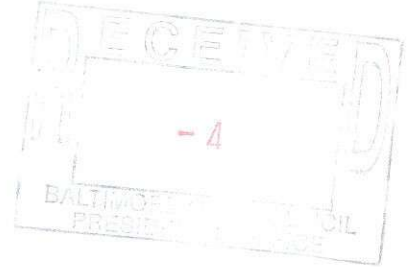




November 1, 2013

Honorable President and Members
of the City Council of Baltimore
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202



Attn: Karen Randle
Executive Secretary

Re: City Council Bill 13-0274 – A Safe and Adequate Retirement
System for the City of Baltimore

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 13-0274 for form and legal sufficiency. City Council Bill 274 establishes a new tax-qualified defined contribution plan (the “Supplemental Saving Plan of the City of Baltimore”) for the benefit of certain employees initially employed or reemployed by the City of Baltimore on or after January 1, 2014. The bill provides for the administration of the Plan and requires Plan members and the City to make contributions to the Plan each payroll period. The bill permits Plan members to select from among various investment options, imposes vesting rules for City contributions, provides for the distribution of a member’s account balance upon the occurrence of certain events and provides for ethics rules for employees and trustees of the City’s Pension plans. The bill also establishes for certain employees a limit on pensionable pay under the ERS Plan and requires certain contributions from those employees.

Art. II, §24 of the Baltimore City Charter gives the Mayor and City Council the authority to establish and maintain a general system of pensions and retirement benefits for its employees. City Council Bill 13-0247 is a valid exercise of that authority. There is no legal prohibition to establishing a new retirement plan that applies only to persons entering City employment after the effective date of the legislation.

The Law Department does, however, have comments on several parts of the bill.


1. The bill refers in several places to the CPI-U as defined in 17.1(D)(1) but does not define “CPI-U” and does identify what law contains “17.1(D)(1).”
2. Subtitle 2 provides for administration of the SSP by the ERS Board but does not state whether administrative areas not covered in the bill, such as rules for voting and subpoena power, are subject to the provisions of Art. 22, Sec. 5.

F/A

3. In Sec. 2-7 regarding meetings, the bill does not specify whether the Trustees must have separate meetings for the ERS and the SSP.
4. Sec. 2-12(c) provides for indemnification by the City but states that the City "may" indemnify persons acting in a fiduciary capacity with respect to the Plan. Sec. 1-2(d) of the bill provides that "may" is permissive and "must" and "shall" are mandatory. If indemnification is not mandatory then who decides when the City will indemnify? The same question arises in 2-12(d) with respect to insurance.
5. In Sec. 5-3 (c)(1), it is not clear what "additional contributions" is referring to. It would be clearer to use "amount of the deferral to the Deferred Compensation Plan."
6. In Sec. 5-5(c), line 18, the reference should be to the "Supplemental Saving Plan" not just "Plan" as it may be confused with the reference to the Deferred Compensation Plan in the previous line.
7. In Sec. 10-5 through 10-10, the "may" versus "shall" issue arises again. If it is permissive who decides when the exception applies?

Provided that the issues noted above are resolved, the Law Department can approve City Council Bill 13-0274 for form and legal sufficiency.

Sincerely,


Elena DiPietro
Chief Solicitor

cc: George Nilson, City Solicitor
Angela C. Gibson, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
Hilary Ruley, Assistant Solicitor
Victor K. Tervalo, Assistant Solicitor
Jennifer Landis, Assistant Solicitor