art. 22, §39.*) (*Ord. 62-1285; Ord. 73-420; Ord. 74-552.*)

§ 40. Limitation of other statutes.

(a) *Other laws.*

No other provision of any local law or ordinance which provides wholly or partly at the expense of the City of Baltimore for pensions or retirement benefits for employees of the said City, their widows or other dependents, shall apply to members or beneficiaries of the Retirement System established by this subtitle, their widows or other dependents.

(b) *Severability.*

If any section or part of any section of this subtitle is declared to be unconstitutional, the remainder of this subtitle shall not thereby be invalidated.

(c) *Inconsistent laws.*

All provisions of law inconsistent with the provisions of this subtitle are hereby repealed to the extent of such inconsistency.

(*City Code, 1966, art. 22, §40; 1976/83, art. 22, §40.*) (*Ord. 62-1285.*)

§ 41. Hearings.

The Board of Trustees, upon its own initiative, or upon the request of an applicant for the benefits provided for by this subtitle, shall conduct a hearing on said claim, which hearing shall be conducted as a judicial proceeding, all witnesses testifying under oath or by affirmation, and a record of the proceedings shall be made and kept. At such hearing, the investigation shall be conducted in such manner as to ascertain the substantial rights of the parties and the Board of Trustees shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure.

(*City Code, 1966, art. 22, §41; 1976/83, art. 22, §41.*) (*Ord. 62-1285.*)

§ 41A. Subpoena powers.

The Board of Trustees may, in the enforcement of this subtitle, issue subpoenas, compel the attendance and testimony of witnesses and the production of books, papers, records, and documents relating to payroll records, and necessary for hearings, investigations, and proceedings. Any such subpoena shall be served by the Sheriff of Baltimore City or any of his deputies. In case of disobedience to a subpoena, the Board of Trustees may apply to a court of appropriate jurisdiction for an order requiring the attendance, and testimony of witnesses and the production of books, papers, records, and documents. Said court, in case of contumacy or refusal to obey any such subpoena, after notice to the person subpoenaed, and upon finding that the attendance, or testimony of such witnesses or the production of such books, papers, records, and documents as the case may be, is relevant or necessary for such hearings, investigations, or proceedings of the Board of Trustees, may issue an order requiring the attendance and testimony of such witnesses and the production of such books, papers, records, and documents, or any of them, and any failure to obey such order of the court may be punished by the court as contempt thereof.

(City Code, 1976/83, art. 22, §41A.) (Ord. 68-065.)

CONTRACTUAL PROVISIONS**§ 42. Contractual relationship.**

Upon becoming either a Class A, a Class B or a Class C member of the Employees' Retirement System, or upon becoming a member of the Fire and Police Employees' Retirement System, established under this Article 22, such member shall thereupon be deemed to have entered into a contract with the Mayor and City Council of Baltimore, the terms of which shall be the provisions of this Article 22, as they exist at the effective date of this ordinance, or at the time of becoming a member, whichever is later, and the benefits provided thereunder shall not thereafter be in any way diminished or impaired.

(City Code, 1966, art. 22, §42; 1976/83, art. 22, §42.) (Ord. 64-426; Ord. 79-1055.)

INVESTMENT ADVISORS**§ 43. Employment; duties.**

- (a) Subject to the approval of the Board of Estimates, the Boards of Trustees of the respective retirement systems established under this Article 22 may hire, employ or retain qualified persons or other legal entities as investment advisors. The duties of such investment advisors shall include formulating and recommending to the respective Boards of Trustees, for their adoption, policy to be followed by the said Boards in respect to investment of the retirement systems' funds established under this article, subject to the limitations on the said Boards provided for by this article; and monitoring and evaluating the investment of the retirement systems' funds, and the performance of the investment managers with respect thereto. Payment for such investment advisory services shall be made from the resources of the pension fund or funds.
- (b) Nothing herein contained shall be construed to limit in any manner the authority heretofore conferred by this article on the said Boards of Trustees over the investment and management of the said several retirement systems' funds, it being the intention of this section that the investment advisors authorized herein shall advise and make recommendations to the said Boards with respect to general investment policy, but the final determination as to the investment and management of any of the said funds shall remain with the said respective Boards of Trustees.

(City Code, 1966, art. 22, §43; 1976/83, art. 22, §43.) (Ord. 64-424; Ord. 70-907; Ord. 78-851.)

POLICE DEPARTMENT, SPECIAL FUND**§ 44. Widows' benefits.**

- (a) Notwithstanding any provision to the contrary contained in § 16-26 of the Code of Public Local Laws of Baltimore City, effective with the 1st day of the 1st full pay period after July 1, 1985, any widow or eligible children entitled to receive benefits under the provisions of said § 16-26 of the Code of Public Local Laws of Baltimore City shall receive a total benefit allowance calculated at the rate of not less than 15% of the current annual salary of those members of the police force or other employees of the Police Department in active service in the highest step or flat salary, excluding longevity or merit increases, of the grade, rank or classification occupied by the deceased member or employee at the time of his retirement. Effective with the 1st day of the 1st full pay period after July 1, 1986, any widow or eligible children, as provided in this section, shall receive a total benefit allowance calculated at the rate of not less than 20% of current annual salaries; but never shall the payment be less than \$4,716.60 per annum.

Effective with the 1st day of the 1st full pay period after July 1, 1987, and every year thereafter, these widows and eligible children shall receive a total benefit allowance calculated at the rate of not less than 25% of the current annual salaries of members and employees in active service; but never shall the payment be less than \$5,895.75 per annum. In no event shall any widow or eligible child receive a reduction in total benefit allowance on July 1, 1985, on July 1, 1986, or on July 1, 1987. The payment and continued payment of such increases in total benefit allowances as may result from the workings of this paragraph shall be subject to the annual appropriation and payment of the necessary funds by the Mayor and City Council of Baltimore.

- (b) In addition to any other provisions contained in this § 44, effective with the 1st full pay period on or after July 1, 1979, any surviving widow entitled to receive benefits on or before June 30, 1977, under the provisions of § 16-26 of the Code of Public Local Laws of Baltimore City shall be entitled to receive a 5% increase annually over and above the total annual benefit allowance such widow was receiving on June 30, 1977, not to exceed a maximum of \$130, provided that the deceased member had 25 or more years of service. If the deceased member had less than 25 years of service, such widow's maximum annual increase of \$130 shall be reduced, pro rata, by each year and the decimal proportion of a year that the deceased member's service was less than 25 years. The payment and continued payment of such increases in total benefit allowances as may result from the workings of this paragraph shall be subject to the annual appropriation and payment of the necessary funds by the Mayor and City Council of Baltimore.

(City Code, 1976/83, art. 22, §44.) (Ord. 74-552; Ord. 75-975; Ord. 79-1055; Ord. 85-346; Ord. 86-579.)

§ 45. Military service credit.

Notwithstanding any provision to the contrary contained in § 16-29 and § 16-30 of the Code of Public Local Laws of Baltimore City, upon proper application to the Police Commissioner, credit for military service, as defined in § 4(e) of this article, shall be granted to any retiree who retired under the provisions of the Police Department Special Fund who served in the military prior to employment with the Police Department, provided the member has attained the age of 50 years and acquired at least 10 years of service, or has acquired 25 years of service prior to such

application. However, a retiree shall not be awarded credit if he has received credit for a period of military service under any other retirement system for which retirement benefits have been or will be received by him; however, this exclusion does not apply to any such credit provided through Federal Old-Age and Survivor's Insurance (Social Security), or to any benefits provided under Title 3 or Title 10, Chapter 67, §§ 1331 through 1337 of the U.S. Code.

The military service credit herein provided shall not exceed 3 years. The payment and continued payment of any increases in total benefit allowances as may result from the provisions of this paragraph shall be subject to the annual appropriation of the necessary funds by the Mayor and City Council of Baltimore. The provisions of this section shall apply to all retirees who are receiving periodically paid benefits on the effective date of this ordinance, regardless of their date of retirement, provided that at the time of retirement the retiree met the age and service requirements stated above. The provisions of this section shall not apply to beneficiaries of the retirees of this fund. The recalculated benefit, if any is due, shall be prospective only from the effective date of this ordinance.

(City Code, 1976/83, art. 22, §45.) (Ord. 87-910.)

GENERAL PROVISIONS**§ 46. Scope of subtitle.**

This subtitle applies to the Employees' Retirement System, the Fire and Police Employees' Retirement System, and the Elected Officials' Retirement System.
(*City Code, 1976/83, art. 22, §46.*) (*Ord. 97-168.*)

§ 47. Definitions.(a) *In general.*

In this subtitle, the following words have the meanings indicated.

(b) *System.*

"System" means the Employees' Retirement System, the Fire and Police Employees' Retirement System, or the Elected Officials' Retirement System.

(c) *New system.*

"New system" means the City system in which an employee becomes a member on a change of employment with the City.

(d) *Previous system.*

"Previous system" means the City system in which an employee was a member immediately before a change of employment with the City.

(e) *Terminate employment with City.*

"Terminate employment with the City" means to end all permanent full-time and permanent part-time City employment.

(f) *Designated beneficiary.*

"Designated beneficiary" means 1 or more persons named by a member, former member, or a retiree as beneficiary on a notarized written designation filed with the Board of Trustees on forms provided by the Board of Trustees.

(g) *Surviving spouse.*

(1) "Surviving spouse" means the individual to whom a member, former member, or retiree was married on the date of his or her death, even if the individual was separated from or had been granted a limited divorce from the member, former member, or retiree.

(2) "Surviving spouse" does not include an individual who has been granted an absolute divorce from a member, former member, or retiree before his or her death.

(h) *Minor child.*

“Minor child” means the child of a member, former member, or retiree who:

- (1) has not attained the age of 18; or
- (2) if the child is a full-time student, as verified to the satisfaction of the Administrator in accordance with the policies set by the Board of Trustees, has not attained the age of 22.

(i) *Retirement date.*

“Retirement date” means the date on which a member effectively begins to receive retirement benefits.

(*City Code, 1976/83, art. 22, §47.*) (*Ord. 97-168; Ord. 98-290A.*)

§ 48. Contemporaneous membership in 1 or more City systems.(a) *In general.*

City employees who are eligible to retire from 1 or more City systems or who are currently receiving benefits from 1 or more City systems, may join another system on beginning employment in a position covered by the new system, while retaining service credit in the previous system but postponing or suspending receipt of benefits from the previous system until the member has terminated employment with the City.

(b) *Receipt of benefits.*

On terminating employment with the City, any employee may receive simultaneous retirement benefits from all systems in which he or she has a current benefit, a vested benefit, or suspended benefits that were earned while employed by the City.

(c) *Post-retirement increases.*

On terminating employment with the City, a member’s retirement benefits that had been postponed or suspended from the member’s previous system will be calculated to include all post-retirement increases that the member would have been eligible to receive as a retiree had retirement benefits not been postponed or suspended from the member’s previous system.

(d) *Election of distribution of death benefits.*

(1) Any member electing to postpone receipt of retirement benefits from a previous system by joining a new system shall file, on a form approved by the Board of Trustees, a tentative election to distribute death benefits.

(2) The member shall:

- (i) tentatively elect the payment mode of his or her retirement pursuant to §§ 6(a)(5), 6(c)(3), 9(m), 22(c), and 34(k) of this article; and

- (ii) designate tentative beneficiaries to receive his or her retirement benefits in the event he or she dies before terminating employment with the City.
- (3) The member may change this election at any time before the member files a permanent application for retirement on termination of employment with the City.
- (4) Members of the Employees' Retirement System who are entitled to deferred vested retirement benefits and who join a new system before attaining age 55 shall file this tentative election on attaining age 55.

(e) *Death benefits.*

(1) *Postponement or suspension of benefits in previous system.*

The following death benefit shall be paid on behalf of any member who had postponed or suspended retirement benefits from a previous system and who dies while in service in his or her new system without having terminated employment with the City:

- (i) an ordinary, accidental or special death benefit from the member's new system, pursuant to § 6(h), 6(i), 9(o)(1), 9(o)(2), 9(o)(3), 22(j), 22(k), 34(h), or 34(i); and
- (ii) a death benefit from the member's previous system:
 - 1. in the case of a suspension, pursuant to the election of retirement benefits made at the time of applying for retirement benefits from the previous system; or
 - 2. in the case of postponement, as chosen pursuant to a tentative election made under subsection (d) of this section.

(2) *Death of retiree receiving benefits from 2 or more systems.*

If a retiree dies while receiving retirement benefits from 2 or more systems, a death benefit shall be payable from each system, in accordance with the applicable provisions of the respective systems and the elections made in the application for retirement by the retiree at the time he or she retired from each system.

(3) *Death of member who failed to file tentative election.*

The following death benefit shall be payable on behalf of any member who had postponed retirement benefits from a previous system without filing a tentative election under subsection (d) of this section and who dies while in service in his or her new system without having terminated employment with the City:

- (i) an ordinary, accidental or special death benefit from the member's new system, pursuant to § 6(h), 6(i), 9(o)(1), 9(o)(2), 9(o)(3), 22(j), 22(k), 34(h), or 34(i); and

(ii) a death benefit associated with the maximum retirement benefit allowance from the member's previous system, pursuant to § 6(a)(14), 9(m)(6), 9(m)(7), 22(b), or 34(k)(3) - (6).
(City Code, 1976/83, art. 22, §48.) (Ord. 97-168.)

§ 49. Rollovers and transfers to purchase service credit, effective January 1, 2002.

(a) *Definitions.*

(1) *In general.*

In this section, the following terms have the meanings indicated.

(2) *Rollover contribution.*

(i) "Rollover contribution" means an eligible rollover distribution, as defined in Internal Revenue Code § 402(c)(4), that the member:

(A) receives from an eligible retirement plan, as defined in Internal Revenue Code § 402(c)(8)(b); and

(B) transfers to the system in accordance with Internal Revenue Code § 402(c) so as not to be included in the member's taxable income.

(ii) "Rollover contribution" does not include any portion of a distribution that would not be included in the member's taxable income if it were not rolled over.

(3) *Trustee-to-Trustee transfer.*

"Trustee-to-trustee transfer" means a direct transfer to the system made in accordance with Internal Revenue Code § 403(b)(13) or § 457(e)(17).

(b) *In general.*

If any provision of this article allows a member of any system to purchase or repurchase service credit by making a single payment, all or any portion of that payment may be made by a rollover contribution or a trustee-to-trustee transfer, except as specified in subsection (c) of this section.

(c) *Limitation.*

No member may purchase or repurchase service credit under this section if the Board of Trustees determines that the purchase or repurchase does not qualify for tax-free rollover or transfer treatment under the applicable provisions of the Internal Revenue Code as then in effect.

(Ord. 03-576.)