

CITY OF BALTIMORE
ORDINANCE **20.458**
Council Bill 20-0603

Introduced by: The Council President
At the request of: The Administration (Employees' Retirement Systems)
Introduced and read first time: September 21, 2020
Assigned to: Taxation, Finance and Economic Development Committee
Committee Report: Favorable with amendments
Council action: Adopted
Read second time: November 2, 2020

AN ORDINANCE CONCERNING

Retirement Savings Plan – Clarifications

FOR the purpose of clarifying the definition of “earnable compensation” for the members of the Retirement Savings Plan; clarifying that any employee of the Enoch Pratt Free Library System, who is not eligible to participate in the Maryland State Retirement and Pension System, is considered able to be a member of the Retirement Savings Plan; clarifying that any employee of the Baltimore Museum of Art or the Walters Art Gallery is not considered to be an employee for purposes of the Retirement Savings Plan; eliminating the time period limit for when an employer contribution made by mistake may be returned to the participating employer after payment of the mistaken contribution; modifying the composition of the Board of Trustees of the Retirement Savings Plan; modifying the qualifications needed by certain Trustees appointed to the Board; clarifying the term of office for appointed Trustees; clarifying that the Board is responsible for any other assets assigned to the Board by the City; clarifying certain provisions and language regarding the selection of Board Officers and their compensation; clarifying that administrative expenses of the Retirement Savings Plan and in the management of Plan assets may only be paid out of certain forfeitures or the unallocated Plan Asset Account; clarifying which City Benefit Plans a Trustee or Board employee may not do business; clarifying certain provisions concerning when members will commence participation in the Plan; modifying the definition of “service” for purposes of the Retirement Savings Plan; clarifying certain provisions concerning contributions to the Plan; clarifying certain provisions regarding forfeiture of non-vested employer ~~contributions~~ contribution and adding a provision that if a vested member of the Plan transfers service to another City retirement plan, the Employer Contribution Sub-Account is forfeited; providing that a member who terminates employment and transfers service to another city retirement plan is entitled to receive the value of the member’s mandatory employee contribution sub-account and, if applicable, rollover contribution sub-account; clarifying certain provisions regarding beneficiary distribution, after a member’s death; providing for distribution of small account balances; defining “minor beneficiary”; and generally relating to the Retirement Savings Plan.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

Council Bill 20-0603

BY repealing and reordaining with amendments

Article 22A - Retirement Savings Plan

Sections 1-1(g) and (h), 1-7(b)(1), 2-2, 2-6(b) and (c), 2-7(b), 2-10, 2-13, 2-20(b)(2),

3-2 (a) and (b), 4-1, 5-3(d), 5-4(c)(1), 8-1, 9-4(d)(1), and 10-7

Baltimore City Code

(Edition 2000)

BY adding

Article 22A - Retirement Savings Plan

Sections 2-3(d), ~~8-1A~~, 9-2A, and 9-9

Baltimore City Code

(Edition 2000)

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

Baltimore City Code

Article 22A. Retirement Savings Plan

Subtitle 1. Definitions; General Provisions

§ 1-1. Definitions.

(g) *Earnable compensation.*

(1) *[In general.] HYBRID MEMBER.*

“Earnable compensation” means the annual salary authorized for a HYBRID member.

(2) *[Exclusions.] NON-HYBRID MEMBER.*

“Earnable Compensation” [does not include overtime pay, differential pay, environmental pay, hazardous duty pay, pay for conversion of leave or other fringe benefits, or any like additional payments.] MEANS THE ACTUAL PAY RECEIVED EACH PAYROLL PERIOD (IF ANY) BY A NON-HYBRID MEMBER.

(3) *EXCLUSIONS.*

FOR BOTH HYBRID AND NON-HYBRID MEMBERS, “EARNABLE COMPENSATION” DOES NOT INCLUDE OVERTIME PAY, DIFFERENTIAL PAY, ENVIRONMENTAL PAY, HAZARDOUS DUTY PAY, PAY FOR CONVERSION OF LEAVE, BONUS PAY OR OTHER FRINGE BENEFITS, OR ANY LIKE ADDITIONAL PAYMENTS.

(h) *Employee.*

(1) *In general.*

“Employee” means any of the following, if in a job classification that requires at least 500 hours per year:

Council Bill 20-0603

(i) except as provided in paragraph (2) of this subsection, any permanent officer or employee of the Mayor and City Council of Baltimore, including any officer or employee of an agency, department, unit, subdivision, or instrumentality of the Mayor and City Council; and

(ii) any employee of the Baltimore City Public School System who is not eligible to participate in the Maryland State Retirement and Pension System.

(III) ANY EMPLOYEE OF THE ENOCH PRATT FREE LIBRARY WHO IS NOT ELIGIBLE TO PARTICIPATE IN THE MARYLAND STATE RETIREMENT AND PENSION SYSTEM.

(2) Exclusions.

“Employee” does not include:

(i) any “elected official”, as defined in City Code Article 22, § 17A(2), for purposes of membership in the Elected Officials’ Retirement System of the City of Baltimore; or

(ii) any “employee”, as defined in City Code Article 22, § 30(2), for purposes of membership in the Fire and Police Employees’ Retirement System of the City of Baltimore.

(III) ANY “EMPLOYEE” OF THE BALTIMORE MUSEUM OF ART OR THE WALTERS ART MUSEUM.

§ 1-7. Exclusive benefit.

(b) Exception for mistake of fact.

(1) An employer contribution made by mistake of fact may be returned to the appropriate participating employer [within, but not later than, 1 year] after payment of the mistaken contribution.

Subtitle 2

Administration

§ 2-2. Board composition.

(a) In general.

(1) The Board consists of [14 trustees.] THE FOLLOWING 13 TRUSTEES, ALL OF WHOM SERVE WITH VOTING PRIVILEGES:

[(2) Of these:]

[(i) 11 trustees serve with voting privileges (“voting trustees”); and]

Council Bill 20-0603

1 [(ii) 3 trustees serve in an advisory capacity only, without voting privileges
2 ("non-voting trustees").]

3 [(b) *Voting trustees.*]

4 [(1) *In general.*]

5 [The 11 voting trustees are:]

6 (i) the Director of Finance or the Director's designated representative, who must
7 be either the Deputy Director of Finance or the Budget Director;

8 (ii) the City Comptroller;

9 (iii) the Director of Human Resources;

10 (iv) the City Labor Commissioner;

11 (v) [the Executive Director of the Employees' Retirement System of the City of
12 Baltimore] 2 REPRESENTATIVES OF THE BALTIMORE CITY PUBLIC SCHOOL
13 SYSTEM, TO BE DESIGNATED BY THE CHIEF EXECUTIVE OFFICER OF THE
14 BALTIMORE CITY PUBLIC SCHOOL SYSTEM;

15 (vi) [2 representatives of the Baltimore City Public School System, to be
16 designated by the Chief Executive Officer of the Baltimore City Public School
17 System] THE PRESIDENT OF AFSCME LOCAL 44 OR THE PRESIDENT'S
18 DESIGNATED REPRESENTATIVE;

19 (vii) [a representative designated jointly by AFSCME Local 44, the City Union of
20 Baltimore ("CUB"), and the Managerial and Professional Society of
21 Baltimore, Inc. ("MAPS"); and] THE PRESIDENT OF THE CITY UNION OF
22 BALTIMORE ("CUB") OR THE PRESIDENT'S DESIGNATED REPRESENTATIVE;

23 [(viii) 3 residents and registered voters of the City of Baltimore, to be appointed
24 by the Mayor in accordance with City Charter Article IV, § 6.]

25 (VIII) THE PRESIDENT OF THE MANAGERIAL AND PROFESSIONAL SOCIETY OF
26 BALTIMORE, INC. ("MAPS") OR THE PRESIDENT'S DESIGNATED
27 REPRESENTATIVE;

28 (IX) A REPRESENTATIVE JOINTLY DESIGNATED BY THE BALTIMORE FIRE OFFICERS
29 ASSOCIATION AND BALTIMORE CITY LODGE #3 FRATERNAL ORDER OF POLICE;

30 (X) 2 RESIDENTS AND REGISTERED VOTERS OF THE CITY OF BALTIMORE, TO BE
31 APPOINTED BY THE MAYOR IN ACCORDANCE WITH CITY CHARTER ARTICLE IV,
32 §6; AND

33 (XI) A REPRESENTATIVE APPOINTEE TO BE DESIGNATED BY THE CITY COUNCIL
34 PRESIDENT.

Council Bill 20-0603

1 (2) *Appointed trustees – Qualifications.*

2 [(i) The 3 voting trustees] EACH OF THE 2 TRUSTEES appointed under paragraph
3 [(1)(viii)] (1)(X) of this subsection must each have at least 10 years of relevant
4 institutional investment management expertise OR OTHER EQUIVALENT
5 EXPERIENCE[.

6 (ii) None of these appointed trustees] AND may NOT be an official or employee of the
7 City at the time of his or her appointment or during the entire term of office.

8 (3) *Appointed trustees – Term of office.*

9 (i) Each of the [3] 3 [voting] trustees appointed under paragraph [(1)(viii)]
10 PARAGRAPHS (1)(X) AND (XI) of this subsection serves for a term of 4 years,
11 concurrent with the term of the Mayor AND THE CITY COUNCIL PRESIDENT.

12 (ii) At the end of a term, an appointed member continues to serve until a successor is
13 appointed and qualifies.

14 (iii) [A trustee] IF appointed to fill a vacancy in an unexpired term, A TRUSTEE serves
15 only for the remainder of that term.

16 [(c) *Non-voting trustees.*]

17 [The 3 non-voting trustees are:]

18 [(1) the President of AFSCME Local 44];

19 [(2) the President of the City Union of Baltimore (“CUB”); and]

20 [(3) the President of the Managerial and Professional Society of Baltimore, Inc.
21 (“MAPS”)].

22 (B) [(d)] *Service without regard to political affiliation.*

23 Notwithstanding City Charter Article IV, § 8, trustees may be appointed or hold their
24 positions without regard to political affiliation.

25 **§ 2-3. Board functions.**

26 ...

27 (D) *OTHER ASSETS.*

28 SUBJECT TO § 2-8 {“RETENTION OF SERVICES; RIGHT OF RELIANCE”} OF THIS SUBTITLE,
29 THE BOARD IS RESPONSIBLE FOR ANY OTHER ASSETS ASSIGNED TO THE BOARD BY THE
30 CITY. THE SCOPE OF THE BOARD’S RESPONSIBILITY IS DETERMINED BY THE TERMS OF THE
31 ASSIGNMENT.

Council Bill 20-0603

§ 2-6. Officers.

(b) Vice-Chair.

The [voting] trustees may elect a [voting] trustee to serve as Vice-Chair of the Board.

(c) Secretary.

(1) If an Executive Director has been appointed by the Board under § 2-8(a) {"Services"} of this subtitle, the Executive Director serves as the Board's Secretary.

(2) If no Executive Director has been appointed, the [voting] trustees may elect a [voting] trustee to serve as the Board's Secretary.

§ 2-7. Meetings; Voting; Records.

(b) Voting.

(1) Each [voting] trustee is entitled to 1 vote on the Board.

(2) 6 [voting] trustees constitute a quorum.

(3) An affirmative vote by the majority of a quorum is needed for any action by the Board [of Trustees].

§ 2-10. Compensation; Expenses.

(a) In general.

Except as provided in subsection (b) of this section, each [Trustee] TRUSTEE serves without compensation.

[(b) Stipend for appointed trustees.]

[(1) Each of the 3 trustees appointed under § 2-2(b)(1)(viii) of this subtitle is entitled to a stipend, in an amount determined by the Board of Estimates, for attending meetings of the Board of Trustees.]

[(2) The Board of Trustees may establish meeting-attendance standards that the appointed trustees must satisfy to be eligible for the stipend.]

(B) [(c)] Expenses.

[All voting and non-voting trustees] TRUSTEES SERVE WITHOUT COMPENSATION, BUT are entitled to reimbursement for reasonable expenses incurred in the performance of their duties.

§ 2-13. Plan expenses.

Except for investment fund fees and expenses paid under § 6-2(e) {"Investments: Fund fees and expenses"} of this article, all expenses incurred in the administration of the Retirement Savings Plan and in the management of Plan assets may only be paid as follows:

- (1) first, out of EITHER forfeitures under Subtitle 8 {"Forfeitures"} of this article; [and] or
- (2) [then, to the extent expenses remain unpaid, by the City] THE UNALLOCATED PLAN ASSET ACCOUNT THAT HOLDS REVENUE SHARING OR SIMILAR PAYMENTS RECEIVED BY THE PLAN FROM OR WITH RESPECT TO AN INVESTMENT OPTION, AS DETERMINED BY THE BOARD.

§ 2-20. Conflicts of interest.

(b) *Additional standards and requirements.*

- (2) *Business with City Benefit Plan.*

No Trustee or Board employee may do business with any system, plan, or trust administered by any of the following (collectively, “the City Benefit Plans”):

- (i) the Board of Trustees of the Employees' Retirement System of the City of Baltimore;
- (ii) the Board of Trustees of the Fire and Police Employees' Retirement System of the City of Baltimore;
- (iii) the Board of Trustees of the Elected Officials' Retirement System of the City of Baltimore; AND
- (iv) the Board of Trustees of the Retirement Savings Plan of the City of Baltimore[; and
- (v) the Committee of the City of Baltimore Deferred Compensation Plan].

Subtitle 3

Plan Membership

§ 3-2. Commencement of participation.

- (a) *Initial employment ON OR AFTER JULY 1, 2014.*

An employee initially employed by a participating employer on or after July 1, 2014, must make an election under City Code Article 22, § 9.1, and, based on that election, will commence participation [as a hybrid member or a non-hybrid member of] IN the Plan [on the 180th day after the date on which his or her initial employment began] AS FOLLOWS:

Council Bill 20-0603

(I) A HYBRID MEMBER WILL COMMENCE PARTICIPATION ON THE 1ST ANNIVERSARY OF THE DATE ON WHICH HIS OR HER INITIAL EMPLOYMENT BEGAN.

(II) A NON-HYBRID MEMBER WILL COMMENCE PARTICIPATION ON THE 180TH DAY AFTER THE DATE ON WHICH HIS OR HER INITIAL EMPLOYMENT BEGAN.

(b) *Reemployment IF INITIALLY EMPLOYED BEFORE JULY 1, 2014.*

(1) *Prior employment terminated after earning vested benefit.*

An employee who was employed by a participating employer [on or] before [June 30] JULY 1, 2014, and who, after having terminated that employment [and earning] WITH a vested benefit under a City retirement plan, is reemployed by that or another participating employer on or after July 1, 2014, automatically commences participation in the Plan as a non-hybrid member on the 30th day after the date [on which his or her] OF reemployment [began].

(2) *Prior employment terminated before earning vested benefit.*

An employee who was employed by a participating employer [on or] before [June 30] JULY 1, 2014, and who, after having terminated that employment before earning a vested benefit under a City retirement plan, is reemployed by that or another participating employer on or after July 1, 2014, must make an election under City Code Article 22, § 9.1, and, based on that election, will commence participation as a hybrid member or a non-hybrid member [of the Plan] on the [180th day after the] date [on which his or her reemployment began] PROVIDED IN SUBSECTION (A) OF THIS SECTION.

...

Subtitle 4

Service

§ 4-1. "Service" defined.

(a) *In general.*

Except as otherwise provided in this section, "service" means the sum of each period of a member's employment with a participating employer.

(b) *Exclusions.*

Except as provided in subsection (c) of this section, "service" does not include any period [that] OF EMPLOYMENT:

(1) THAT has been credited as service under any other City retirement plan[; and] FOR CALCULATING THE AMOUNT OF A RETIREMENT BENEFIT OR A DEFERRED VESTED RETIREMENT BENEFIT; OR

Council Bill 20-0603

(2) [was used by that plan for calculating a retirement benefit or a deferred vested retirement benefit] DURING WHICH THE MEMBER WAS NOT ON THE ACTIVE PAYROLL OF THE PARTICIPATING EMPLOYER.

(c) [Inclusions] EXCEPTIONS.

[Notwithstanding subsection (b) of this section, "service" includes any period credited to a hybrid member of the Retirement Savings Plan for service as a Class D member of the Employees' Retirement System.]

THE EXCLUSIONS OF SUBSECTION (B) OF THIS SECTION DO NOT APPLY TO ANY PERIOD OF EMPLOYMENT CREDITED TO A HYBRID MEMBER FOR SERVICE AS A CLASS D MEMBER OF THE EMPLOYEES' RETIREMENT SYSTEM.

(D) TRANSFERS OF SERVICE.

IF A MEMBER TRANSFERS SERVICE TO ANY OTHER CITY RETIREMENT PLAN, THAT TRANSFERRED SERVICE ~~WILL NO LONGER~~ MAY NOT BE COUNTED TO DETERMINE WHETHER THE MEMBER IS VESTED IN THEIR HIS OR HER EMPLOYER CONTRIBUTION SUB-ACCOUNT.

Subtitle 5

Contributions

§ 5-3. Employer contributions.

...
(d) *Non-hybrid members also contributing to Deferred Compensation Plan.*

(1) For each payroll period in which a non-hybrid member makes a voluntary deferral to the City's Deferred Compensation Plan, the member's employer must contribute to the Retirement Savings Plan an amount equal to 50% of the [compensation] AMOUNT deferred by the member for that payroll period, but taking into account only [compensation] THE AMOUNT deferred that does not exceed 2% of the member's EARNABLE compensation for that payroll period.

§ 5-4. Rollover contributions.

...
(c) *Conditions of rollover.*

(1) Every rollover contribution must be:

(I) [(1) an "eligible rollover distribution", as defined in IRC § 402(F)(2)(A)] EITHER AN "ELIGIBLE ROLLOVER DISTRIBUTION" AS DEFINED IN IRC § 402(F)(2)(A), INCLUDING ELIGIBLE DISTRIBUTIONS OF DESIGNATED ROTH CONTRIBUTIONS DESCRIBED IN IRC § 402A(C)(3); OR

(II) ELIGIBLE FOR ROLLOVER TREATMENT UNDER IRC § 408(D)(3), INCLUDING ELIGIBLE DISTRIBUTIONS FROM A ROTH IRA DESCRIBED IN IRC § 408(A) ELIGIBLE

Council Bill 20-0603

FOR ROLLOVER TREATMENT UNDER IRC § 408(D)(3), INCLUDING ELIGIBLE
DISTRIBUTIONS FROM A ROTH IRA DESCRIBED IN IRC § 408(A).

...

Subtitle 8

Forfeitures

§ 8-1. Forfeiture of non-vested Employer Contributions.

The Employer Contribution Sub-Account of a member who terminates employment with a participating employer before that sub-account is vested under § 7-2 {"Vesting: Employer Contribution Sub-Account"} of this article is forfeited as of the date of the member's termination of employment, UNLESS THAT MEMBER IS REEMPLOYED BY A PARTICIPATING EMPLOYER WITHIN 30 DAYS AFTER TERMINATION OF EMPLOYMENT.

~~§ 8-1A. FORFEITURE OF VESTED EMPLOYER CONTRIBUTIONS - TRANSFERS OF SERVICE.~~

~~THE EMPLOYER CONTRIBUTION SUB-ACCOUNT OF A MEMBER WHO TERMINATES EMPLOYMENT UNDER § 1-1(H) OF THIS ARTICLE {"DEFINITIONS: EMPLOYEE EXCLUSIONS"} WITH A PARTICIPATING EMPLOYER UNDER § 1-1(Q) OF THIS ARTICLE {"DEFINITIONS: PARTICIPATING EMPLOYER; EMPLOYER"} AFTER THAT SUB-ACCOUNT IS VESTED UNDER § 7-2 OF THIS ARTICLE {"VESTING: EMPLOYER CONTRIBUTION SUB-ACCOUNT"} IS FORFEITED AS OF THE DATE OF THE MEMBER'S TERMINATION OF EMPLOYMENT, IF THE MEMBER TRANSFERS HIS OR HER HYBRID OR NON-HYBRID SERVICE TO ANOTHER CITY RETIREMENT PLAN UNDER § 1-1(P) OF THIS ARTICLE {"DEFINITIONS: OTHER CITY RETIREMENT PLAN"}.~~

Subtitle 9

Distributions

§ 9-2A. DISTRIBUTABLE EVENTS - TRANSFERS.

A MEMBER WHO TERMINATES EMPLOYMENT AND TRANSFERS HIS OR HER SERVICE TO ANOTHER CITY RETIREMENT PLAN IS ENTITLED TO RECEIVE THE VALUE OF THE MEMBER'S:

(1) MANDATORY EMPLOYEE CONTRIBUTION SUB-ACCOUNT; AND

(2) IF APPLICABLE, ROLLOVER CONTRIBUTION SUB-ACCOUNT.

§ 9-4. Distributable events – Death.

...

(d) *Failure to designate beneficiary.*

(1) If the Board determines that a member has died [without validly designating a beneficiary or that no validly-designated beneficiary is still alive, the value of the member's account will be paid to:] AND THERE IS NO VALID BENEFICIARY DESIGNATION, OR IF ALL DESIGNATED BENEFICIARIES PREDECEASE THE MEMBER, THE

Council Bill 20-0603

MEMBER'S ACCOUNT WILL BE PAID TO THE MEMBER'S SURVIVING SPOUSE, OR, IF THERE IS NO SURVIVING SPOUSE, TO THE MEMBER'S ESTATE.

[(i) the member's surviving spouse;]

[(ii) if there is no surviving spouse, to the member's surviving children, in equal shares;]

[(iii) if there are no surviving children, to the member's surviving parents, in equal shares; and]

[(iv) if there are no surviving parents, to the member's estate.]

...

§ 9-9. DISTRIBUTION OF SMALL ACCOUNT BALANCES.

IF A MEMBER EXPERIENCES A DISTRIBUTABLE EVENT UNDER § 9-2 {"DISTRIBUTABLE EVENTS – RETIREMENT"}, § 9-3 {"DISTRIBUTABLE EVENTS – DISABILITY"}, § 9-4 {"DISTRIBUTABLE EVENTS – DEATH"} OR § 9-5 {"DISTRIBUTABLE EVENTS – OTHER TERMINATION OF EMPLOYMENT"}, AND IF THE MEMBER'S TOTAL VESTED ACCOUNT BALANCE ON THE DATE OF THE EVENT IS LESS THAN \$1,000, THEN THE TOTAL VESTED ACCOUNT BALANCE WILL AUTOMATICALLY BE DISTRIBUTED TO THE MEMBER (OR THE MEMBER'S BENEFICIARY) WITHOUT THE MEMBER (OR BENEFICIARY) APPLYING AS SOON AS ADMINISTRATIVELY PRACTICABLE AFTER 90 DAYS FOLLOWING THE DISTRIBUTABLE EVENT.

Subtitle 10

Anti-Alienation Provisions

§ 10-7. Exceptions – Custodian under Uniform Transfers to Minors Act.


The amount otherwise due a minor beneficiary may be paid to a custodian validly appointed for the minor under the Maryland Uniform Transfers to Minors Act (State Estates and Trusts Article, Title 13, Subtitle 3) or similar provisions of another jurisdiction. A "MINOR BENEFICIARY" IS A BENEFICIARY WHO HAS NOT ATTAINED AGE 22.

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

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day after the date it is enacted.

Council Bill 20-0603

Certified as duly passed this 16 day of November, 20 20



President, Baltimore City Council

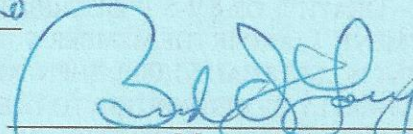
Certified as duly delivered to His Honor, the Mayor,

this 16 day of November, 20 20



Chief Clerk

Approved this 2nd day of Dec., 20 20



Mayor, Baltimore City

Approved for Form and Legal Sufficiency
This 2nd day of December, 2020.



Chief Solicitor