



City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland 21202

Legislation Text

File #: 13-0224, **Version:** 0

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

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INTRODUCTORY*

CITY OF BALTIMORE
COUNCIL BILL

Introduced by: The Council President
At the request of: The Administration (Office of the City Solicitor)

A BILL ENTITLED

AN ORDINANCE concerning
Fire and Police Employees' Retirement System - Post-Retirement Benefit Increases

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

BY repealing and reordaining, with amendments

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

BY adding

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

Preamble

On September 20, 2012, the United States District Court for the District of Maryland ruled that the amendment

made by Ordinance 10-306 to the Fire and Police Employees' Retirement System ("F&P System") law, substituting a new tiered, fixed percentage post-retirement benefit increase for the pre-existing variable post-retirement benefit increase, violated the United States Constitution.

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

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

If the court's ruling is reversed on appeal, the Mayor and City Council desires to preserve the changes made to the variable post-retirement increase by Ordinance 10306, which changes are necessary to maintain the financial soundness and sustainability of the F&P System.

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 22. Retirement Systems

Subtitle - Fire and Police Employees' Retirement System

§ 36A. Postretirement benefit increases to certain retirees and beneficiaries.

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

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

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

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

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

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

(H-2) AMOUNT OF BENEFIT INCREASE PAYABLE FOR FISCAL YEARS BEGINNING ON OR AFTER THE FISCAL YEAR SUCCEEDING THE “APPELLATE DECISION FISCAL YEAR”.

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

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

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 date it is enacted. If, however, the ruling of the United States District Court for the District of Maryland in Robert F. Cherry, Jr., et al. v. Mayor and City Council of Baltimore City, et al., is reversed on appeal, then, with no further action required by the Mayor and City Council, this Ordinance will be abrogated and of no further effect.

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art22/F&P Post-Retirement/aa:me

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