

**CITY OF BALTIMORE
COUNCIL BILL 13-0224
(First Reader)**

Introduced by: The Council President

At the request of: The Administration (Department of Finance)

Introduced and read first time: April 29, 2013

Assigned to: Taxation, Finance and Economic Development Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Fire and Police Employees' Retirement System, Department of Finance, Fire Department, Police Department

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Fire and Police Employees' Retirement System –**
3 **Post-Retirement Benefit Increases**

4 FOR the purpose of amending the provisions of the Fire and Police Employees' Retirement System
5 that pertain to post-retirement benefit increases under the Fire and Police Employees'
6 Retirement System to provide that, if the United States Court of Appeals for the Fourth Circuit
7 upholds the ruling of the United States District Court for the District of Maryland in *Robert F.*
8 *Cherry, Jr., et al. v. Mayor and City Council of Baltimore City, et al.*, Civil Action No. 1:10-
9 CV-01447-MJG, that the substitution made by Ordinance 10-306 of a tiered, fixed percentage
10 increase for the pre-existing variable post-retirement increase violated the United States
11 Constitution, the tiered, fixed percentage increase will be discontinued and replaced with a
12 flat, fixed percentage increase; providing for a special effective date; providing for the
13 automatic termination of this Ordinance under certain circumstances; and generally relating to
14 the Fire and Police Employees' Retirement System of the City of Baltimore.

15 BY repealing and reordaining, with amendments

16 Article 22 - Retirement Systems
17 Section(s) 36A(h)(1)
18 Baltimore City Code
19 (Edition 2000)

20 BY adding

21 Article 22 - Retirement Systems
22 Section(s) 36A(h-2)
23 Baltimore City Code
24 (Edition 2000)

25 **Preamble**

26 On September 20, 2012, the United States District Court for the District of Maryland ruled that
27 the amendment made by Ordinance 10-306 to the Fire and Police Employees' Retirement System

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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1 (“F&P System”) law, substituting a new tiered, fixed percentage post-retirement benefit increase
2 for the pre-existing variable post-retirement benefit increase, violated the United States
3 Constitution.

4 In reaching its decision, the court agreed that the changes furthered the important public
5 purpose of making the F&P System sustainable and affordable. The court also agreed, in
6 substance, that the City could restructure the variable post-retirement increase to achieve the
7 significant cost reductions that Ordinance 10-306 provided.

8 The court found the ordinance unconstitutional only because it implemented a tiered cost-of-
9 living adjustment (“COLA”), under which older retirees would receive a higher COLA than
10 younger retirees, some of whom would receive no COLA for a period of time. In the court's
11 opinion, the Constitution requires that all F&P retirees receive the same, or substantially the same,
12 COLA.

13 If the court’s ruling is reversed on appeal, the Mayor and City Council desires to preserve the
14 changes made to the variable post-retirement increase by Ordinance 10-306, which changes are
15 necessary to maintain the financial soundness and sustainability of the F&P System.

16 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
17 Laws of Baltimore City read as follows:

18 **Baltimore City Code**

19 **Article 22. Retirement Systems**

20 **Subtitle – Fire and Police Employees’ Retirement System**

21 **§ 36A. Post-retirement benefit increases to certain retirees and beneficiaries.**

22 (H-1) [(h)] *Amount of benefit increase payable for fiscal years beginning on or after July*
23 *1, 2009, AND ENDING ON OR BEFORE THE LAST DAY OF THE “APPELLATE DECISION FISCAL*
24 *YEAR”.*

25 (1) The post-retirement benefit increase under paragraph (2)(iii) of this subsection is first
26 payable in January 2011 for the fiscal year ending June 30, 2010, AND LAST PAYABLE IN
27 THE JANUARY FOLLOWING THE “APPELLATE DECISION FISCAL YEAR” (AS DEFINED IN
28 SUBSECTION (H-2)(1) OF THIS SECTION) FOR THAT FISCAL YEAR. The post-retirement
29 increase under paragraph (2)(ii) of this subsection is first payable in January 2012 for
30 the fiscal year ending June 30, 2011, AND LAST PAYABLE IN THE JANUARY FOLLOWING
31 AN “APPELLATE DECISION FISCAL YEAR” (AS DEFINED IN SUBSECTION (H-2)(1) OF THIS
32 SECTION) FOR THAT FISCAL YEAR.

33 (2) As of the applicable effective date provided in paragraph (1) of this subsection, and
34 each succeeding June 30, a member or beneficiary who, as of that June 30, is eligible
35 under subsection (a) of this section shall receive the following increase in his or her
36 periodic benefit, the increase to commence effective as of the immediately following
37 January:

38 (i) A member or beneficiary who, as of that June 30, has not attained age 55, shall
39 receive no increase.

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1 (ii) A member or beneficiary who, as of that June 30, has attained age 55 but has
2 not attained age 65, shall receive an increase equal to 1.0%.

3 (iii) A member who, as of that June 30, either has attained age 65 or has retired
4 with a 100% line-of-duty disability under § 34(f-1), and a beneficiary who, as
5 of that June 30, either has attained age 65 or is a beneficiary of a member who
6 has retired with a 100% line-of-duty disability under § 34(f-1), shall receive an
7 increase equal to 2.0%.

8 (H-2) *AMOUNT OF BENEFIT INCREASE PAYABLE FOR FISCAL YEARS BEGINNING ON OR AFTER THE*
9 *FISCAL YEAR SUCCEEDING THE "APPELLATE DECISION FISCAL YEAR".*

10 (1) FOR PURPOSES OF SUBSECTION (H-1)(1) OF THIS SECTION AND PARAGRAPH (2) OF THIS
11 SUBSECTION, "APPELLATE DECISION FISCAL YEAR" MEANS THE FISCAL YEAR IN WHICH
12 THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT UPHOLDS THE RULING
13 OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND IN *ROBERT F.*
14 *CERRY, JR., ET AL. V. MAYOR AND CITY COUNCIL OF BALTIMORE CITY, ET AL.*, CIVIL
15 ACTION NO. 1:10-CV-01447-MJG, THAT THE SUBSTITUTION BY ORDINANCE 10-306 OF
16 A TIERED, FIXED PERCENTAGE INCREASE FOR THE PRE-EXISTING VARIABLE POST-
17 RETIREMENT INCREASE VIOLATED THE UNITED STATES CONSTITUTION.

18 (2) AS OF JUNE 30 OF THE FISCAL YEAR SUCCEEDING AN "APPELLATE DECISION FISCAL
19 YEAR" (AS DEFINED IN PARAGRAPH (1) OF THIS SUBSECTION), AND EACH SUCCEEDING
20 JUNE 30, A MEMBER OR BENEFICIARY WHO, AS OF THAT JUNE 30, IS ELIGIBLE UNDER
21 SUBSECTION (A) OF THIS SECTION SHALL RECEIVE AN INCREASE IN HIS OR HER PERIODIC
22 BENEFIT EQUAL TO 1.3%, THE INCREASE TO COMMENCE EFFECTIVE AS OF THE
23 IMMEDIATELY FOLLOWING JANUARY.

24 **SECTION 2. AND BE IT FURTHER ORDAINED**, That the catchlines contained in this Ordinance
25 are not law and may not be considered to have been enacted as a part of this or any prior
26 Ordinance.

27 **SECTION 3. AND BE IT FURTHER ORDAINED**, That this Ordinance takes effect on the date it is
28 enacted. If, however, the ruling of the United States District Court for the District of Maryland in
29 *Robert F. Cherry, Jr., et al. v. Mayor and City Council of Baltimore City, et al.*, is reversed on
30 appeal, then, with no further action required by the Mayor and City Council, this Ordinance will be
31 abrogated and of no further effect.