ARTICLE 22
RETIREMENT SYSTEMS

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For information – call, write, or fax:

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

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EMPLOYEES' RETIREMENT SYSTEM

§ 1. Definitions.

(1) "Retirement System" shall mean the Employees' Retirement System of the City of Baltimore as defined in § 2 of this subtitle.

(2) (i) (A) "Employee" means:

1. any regular and permanent officer, agent, or employee of the City of Baltimore; and

2. any regular and permanent officer, agent, servant, or employee, by whatever authority appointed, whose salary or compensation is paid by the Mayor and City Council of Baltimore, except when the City of Baltimore acts only as an agent for the convenience of disbursing payroll funds.

(B) In all cases of doubt the Board of Trustees shall decide who is an employee within the meaning of this subtitle.

(ii) Notwithstanding any other provision of this article or any prior determination of the Board of Trustees, employees of the Baltimore Museum of Art and of the Walters Art Museum who are employed or reemployed on or after July 1, 2014, are not "employees" under this subtitle.

(3) "Member" shall mean any person included in the membership of the system as provided in §§ 3 and 9 of this subtitle.

(4) "Board of Trustees" shall mean the Board, provided in § 5 of this subtitle, to administer the Retirement System.

(5) *{Vacant}*

(6) "Service" shall mean service as an employee as described in paragraph (2) of this section, and paid for by the City of Baltimore, while a member of the 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 the provision of § 4(a) of this subtitle, subject to the qualifications set forth in § 4(d) 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) (i) "Regular interest" means:

(A) for the accumulation of Class A or Class B member contributions, interest at 5.25% per year, compounded annually; and

(B) for the accumulation of Class C or Class D member contributions, interest at 3% per year, compounded annually.

(ii) "Regular interest" for valuation purposes means:

(A) 7.75% before benefit payments commence; and

(B) 6.55% after benefit payments commence.

(iii) "Regular interest" for the purpose of determining actuarial equivalents means interest at 4.5% per year, compounded annually.

(10) "Accumulated contributions" means the sum of all the amounts deducted from the earnable compensation of a member, and any other additional amounts contributed by the member as provided in this subtitle, together with regular interest as provided in paragraph (9) of this section and pursuant to the provisions of §§ 7, 8 and 9 of this subtitle.

(11) Average final compensation:

(i) For any member who terminates employment with the City prior to January 1, 1994, except as noted in subparagraphs (a) and (b) below, "average final compensation" shall mean the average annual earnable compensation for any period of 3 successive years of service during which his earnable compensation was highest; or if he had less than 3 years of service, then the average annual earnable compensation during his total years of service. "Earnable compensation" shall mean the annual salary authorized for the member. It shall 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.

Beginning with the 1st day of the 1st full pay period after July 1, 1975, the provisions of this paragraph shall apply to members who retired on or after April 19, 1974, up to and including June 30, 1975. However, no retroactive payments shall be made to members who retired before July 1, 1975.

Beginning July 1, 1975, the provisions of this paragraph shall apply to all members who retire on or after July 1, 1975.

(a) For members who retired during the period beginning with July 1, 1973, up to and including April 18, 1974, the term "average final compensation" shall be the same as is provided in paragraph (11)(i); however, no retroactive payments shall be made with respect to any period prior to the 1st day of the 1st full pay period after July 1, 1975. It is further provided with respect to members who retired during the period July 1, 1973, through April 18, 1974, inclusive, or their beneficiaries, that they shall receive the adjustment required under this paragraph to the extent that it exceeds the benefit provided under § 6(n) and § 6(o) of this article as amended from time to time.

(b) Beginning July 1, 1984, any member who retired between January 1, 1926 and April 18, 1974, or the member's beneficiary, shall have the retirement allowance portion of the total retirement benefit recalculated on the member's average final compensation as defined in § 1(11)(i). The total difference between the average final compensation

calculated at the time of retirement and the calculation based on average final compensation based on 3 years shall be added to the present annual allowance being received. However, no retroactive payments for any increases shall be made to eligible beneficiaries of deceased members and members retired before April 19, 1974.

(ii) For any member who is an employee on or after January 1, 1994, "average final compensation" means the average of the member's annual earnable compensation on January 1 for 3 successive years of service when the member's earnable compensation is the highest. If the member is in service on January 1 for less than 3 successive years, then average final compensation means the average annual earnable compensation during this total years of service. "Earnable compensation" means the annual salary authorized for the member. It 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.

(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. It shall not include additional benefits provided under §§ 6(n) and 6(o) of this subtitle.

(13a) (i) All retirement allowances or other benefits that are calculated on an annual basis shall be payable for each month in a year. Payments shall be made in periodic installments, as determined from time to time by the Board of Trustees, and the monthly allowance shall be computed by dividing the annual allowance by 12.

(ii) All retirement dates for all Class A, B, C, and D members shall fall on the 1st of a month.

(14) "Retirement" shall mean withdrawal from active service with a retirement allowance or pension, granted or deferred under the provisions of this subtitle. However, the deferment of the receipt of the retirement allowance or pension must be at the option of the member.

(15) "Retirement allowance" shall mean the sum of the "annuity" and the pensions.

(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 table as shall be adopted by the Board of Trustees and regular interest.

(18) "Total retirement benefits" shall mean the sum of the "annuity" and the "pensions", and any additional annual benefits, including §§ 6(n) and 6(o), payable to a retiree or his beneficiary as provided for under this subtitle.

(19) "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 with no set forward,

except that in the case of disability retirements under this subtitle, the table is set forward 9 years.

(20) "Actuary" shall mean the person or persons designated as hereinafter provided.

(21) The male pronoun shall include the female pronoun or vice versa.

(22) "Actuarial reserve" shall mean the present value of a benefit due the member, based on such interest and mortality tables as are adopted by the Board of Trustees upon the advice of the actuary for the Retirement System.

(23) *{Repealed}*

(24) "Fiscal year" shall be the 12- month period beginning on July 1 of each year and ending on June 30 of the following year, both these dates included therein, or such alternate dates as shall be mandated by law for the Mayor and City Council.

(25) "Hours of work" shall mean in the computation of service as provided in § 9(c), the prescribed number of regular working hours in a fiscal year, exclusive of overtime, as set forth in an employee's job classification.

(26) "Normal retirement date" shall be for all Class C members the 1st day next following the member's having attained age 65.

(27) "Panel of hearing examiners" shall mean the panel of hearing examiners provided for in § 5(l) and § 9(p).

(28) "Parity time period" shall mean a period of time equal to the service credit a former Class A, Class B, or Class C member had acquired at the time such former member terminated employment with the City, plus any additional service credit for any employment for which the former Class A or Class B member would have been eligible to receive service credit on the date of reemployment, whether by purchase or repurchase, or by transfer of the applicable funds, had he continued his previous City employment and his Class A or Class B membership.

(29) "Primary Social Security benefit" for all Class C members shall mean the estimated annual primary Social Security benefit, as determined by the actuary, to which such Class C member was or would become entitled to upon reaching the age of 65, based on the Social Security Act in effect on January 1 of the year of the member's termination, normal retirement, early retirement, postponed retirement, or ordinary disability. In making the determination, the actuary shall conclusively presume (whether actual or not) that the member has always been a covered employee under the Social Security Act and that the member's earnable compensation (as defined in § 1(11)), which would be treated as wages for purposes of the Social Security Act, has increased at a rate determined by the actuary, the amount to which the member is entitled shall not be reduced because of any Social Security entitlement by reason of a spouse, age of spouse, dependents, or any Social Security disability which the member, the spouse or dependents may suffer, or any Social Security, or Social Security offset income earned by the member. For purposes of computing a member's primary Social Security benefit, if a Class C member has not reached the age of 65 years as of the date on which benefits are determined, City earnable compensation (as defined in § 1(11)), which would be treated as wages for

purposes of the Social Security Act after his retirement or termination of employment, shall be deemed to be at the same rate as the rate in effect as of the date benefits are determined.

(30) Covered Compensation:

(i) For any Class C member who was an employee on or after June 28, 1991, and who terminates employment with the City on or before June 28, 1993, "covered compensation" shall mean for any member on any date, an annual amount determined on the basis of the federal Social Security Act as in effect on the 1st day of the fiscal year during which the determination is made. Such annual amount shall equal the average of the taxable wage bases (as defined herein) in effect for each calendar year during the 35-year period ending with the calendar year which ends immediately prior to the earlier of: (a) July 1 of the fiscal year in which the member terminates City employment; or (b) the calendar year in which the member attains age 65. "Taxable wage base" means, with respect to any calendar year, the maximum amount of earnings which may be considered wages under § 3121(a)(1) of the Internal Revenue Code of 1986, as amended.

(ii) For any Class C member who was an employee on or after June 29, 1993, "covered compensation" shall mean for any member on any date, an annual amount determined on the basis of the federal Social Security Act as in effect on the 1st day of the fiscal year during which the determination is made. Such annual amount shall equal the average of the taxable wage bases (as defined herein) in effect for each calendar year during the 35-year period which ends with the calendar year prior to the earlier of: (a) the January 1 which is one year prior to January 1 of the calendar year in which the member terminates employment with the City; or (b) January 1 of the calendar year in which the member attains age 65. "Taxable wage base" means, with respect to any calendar year, the maximum amount of earnings which may be considered wages under § 3121(a)(1) of the Internal Revenue Code of 1986, as amended.

(City Code, 1927, art. 30, §1; 1950, art. 23, §1; 1966, art. 22, §1; 1976/83, art. 22, §1.)
(Ord. 26-553; Ord. 50-1410; Ord. 53-769; Ord. 59-1864; Ord. 58-1263; Ord. 58-1261; Ord. 64-425; Ord. 67-995; Ord. 72-237; Ord. 73-419; Ord. 74-552,; Ord. 75-975; Ord. 75-1058; Ord. 77-378; Ord. 79-1055; Ord. 79-1126; Ord. 84-029; Ord. 86-731; Ord. 86-767; Ord. 91-777; Ord. 92-086; Ord. 93-263; Ord. 95-466; Ord. 98-290A; Ord. 00-052; Ord. 05-173; Ord. 07-422; Ord. 12-044; Ord. 13-144; Ord. 14-216.)

§ 2. Name and date operative.

A retirement system is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances, pensions and other incidental benefits under the provisions of this subtitle for employees of the City of Baltimore who become members of this retirement system. It shall be known as the "Employees' Retirement System of the City of Baltimore". The Retirement System so created shall begin operation as of January 1, 1926.
(City Code, 1927, art. 30, §2; 1950, art. 23, §2; 1966, art. 22, §2; 1976/83, art. 22, §2.)
(Ord. 26-553; Ord. 75-1058; Ord. 79-1055.)

§ 3. Membership.

(a) *Membership*.

Membership in the Retirement System shall begin not earlier than January 1, 1926. The membership shall consist of the following:

(1) All persons who become employees before July 1979 and all employees who enter or reenter the employment of the City of Baltimore after January 1, 1926, but before July 1, 1979, with the exception of those employees who are required to join either Maryland State or other retirement systems, may become members on their own application, and all those employees who complete two years of employment thereafter shall become members of the Retirement System as a condition of employment.

(2) All persons who become employees and all employees who enter or reenter the employment of the City of Baltimore on or after July 1, 1979, are subject to § 9 of this article. However, notwithstanding anything to the contrary, any Class A or Class B member who is laid off, placed on a reemployment list, and returns to City employment from the reemployment list shall immediately once again become a Class A or Class B member.

(3) The Board of Estimates may authorize membership for any class of part-time employees. That membership may only be prospective.

(b) *Dual membership precluded*.

(1) 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.

(2) The prohibition set forth in paragraph (1) of this subsection does not apply to contributions made to or benefits received from:

(i) the Baltimore City Municipal Deferred Compensation Plan; or

(ii) the Social Security System established by the Act of Congress known generally as "The Social Security Act of 1935", as amended from time to time.

(c) *Officials*.

The Board of Trustees may deny the right to become members to any class of elected officials, or any class of appointed officials, whose terms are fixed by law, or it may, in its discretion, make optional with persons in any such class their individual entrance into membership. Any elected official or any appointed official whose term is fixed by law who is now a member or who hereafter becomes a member of the Employees' Retirement System may, at any time, resign from said system and be entitled, on demand, to the return of his accumulated contributions.

However, such elected or appointed official, whose term is fixed by law, shall have the right at his option to continue membership in the Retirement System following the end of the term of

office for which he was last elected or appointed. Such right shall be contingent upon such person's making all the payments which would have been made by him and also by the City had he continued to hold such elective or appointive office. Such payments shall be based on the current rate of compensation such person would have received, had he remained in office. Within 30 days following the end of the term of office for which said official was last elected or appointed, in order to exercise such option, said official shall be required to deposit the remainder of all the payments in advance for the current fiscal year which would have been paid had he continued to hold such elective or appointive office. Thereafter, such payments shall be made in annual amounts, in advance, within 30 days of the beginning of each and every fiscal year. Such payments shall entitle said official to the same service credit that he was receiving as a member prior to his leaving office.

Upon the attainment of age 60, such official shall be entitled to receive a service retirement allowance as provided for under the provisions of § 6(b) of this subtitle, computed as if he were a member retiring from service at age 60. Should a member so electing die before attaining age 60, the amount of his accumulated contributions with interest to the date of his death shall be paid to his estate, or 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. Such deceased member's beneficiary or his estate shall not be entitled to any benefit under this subtitle other than the return of the deceased member's accumulated contributions.

(d) *Absence from service*.

Should any Class A or Class B member cease to be an employee of the City of Baltimore and not be entitled to any benefits provided for under this subtitle, he shall thereupon cease to be a member and the balance in his annuity savings account, with interest to the date he left City employment, with the exception of military service credit provided for in § 4(e) of this subtitle, shall be refunded. Any Class C member who is absent without pay for more than 30 consecutive days from City employment without an authorized leave of absence and who is not eligible for any benefits under this subtitle shall thereupon cease to be a member of this Retirement System and the member's accumulated contributions, if any, shall be refunded with interest to the date the member left City employment.

(e) - (f) *{Vacant}*

(g) *Classes of membership*.

On and after January 1, 1954, there shall be 2 classes of members to be known as Class A and Class B members, and beginning July 1, 1979, there shall be a 3rd class of members to be known as Class C members, and to be defined as follows:

(1) Class A members shall be all new employees before July 1, 1979, who enter the membership on or after January 1, 1954, and any members in service on January 1, 1954, who elect on a form approved by the Board, to contribute at a rate of contribution computed to provide an annuity at age 60 of 1/120 of average final compensation, multiplied by the number of years of service after March 31, 1954. Any school crossing guard, police department meter monitor or linemen transferred to this system pursuant to § 30(2) of this article shall be classified in this system as a Class A member, and shall not be charged with any deficit resulting from the difference in contribution rates between

the Fire and Police Employees' Retirement System and this system in the calculation of said member's retirement allowance at the time of retirement. The pension at service retirement on account of each year of prior service for Class A members shall be 1/60 of average final compensation, and the pension on account of each year of service since January 1, 1926 shall be 1/120 of average final compensation.

(2) Class B members shall be members in service on January 1, 1954, who do not elect, prior to April 1, 1954, to contribute at the higher rate applicable to Class A members. The term "Class B members" also includes those members in service who do not become Class A members pursuant to the provisions of this subsection. The pension at service retirement on account of each year of prior service for Class B members shall be 1/65 of average final compensation, and the pension on account of each year of service since January 1, 1926, shall be 1/130 of average final compensation. Any time on or after December 1, 1975, any Class B member in the Retirement System may elect to become a Class A member. Such election shall be contingent upon said member's depositing, by a lump sum payment or by an increased rate of contribution, the amount necessary to obtain an annuity savings account balance equal to the balance such account would contain if said member had elected to become a Class A member on January 1, 1954. Said payments by the member to obtain Class A membership shall be paid in full 90 days before the effective date of his retirement.

If said payments are not paid in full at the time of the member's retirement or death, any retirement benefits payable shall be the actuarial equivalent of the payments made by the member.

(3) Class C members shall be all members as defined in § 9(a).

(4) Class D members shall be all members as defined in § 9.2(a).

(City Code, 1927, art. 30, §3; 1950, art. 23, §3; 1966, art. 22, §3; 1976/83, art. 22, §3.)
(Ord. 26-553; Ord. 27-113; Ord. 45-168; Ord. 53-767; Ord. 58-1387; Ord. 58-1262; Ord. 59-1774; Ord. 53-899; Ord. 56-218; Ord. 65-702; Ord. 67-1039; Ord. 75-1058; Ord. 76-187; Ord. 79-972; Ord. 79-1055; Ord. 97-168; Ord. 07-422; Ord. 14-216.)

§ 4. 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 1925 and who becomes a member during the year 1926, shall file a detailed statement of all service as an employee rendered by him prior to that date for which he claims credit, including all service creditable to him under any other retirement system supported wholly or in part by the City of Baltimore at the time he becomes a member of this system, and of such other facts as the Board of Trustees may require for the proper operation of the Retirement System.

(b) *Computation of service.*

(1) The Board of Trustees, for Class A and Class B members, shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to a year of

service, or proportion thereof, but in no case shall more than 1 year of service be credited for all service in any 12-month period, 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. In the case of former members of the General Assembly of Maryland who become or who have become members of the Retirement System, each full year of membership in the General Assembly shall be credited as a year of service, regardless of whether payment for such service was on a per diem or per annum basis. In any event, a member who vacated or otherwise relinquished his position as a member of the General Assembly before the end of the term for which he was elected, shall be given full credit up to the date of his separation from this position, regardless of whether payment for such service was on a per diem or per annum basis.

(2) Additional service credit.

(i) Notwithstanding anything to the contrary, any Class A or Class B member who was an employee of the City of Baltimore on January 1, 1996, and who separates from service with the City on or after January 1, 1996, and on or before December 31, 1996, shall receive:

1. additional years of service credit equal to the greatest of:

A. 1 year;

B. 1/6 of the number of years of existing service credit (rounding any part of an existing year to the next highest year) that the eligible member has acquired as of the date of separation from City employment; or

C. 1/45 of the member's compensable leave days. For purposes of this § 4(b)(2)(i)1.C., "compensable leave days" shall be the total of vacation, personal leave, and 1/3 of the number of sick leave days that the member has accumulated as of May 1, 1996, or, if earlier, the effective date of the member's separation from service. For purposes of calculating "compensable leave days" only, employees of the Baltimore City Police Department who were hired prior to July 1, 1973, and who, under Baltimore City Police Department personnel policies, do not accumulate sick leave days shall be deemed to have accumulated 6 sick leave days for each year of employment with the Police Department as of May 1, 1996. "Compensable leave days" shall not include accumulated vacation and personal leave cashable on other than a 1-for-1 basis, K-days, compensatory time, or any other leave not enumerated in the above definition. The Department of Finance shall provide to the Retirement System a report showing, for each member who is an employee of the City of Baltimore, his or her accumulated balance of "compensable leave days" as defined herein as of May 1, 1996, or, if earlier, the effective date of the member's separation from service; and

2. for a member whose retirement is effective on or after May 1, 1996, and on or before July 31, 1996:

A. an additional retirement benefit equal to 5% of the member's total retirement benefit, after crediting the additional years of service granted under subparagraph (i)1 of this paragraph, payable in the same manner as the member's total retirement benefit;

B. the same post retirement benefit increase that is payable as of January 1, 1997, to other eligible retirees and beneficiaries, notwithstanding any waiting period otherwise required under this subtitle for eligibility; and

C. payment of his or her retirement benefits beginning as of the member's date of retirement, even if, notwithstanding the normal 30-day waiting period required by this subtitle for benefits, the date of retirement is less than 30 days after the date of application.

(ii) Notwithstanding anything to the contrary, any Class A or Class B member who was any employee of the City of Baltimore on June 30, 1995, and who, on or after July 1, 1995, and on or before December 31, 1995, was removed from his or her regular permanent position with the City without fault (within the meaning of § 6(a)(11) of this subtitle), shall receive additional service credit calculated under § 4(b)(2)(i)1.A. and B, but without regard to § 4(b)(2)(i)1.C or 2 above.

(iii) The additional service credits and benefits granted under this § 4(b)(2) shall not be applicable to Class A or Class B members who are terminated for cause as defined by Civil Service Rule 56.

(iv) The additional service credit granted under this § 4(b)(2) shall be added to the service credit that the member has acquired at the date of separation, and the new total service credit shall be used to determine all other benefit and service eligibility under this subtitle as if the new total were the member's service credit at the time of separation. For purposes of this § 4(b)(2), the date of separation of service shall be the date of cut-off as shown on the member's cut-off notice.

(v) Should a Class A or Class B member who has been separated from service and who has received additional service credits and benefits under this § 4(b)(2) return to City employment, the additional service credits and benefits granted under this § 4(b)(2) shall be forfeited and voided and the member's previous service credit and applicable benefits as of the member's date of separation and prior to the inclusion of any additional service credit or benefit shall be restored to full force and effect.

(vi) All additional benefit payments provided herein shall be prospective from the effective date of this § 4(b)(2) or the member's date of retirement, whichever is later.

(vii) The additional service credit granted under this § 4(b)(2) shall provide credit towards benefits in the Employees' Retirement System only and shall not be transferable to any other retirement or pension system.

(viii) To the extent any additional benefit provided to any member by this § 4(b)(2) constitutes a discriminatory benefit under regulations applicable to governmental plans issued by the Secretary of the Treasury under Internal Revenue Code § 401(A)(4) (when

such regulations are effective), such additional benefit for any member shall be null and void.

(3) The service of Class C members shall be computed and credited under the provisions contained in § 9(c).

(4) The service of Class D members shall be computed and credited under the provisions contained in § 9.2(c).

(c) *Verification of service*.

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.

(d) *Prior service certificates*.

Upon verification of the statement of service, the Board of Trustees shall issue prior service certificates certifying to each member the length of service rendered prior to January 1, 1926, with which he is credited on the basis of his statement of service. So long as membership continues a prior service certificate shall be final and conclusive for retirement purposes as to such service, provided, however, that any member may, within 1 year from the date of issuance or modification of such certificate, request the Board of Trustees to modify or correct his prior service certificate.

When membership ceases, such prior service certificate shall become void. Should the employee again become a member, such employee shall enter the system as an employee not entitled to prior service credit except as provided in §§ 6(b)(12), 6(d)(9), and 6(f)(9) of this subtitle.

(e) *Military personnel – 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 (8) 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 under 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 reemployed 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 reemployment of the member under paragraph (1)(iii) of this section is paid employment; and

(ii) membership in this system is a requirement of that 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; and

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

(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) *"Military service" defined.*

(i) In this subsection, "military service" means any:

(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 Pension Article § 38-101(d);

(ii) "Military service" includes 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.

(9) *Rules and regulations.*

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

(f) *Credit for military service prior to employment.*

Notwithstanding any other provisions of this subtitle, upon proper application to the Retirement System, up to 3 years of credit shall be granted for military service, as defined in § 4(e) of this subtitle, to any Class A or Class B member who has served in the military prior to employment with the City, provided:

(1) if the member terminates employment on or before December 31, 1995, the member has acquired at least 10 years of service and has attained at least age 60, or the member has acquired 30 or more years of service, regardless of age; or

(2) if the member terminates employment on or after January 1, 1996, the member has acquired at least 10 years of service and has acquired at least age 60, or the member has acquired 20 or more years of service, regardless of age.

(3) However, a member 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 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 Board of Trustees is hereby authorized to issue rules and regulations to carry out the provisions of this section, notwithstanding any present rules and regulations to the contrary.

(City Code, 1927, art. 30, §4; 1950, art. 23, §4; 1966, art. 22, §4; 1976/83, art. 22, §4.)
(Ord. 26-553; Ord. 43-920; Ord. 46-303; Ord. 46-458; Ord. 47-854; Ord. 56-369; Ord. 74-552; Ord. 75-1058; Ord. 79-1055; Ord. 79-1126; Ord. 81-552; Ord. 86-663; Ord. 86-767; Ord. 95-632; Ord. 96-006; Ord. 96-051; Ord. 05-173; Ord. 14-216.)

§ 5. Administration; Board of Trustees.

(a) *Responsibility vested in Board.*

(1) 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 § 5, § 6, and § 9 of this subtitle, are 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.

(2) (i) At the written request of the Finance Director and on a majority vote of the Board's members, the Board may serve in a fiduciary capacity for other City trust funds.

(ii) The Board may not unreasonably withhold the approval required by subparagraph (i) of this paragraph.

(iii) For each City trust fund that the Board serves under this paragraph (2), a Memorandum of Understanding between the Board and the Director of Finance must be executed and approved by the Board of Estimates.

(b) *Members.*

The Board shall consist of 7 Trustees as follows:

(1) The Comptroller of the City of Baltimore, ex-officio.

(2) (i) 3 members of the system to be elected by the membership of the system, under rules and regulations adopted by the Board of Trustees to govern the election. These members shall serve for terms of 4 years each, staggered as provided for the Trustees first elected under this paragraph (2).

(ii) Effective January 1, 1996, any member elected to serve as Trustee under this paragraph (2) who retires during his or her term of office after having served more than 2 years in office and who is granted an allowance or pension (within the meaning of § 1(14) of this article), shall continue to serve as Trustee for the balance of his or her term of office.

(3) 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. These members shall serve for terms of 4 years each, staggered as provided for the Trustees first appointed under this paragraph (3).

(4) 1 retiree of the system to be elected by the retirees under rules and regulations adopted by the Board of Trustees to govern the election. This member shall serve for a term of 4 years each *{sic}*, staggered as provided for the Trustee first elected under this paragraph (4).

(4a) Notwithstanding City Charter Article IV, § 8, which ordinarily requires minority party representation, the election or appointment of Trustees under this subsection shall be made without regard to political affiliation, including those Trustees holding their positions ex officio.

(5) (i) The Board of Trustees is an "agency" and a "board" within the meaning of and subject to the standards and requirements of the Baltimore City Public Ethics Law (City Code Article 8). Each Trustee is a "public servant" and an "official" within the meaning of and subject to the standards and requirements of the Baltimore City Public Ethics Law. And each employee of the Board is a "public servant" and an "employee" within the meaning of and subject to the standards and requirements of the Baltimore City Public Ethics Law.

(ii) In addition to the standards and requirements contained in the Baltimore City Public Ethics Law, Trustees and Board employees may not engage in any of the following activities or hold any of the following interests, as these activities or interests are defined in the Baltimore City Public Ethics Law.

1. 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"):

A. the Board of Trustees of the Employees' Retirement System of the City of Baltimore;

B. the Board of Trustees of the Fire and Police Employees' Retirement System of the City of Baltimore;

C. the Board of Trustees of the Elected Officials' Retirement System of the City of Baltimore;

D. the Board of Trustees of the Retirement Savings Plan of the City of Baltimore; and

E. the Committee of the City of Baltimore Deferred Compensation Plan.

2. No Trustee or Board employee may be employed by or have a financial interest in any person or entity doing business or seeking to do business with any City Benefit Plan.

3. A. Notwithstanding City Code Article 8 {"Ethics"}, § 6-28(3) {"Gifts: Qualified exemptions; travel, etc., expenses"} or § 6-30 {"Honoraria"}, no Trustee or Board employee may accept any gift or any payment, free admission, or expense reimbursement for attendance at a conference, seminar, or similar meeting, or for related food, travel, lodging, or entertainment, if the gift or the payment, free admission, or reimbursement is, directly or indirectly, from:

i. any person or entity engaged in an activity or providing a product or service that the Trustee knows or has reason to know has been marketed to a City Benefit Plan or is of a type that the Trustee reasonably would expect to be marketed to a City Benefit Plan; or

ii. any trade, professional, or other association that has members engaged in an activity or providing a product or service that the Trustee knows or has reason to know has been marketed to a City Benefit Plan or is of a type that the Trustee reasonably would expect to be marketed to a City Benefit Plan.

B. Subparagraph 3.A does not preclude application of the qualified exemptions contained in City Code Article 8, § 6-28(1) {"food or beverages .. consumed ... in ... presence of ... donor"}, § 6-28(2) {"gift ... [of] insignificant value"}, § 6-28(5) {"gift ... [exempted by] Ethics Board"}, or § 6-28(6) {"gift from a spouse, parent, child, or sibling"}, subject to the qualifications of § 6-29 {"Exemption limitations"}.

4. No funds of this System or of any system, plan, or trust administered by the Board of Trustees may be used to pay for the attendance of a Trustee or Board employee at any conference, seminar, or similar meeting, or for related food, travel, lodging, or entertainment, unless that attendance has first been approved by the Board of Estimates in accordance with the Administrative Manual of Baltimore City, AM-240-3 {"Board of Estimates Approval"}.

5. No Trustee or Board employee may engage in any activity that requires registration as a lobbyist with the City Ethics Board.

(iii) The City Ethics Board shall administer and enforce this paragraph (5) in accordance with the administrative and enforcement provisions of the Baltimore City Public Ethics Law.

(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 for all necessary expenses that they may incur through service on the Board.

(e) *Oath of office.*

Before assuming office, each trustee shall, within 30 days after his or her appointment or election, take an oath of office that, so far as it devolves on him or her, the trustee will diligently and honestly administer the affairs of the Board, and that he or she will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the Retirement System. This 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) *Voting.*

Each trustee shall be entitled to 1 vote in the Board; 3 votes shall be necessary for a decision by the trustees at any meeting of said Board.

(g) *Rules and 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. Furthermore, the Board of Trustees shall adopt and administer uniform rules and regulations applicable to all members and shall not discriminate in favor of or against any members so that all members in like circumstances shall be treated the same.

(h) *Officers; employees.*

The Board of Trustees shall by a majority vote of all of its members elect from its membership a chairman. The Retirement System's administrator shall serve as the Secretary to the Board. 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 pursuant to the provisions of the City Charter.

(i) *Records*.

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) *Proceedings*.

The Board of Trustees shall keep a record of all of its proceedings which shall be open to public inspection. It shall publish annually on or before November 1 a report showing the fiscal transactions of the Retirement System for the year ending on the preceding June 30, 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.

(k-1) *Auditor*.

The Board of Estimates of the City of Baltimore from time to time shall select an independent auditor for the Employees' Retirement System; the auditor shall report his findings annually to the Board of Estimates and to the Board of Trustees and said audit reports shall be public record.

(l) *{Vacant}*

(m) *Duties of actuary*.

The Board of Trustees, with the approval of the Board of Estimates, shall designate a qualified 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 and rates*.

Immediately after the establishment of the Retirement System, the actuary shall make an investigation of the mortality, service and compensation experience of the members of the system, 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). 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) *Actuarial investigation.*

Beginning with the 3-year period starting July 1, 1975, and at least once in each 3-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 adopt and certify for the Retirement System such mortality, service and other tables or rates as shall be deemed necessary.

(p) *Annual valuation.*

On the basis of such tables or rates 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 together with adjustments for actual experience as may be necessary.

(q) *Subpoena power.*

The Board of Trustees and the panel of hearing examiners 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 proceeding of the Board of Trustees and the panel of hearing examiners, 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.

(r) *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 reasons of his or her service in a fiduciary capacity to the Employees' Retirement System of Baltimore City, in accordance with and subject to the conditions of this section.

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

(i) In this section,"service in a fiduciary capacity" means:

(A) the exercise of any authority, control, or policy-making function, including acts of commission or omission, concerning the management or administration of the Employees' Retirement System of Baltimore City,

(B) the exercise of any authority, control, or policy-making function, including acts of commission or omission, concerning the management or disposition of the assets of the System, or

(C) the exercise of any authority, control, or policy-making function, including acts of commission or omission, concerning the management or administration of any other City trust fund for which the Board serves as a fiduciary under subsection (a)(2) of this section.

(ii) The term includes:

(A) membership on the Board of Trustees of the Employees' Retirement System of Baltimore City,

(B) membership on the advisory investment committee,

(C) service as Administrator or Deputy Administrator of the Employees' Retirement System,

(D) service as a staff member engaged in policy-making functions in the performance of her or his duties and responsibilities, and

(E) service as the Director of Finance, the custodian of the assets of the Employees' Retirement System of Baltimore City 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 or she reasonably believed to be in or not opposed to the best interest of the Employees' Retirement System of Baltimore City or of any City trust fund for which the person serves as a fiduciary under subsection (a)(2) of this section, and, with respect to a criminal action, had no reasonable cause to believe his or her conduct was unlawful, then indemnification shall be against those expenses, including reasonable attorneys' fees, judgments, fines, and accounts paid in settlement that were actually and reasonably incurred by the person 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 or she reasonably believed to be in or not opposed to the best interest of the Employees' Retirement System or of any City trust fund for which the person serves as a fiduciary under subsection (a)(2) of this section, and with respect to a criminal action or proceeding, had reasonable cause to believe that his or her 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 or her duty to the Employees' Retirement System or to any City trust fund for which the person serves as a fiduciary under subsection (a)(2) of this section;

(ii) for an independent contractor furnishing services to the 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 her or him or incurred by her or him arising out of the person's status as 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 under this section, a fiduciary is not 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 is liable for those amounts.

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

(s) *Actuarial funding method.*

Effective retroactively with the year beginning July 1, 1988, and through the year ending June 30, 2013, the Retirement System shall be funded by using the projected unit credit cost method. Effective retroactively with the year beginning July 1, 2013, the Retirement System shall be funded by using the entry age normal cost method.

(City Code, 1927, art. 30, §5; 1950, art.22, §5; 1966, art.22, §5; 1976/83, art. 22, §5.)
(Ord. 26-553; Ord. 68-065; Ord.; Ord. 75-1058; Ord. 78-845; Ord. 79-1055; Ord. 79-1126; Ord. 86-767; Ord. 89-275; Ord. 91-825; Ord. 96-006; Ord. 04-672; Ord. 04-822; Ord. 05-173; Ord. 07-422; Ord. 11-566; Ord. 12-044; Ord. 13-191; Ord. 14-216.)

§ 6. Benefits for Class A and Class B members.

(a) *Service retirement benefits for any Class A or Class B member who was an employee on or after June 29, 1989.*

Any Class A or Class B member in service may retire upon written application to the Board of Trustees, if the application specifies the date on which the member desires to be retired, which date must be the 1st day of a month and not less than 30 days nor more than 90 days following the filing

of the application, and if, on the date so specified, the member shall have attained age 60 and acquired at least 5 years of service or shall have acquired 30 years of service, regardless of age, even if, during the application period, the member has separated from service.

Upon retirement from service, a Class A or Class B member who has attained the age of 60, shall be entitled to receive the maximum service retirement allowance which shall consist of:

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

(2) (i) for any Class A or B member who retires before June 30, 1993: a pension, which together with his annuity, shall be equal to 1.85% in the case of a Class A member, and 1.70% in the case of a Class B member, of his average final compensation multiplied by the number of years of service credit. However, for members who terminate employment with the City before June 29, 1990, the preceding sentence shall be read by substituting "1.84%" for "1.85%", and by substituting "1.69%" for "1.70%".

(ii) for any Class A or B member who retires after June 29, 1993, and on or before March 31, 2001: a pension, which together with his annuity, shall be equal to 1.875% in the case of a Class A member, and 1.725% in the case of a Class B member, of his average final compensation multiplied by the number of years of service credit.

(iii) for any Class A or B member who retires on or after April 1, 2001: a pension that, together with his or her annuity, is equal to 1.935% in the case of a Class A member, and 1.785% in the case of a Class B member, of his or her average final compensation multiplied by the number of years of service credit.

(3) The additional annuity provided as a result of voluntary excess contributions permitted under §§ 8(a)(2) and 8(a)(4) shall be payable and shall not be used in determining the pension payable under § 6(a)(2).

(4) *Retirement with 30 or more years of service.*

(i) Provided, however, that upon retirement from service on or before June 28, 1993, a Class A or Class B member who has not attained the age of 60, but has acquired 30 years or more of service, shall be entitled to receive the maximum service retirement allowance which shall consist of an annuity as provided for in § 6(a)(1), plus the actuarial equivalent of the pension provided for in § 6(a)(2); or such member may elect at the time of retirement to have his service retirement allowance deferred to commence upon the attainment of age 60, in which event the annuity shall be the actuarial equivalent of his accumulated contributions, with regular interest accumulated thereon, to age 60, and the pension payable shall be in the amount computed as provided in § 6(a)(2).

For any member who was an employee on or after June 29, 1989, the actuarial equivalent for the purpose of this subsection (a)(4) shall be based on a reduction of 0.17% for each full month (or fraction thereof) by which the commencement of his pension precedes his 60th birthday. However, for members who terminate employment with the City before June 29, 1990, the preceding sentence shall be read by substituting "0.21%" for "0.17%".

(ii) Provided, however, that upon retirement from service on or after June 29, 1993, a Class A or Class B member who has acquired 30 years or more of service, regardless of age, shall be entitled to receive the maximum service retirement allowance without reduction. The allowance shall be based on the member's service and average final compensation at the time of retirement from service and shall consist of an annuity as provided for in § 6(a)(1), plus the pension provided for in § 6(a)(2).

(5) *Optional retirement allowances.*

Any Class A or Class B member who is entitled to receive the maximum service retirement allowance may elect to receive such maximum service retirement allowance, or he may elect to receive the actuarial equivalent of such maximum service retirement allowance, computed as of the effective date of his retirement, in a lesser amount payable throughout his life in accordance with the following provisions:

Option 1. If he dies before he has received in total retirement benefits 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 2. Upon his death, his retirement allowance as it was at the time of his retirement, shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 3. Upon his death, ½ of his retirement allowance as it was at the time of his retirement shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Some other periodically paid benefit or benefits shall be paid either to the Class A or Class B member or to such a person or persons as he shall nominate, provided such other benefit or benefits shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance, and subject to approval by the Board of Trustees.

(6) Any living retired Class A or Class B 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 service retirement 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 service retirement allowance.

Any living retired Class A or Class B 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 retirement 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 Retirement Systems Office of the City of Baltimore, and filed with said office.

(7) If any living retired Class A or Class B member changes the type or kind of retirement allowance elected by him, as provided hereinbefore, then any payments which may have been made to him prior to such change are to be taken into account in arriving at the amount to be paid to him in connection with the retirement allowance finally selected.

(8) Any Class A or Class B member who retires and dies within 30 days after the effective date of his retirement, and who has been granted a retirement allowance of maximum benefits for service under this subsection, or who has elected to receive one of the several optional retirement allowances available, is considered to be a member dying in active service, and the non-line-of-duty death benefits provided for in § 6(h) shall be paid in lieu of the benefits provided for in this subsection.

(9) Any service retirement allowance payments made to any retired Class A or Class B member, who dies within 30 days after the effective date of his retirement, shall be offset against any amounts payable under the provisions of § 6(h).

(10) Notwithstanding any provision to the contrary contained in this subsection, any Class A or Class B member who retires prior to age 60 and who defers his retirement allowance to commence upon his attainment of age 60, shall be considered as a member dying in active service if he dies at any time between the effective date of his retirement and 30 days following his attainment of age 60, and the benefits provided in § 6(h) shall be paid as therein provided. Any retirement allowance payments made to said member after his attainment of age 60, shall be offset against any amounts payable under the provisions of § 6(h).

(11) (i) Notwithstanding anything to the contrary in this subtitle, should a Class A or Class B member be removed from a regular permanent position of the City without fault upon his part, or should a Class A or Class B member appointed or elected for a fixed term not be reappointed or reelected, after the acquisition of 20 years of service, such member may elect, in lieu of the withdrawal of his accumulated contributions, to receive a retirement allowance equal to the ordinary disability retirement allowance as provided in § 6(c), which would have been payable at such time has he been retired on an ordinary disability retirement.

Effective December 2, 1991, in applying the preemployment military service credit provision of § 4(f) to a member described in the above paragraph, the requirement that the member shall have attained age 60 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. This Ordinance 91-829 shall also apply to any member who retired under the provisions of the above paragraph. Any increased benefits due to such a retired member shall be paid prospectively from the effective date of this ordinance. Furthermore, variable benefits, if any, paid to such a retired member shall not be changed as a result of this ordinance.

(ii) Notwithstanding anything to the contrary in this subtitle, should a Class A or Class B member be removed from a regular permanent position of the City without fault upon

his part, or should a Class A or Class B member appointed or elected for a fixed term not be reappointed or reelected with less than 20 years of service, but after the acquisition of 5 years of service, such member may elect to have his accumulated contributions remain in the system with regular interest thereon, while no longer in service, and on the attainment of age 60 such member shall be entitled to receive a service retirement allowance as provided for under the provisions of § 6(a) of this subtitle, computed as if he were a member retiring from service at age 60. Should a member so electing die before attaining age 60, the amount of his accumulated contributions with interest to the date of his death shall be paid to his estate, or 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. Such deceased member's beneficiary or his estate shall not be entitled to any benefits under this subtitle other than the return of the deceased member's accumulated contributions. Should such a beneficiary be restored to active service, his retirement allowance shall cease, and he shall again become a member of the Retirement System.

(12) Notwithstanding anything to the contrary in this subtitle, should a Class A or Class B member, who has acquired 15 or more years of service, leave a regular permanent position of the City, such member may elect to have his accumulated contributions remain in the system with regular interest thereon, while no longer in service, and upon attaining the age of 60, such member shall be entitled to receive the maximum service retirement allowance as provided for in § 6(a), computed as if he were a member retiring from service at age 60. Should a member so electing die before attaining age 60, the amount of his accumulated contributions with interest to the date of his death shall be paid to his estate, or to such person as he shall have nominated by written designation, duly acknowledged and filed with the Board of Trustees. The beneficiary or the estate of a deceased member, who dies before attaining the age of 60, shall not be entitled to any benefits under this subtitle other than the return of the deceased member's accumulated contributions with interest to the date of death. This paragraph shall not apply to any Class A or Class B member who is convicted of a job-related offense, such offense being either a misdemeanor or felony punishable by incarceration for more than 6 months or punishable by a fine in excess of $500. To be job-related, the offense must be committed by the member in the performance of his duties as an employee or an official of the City of Baltimore and committed against the City of Baltimore.

(13) Any Class A or Class B member who leaves City employment and is entitled to any benefits under this subsection, if he is subsequently reemployed by the City as an employee, shall upon his return to City employment be immediately continued as a Class A or Class B member. Thereupon he shall be credited with any past service, and any retirement allowance he may be receiving shall be discontinued.

(14) In the event that a member who was an employee on or after June 29, 1989, 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 a least 1 year immediately prior to retirement, an amount equal to 35% (or such different amount as set forth below) 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 is 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 35% (or such different amount as set forth below) 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. For members who terminate employment with the City before June 29, 1990, the preceding two sentences shall be read by substituting "33⅓%" for "35%" wherever such amounts appear therein.

However, effective June 28, 1992, any eligible surviving spouse, child or children of a member who retired and elected or who will retire and elect the maximum benefit under the above paragraph, shall receive 40% of the allowance the member was receiving.

(15) *Member contributions*.

(i) Effective with the 1st full payroll period commencing closest to January 1, 1978, the contributions by a Class A or Class B member to the Retirement System shall equal 5% of the member's earnable compensation, these contributions to continue throughout the member's entire period of service, subject to the provisions in subparagraph (ii) of this paragraph (15). However, a male member in the system prior to July 1, 1973, who is contributing at a rate of contribution that is less than 5% shall continue to contribute at his present rate; and a female member in the system prior to July 1, 1973, shall contribute at a rate of contribution in effect prior to July 1, 1973, for a male member of corresponding age at the time of entrance into the system, unless that rate exceeds 5%, in which event her contribution shall equal 5% of her earnable compensation. "Earnable compensation" has the meaning defined in § 1(11) of this subtitle.

Beginning July 1, 1992, the preceding paragraph shall read by substituting "4%" for "5%".

(ii) The Board of Trustees, through its Retirement Systems' administrator, shall certify to the Department of Finance, and the Department of Finance shall cause to be deducted from the salary of each Class A or Class B member on each and every payroll period, the percentage of contribution provided for in subparagraph (i) of this paragraph (15), and these deductions shall be paid into the Retirement System Fund, and shall be credited, together with regular interest, to the individual account of the member from whose compensation the deductions were made. However, deductions shall not be made from the compensation of a Class A or Class B member who has attained age 60 and has completed 35 years of service. No deductions may be made from the earnable compensation of a member who is either entering or leaving service and has worked less than a full payroll period.

(iii) The deductions provided for in this paragraph (15) shall be made notwithstanding that the minimum compensation provided for by law for any Class A or Class B member is reduced thereby. Every member is deemed to consent and agree to the deductions made and provided for, and the member's receipt of the member's full salary or compensation, and payment of that salary or compensation, less these deductions, are a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the person during the period covered by the payment, except as to the benefits provided under this subtitle.

(iv) A member's accumulated contributions that are withdrawn by the member, or paid to the member's estate or designated beneficiary in event of death as provided in this subtitle, shall be paid from the Retirement System Fund.

(v) Any member who, with the Board of Trustees' approval*{,}* deposited, prior to December 1, 1975, voluntary excess contributions in the Retirement System Fund, by a single payment or by an increased rate of contribution to purchase an additional annuity, is entitled on retirement, to receive an additional annuity for those voluntary excess contributions. Any Class A or Class B member who, with the Board of Trustees' approval, is depositing, on December 1, 1975, voluntary excess contributions in the Retirement System Fund, by an increased rate of contribution, may continue to contribute the same approved amount, without the right to increase or decrease that amount after December 1, 1975. After December 1, 1975, the Board of Trustees shall neither accept nor approve any requests from any member to deposit excess voluntary contributions in a lump-sum payment or periodic payments. At any time prior to retirement, any member who deposited voluntary excess contributions in the Retirement System Fund, upon written application, shall be refunded those excess voluntary contributions.

(vi) However, if a Class A or Class B member exercises her or his option to become a Class C member under § 9 of this subtitle, the member shall elect in his or her notice of intent to either withdraw his or her excess voluntary contributions or permit them to remain in the Retirement System together with the member's mandatory contributions, without any further right to withdraw those excess voluntary contributions prior to retirement, except on leaving City employment. On becoming a Class C member, the Class A or Class B member shall discontinue making any further voluntary excess contributions to the Retirement System.

(b) *Service retirement benefits for Class A or Class B member who was an employee on or after July 1, 1987, but not after June 28, 1989.*

Any Class A or Class B member in service may retire upon his written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired, provided that the said member at the time so specified for his retirement shall have attained the age of 60 and acquired at least 5 years of service or shall have acquired 30 years of service, regardless of age, and notwithstanding that, during such period of notification, he may have separated from service.

Upon retirement from service, a Class A or Class B member who has attained the age of 60, shall be entitled to receive the maximum service retirement allowance which shall consist of:

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

(2) a pension, in addition to his annuity, which shall be equal to 0.85% of his average final compensation in the case of Class A members, and 0.785% of his average final compensation in the case of Class B members, multiplied by the number of years of his service since January 1, 1926; and

(3) if he has been credited with prior service, a supplemental pension which shall be equal to 1/60 of his average final compensation in the case of Class A members and one 1/65 in the case of Class B members, multiplied by the number of years of such prior service; and

(4) if at the time of retirement the annuity determined in accordance with § 6(b)(1), 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 § 6(b)(2), a supplemental pension equal to the difference between the two shall be payable.

The additional annuity provided as the result of voluntary excess contributions under §§ 8(a)(2) and 8(a)(4) shall be payable and shall not be used in determining this supplemental pension, if any, payable under this subsection.

Beginning with April 19, 1974, the benefits provided in this subsection shall be applicable to former members who retired prior to said effective date, and their beneficiaries, as well as to those Class A or Class B members who subsequently retire on or after that date.

(5) Provided, however, that upon retirement from service, a Class A or Class B member who has not attained the age of 60, but has acquired 30 years or more of service, shall be entitled to receive the maximum service retirement allowance which shall consist of an annuity as provided for in § 6(b)(1), plus the actuarial equivalent of the pension provided for in § 6(b)(2), plus the actuarial equivalent of the supplemental pension provided for in § 6(b)(3), plus if the annuity provided for in § 6(b)(1) is less than the actuarial equivalent of the pension provided for in § 6(b)(2), a supplemental pension equal to such difference; or such member may elect at the time of retirement to have his service retirement allowance deferred to commence upon the attainment of age 60, in which event the annuity shall be the actuarial equivalent of his accumulated contributions, with regular interest accumulated thereon, to age 60, and the pensions payable shall be in the amounts computed as provided in §§ 6(b)(2), 6(b)(3) and 6(b)(4). For the purpose of this subsection (b)(5), the actuarial equivalent shall be based on a reduction of ¼% for each full month (or fraction thereof) by which the commencement of his pension precedes his 60th birthday.

(6) *Optional retirement allowances.*

Any Class A or Class B member who is entitled to receive the maximum service retirement allowance may elect to receive such maximum service retirement allowance, or he may elect to receive the actuarial equivalent of such maximum service retirement allowance, computed as of the effective date of his retirement, in a lesser amount payable throughout his life in accordance with the following provisions:

Option 1. If he dies before he has received in total retirement benefits 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 2. Upon his death, his retirement allowance as it was at the time of his retirement, shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 3. Upon his death, ½ of his retirement allowance as it was at the time of his retirement shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Some other periodically paid benefit or benefits shall be paid either to the Class A or Class B member or to such person or persons as he shall nominate, provided such other benefit or benefits shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance, and subject to approval by the Board of Trustees.

(7) Any living retired Class A or Class B 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 service retirement 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 service retirement allowance. Any living retired Class A or Class B 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 retirement 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 Retirement Systems Office of the City of Baltimore, and filed with said office.

(8) If any living retired Class A or Class B member changes the type or kind of retirement allowance elected by him, as provided hereinbefore, then any payments which may have been made to him prior to such change are to be taken into account in arriving at the amount to be paid to him in connection with the retirement allowance finally selected.

(9) Any Class A or Class B member who retires and dies within 30 days after the effective date of his retirement, and who has been granted a retirement allowance of maximum benefits for service under this subsection, or who has elected to receive one of the several optional retirement allowances available in lieu thereof, shall be considered as a member's dying in active service, and the ordinary death benefits provided for in § 6(h) shall be paid in lieu of the benefits provided for in this subsection.

(10) Any service retirement allowance payments made to any retired Class A or Class B member, who dies within 30 days after the effective date of his retirement, shall be offset against any amounts payable under the provisions of § 6(h).

(11) Notwithstanding any provision to the contrary contained in this subsection, any Class A or Class B member who retires prior to age 60 and who defers his retirement allowance to commence upon his attainment of age 60, shall be considered as a member's dying in active service if he dies at any time between the effective date of his retirement and 30 days following his attainment of age 60, and the benefits provided in § 6(h) shall be paid as therein provided. Any retirement allowance payments made to said member after his attainment of age 60, shall be offset against any amounts payable under the provisions of § 6(h).

(12) (i) Notwithstanding anything to the contrary in this subtitle, should a Class A or Class B member be removed from a regular permanent position of the City without fault upon his part, or should a Class A or Class B member appointed or elected for a fixed term not be reappointed or reelected, after the acquisition of 20 years of service, such member may elect, in lieu of the withdrawal of his accumulated contributions, to receive a retirement allowance equal to the ordinary disability retirement allowance as provided in § 6(d), which would have been payable at such time had he been retired on an ordinary disability retirement.

Effective December 2, 1991, in applying the preemployment military service credit provision of § 4(f) to a member described in the above paragraph, the requirement that the member shall have attained age 60 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. This Ordinance 91-829 shall also apply to any member who retired under the provisions of the above paragraph. Any increased benefits due to such a retired member, shall be paid prospectively from the effective date of this ordinance. Furthermore, variable benefits, if any, paid to such a retired member shall not be changed as a result of this ordinance.

(ii) Notwithstanding anything to the contrary in this subtitle, should a Class A or Class B member be removed from a regular permanent position of the City without fault upon the member's part, or should a Class A or Class B member appointed or elected for a fixed term not be reappointed or reelected with less than 20 years of service, but after the acquisition of 5 years of service, such member may elect to have his accumulated contributions remain in the system with regular interest thereon, while no longer in service, and on the attainment of age 60 such member shall be entitled to receive a service retirement allowance as provided for under the provisions of § 6(b) of this subtitle, computed as if he were a member retiring from service at age 60. Should a member so electing die before attaining age 60, the amount of his accumulated contributions with interest to the date of his death shall be paid to his estate, or 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. Such deceased member's beneficiary or his estate shall not be entitled to any benefits under this subtitle other than the return of the deceased member's accumulated contributions. Should such a beneficiary be restored to active service, his retirement allowance shall cease, and he shall again become a member of the Retirement System.

(13) Notwithstanding anything to the contrary in this subtitle, should a Class A or Class B member, who has acquired 15 or more years of service, leave a regular permanent position of the City, such member may elect to have his accumulated contributions remain in the system with regular interest thereon, while no longer in service, and upon attaining the age of 60, such member shall be entitled to receive the maximum service retirement allowance as provided for in § 6(b), computed as if he were a member retiring from service at age 60. Should a member so electing die before attaining age 60, the amount of his accumulated contributions with interest to the date of his death shall be paid to his estate, or to such person as he shall have nominated by written designation, duly acknowledged and filed with the Board of Trustees. The beneficiary or the estate of a deceased member, who dies before attaining the age of 60, shall not be entitled to any benefits under this subtitle other than the return of the deceased member's accumulated contributions with interest to the date of death.

This paragraph shall not apply to any Class A or Class B member who is convicted of a job-related offense, such offense being either a misdemeanor or felony punishable by incarceration for more than 6 months or punishable by a fine in excess of $500. To be job-related, the offense must be committed by the member in the performance of his duties as an employee or an official of the City of Baltimore and committed against the City of Baltimore.

(14) Any Class A or Class B member who leaves city employment and is entitled to any benefits under this subsection if he is subsequently reemployed by the City as an employee, shall upon his return to City employment be immediately continued as a Class A or Class B member. Thereupon he shall be credited with any past service, and any retirement allowance he may be receiving shall be discontinued.

(15) (i) If a member who was an employee on or after July 1, 1987, but not after June 28, 1989, 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 5% of the allowance the member was receiving shall be paid to the surviving spouse to continue as long as he or she remains unmarried. If there is no surviving spouse or if the spouse dies or remarries before the youngest unmarried child of the deceased member attains age 18 or, if the child is a full-time student, before he or she attains age 22, then an amount equal to 5% of the allowance the member was receiving shall be paid to the child or children, divided in the manner that the Board of Trustees in its discretion determines, to continue for the benefit of the child or children until the last child marries, dies, or attains age 18 or, if a full-time student, 22.

(ii) Effective April 1, 2001, any eligible surviving spouse, child, or children of a member who retired and elected the maximum benefit under subparagraph (i) of this paragraph (15), shall receive 40% of the allowance the member was receiving.

(b-1) *Service retirement benefits for Class A or Class B member who terminated employment on or before June 30, 1987.*

(1) *Survivorship benefits for members who selected maximum benefits and die on or before March 31, 2001.*

No benefit is payable to the beneficiary(ies), next of kin, or the estate of a member who selected maximum benefits and dies on or before March 31, 2001.

(2) *Survivorship benefits for members who selected maximum benefits and die on or after April 1, 2001.*

(i) If a member who was an employee and retired before July 1, 1987, and elected to receive maximum benefits without optional modification dies on or after April 1, 2001, and is survived by a spouse to whom the member had been married for at least 1 year immediately before retirement, an amount equal to 40% of the allowance the member was receiving shall be paid to the surviving spouse to continue as long as he or she remains unmarried.

(ii) If there is no surviving spouse or if the spouse dies or remarries before the youngest unmarried child of the deceased member attains age 18 or, if the child is a full-time student, before he or she attains age 22, then an amount equal to 40% of the allowance the member was receiving shall be paid to the child or children, divided in the manner that the Board of Trustees in its discretion determines, to continue for the benefit of the child or children until the last child marries, dies, or attains either age 18 or, if a full-time student, 22.

(c) *Non-line-of-duty disability retirement benefit for any Class A or Class B member who was an employee on or after June 29, 1989.*

(1) *Eligibility requirements.*

A Class A or Class B 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 his or her 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 takes effect as follows:

(i) if the member applied for disability retirement before terminating City employment, the retirement is effective as of the 1st day of the month immediately following the member's last day of City employment; and

(ii) if the member applied for disability retirement after terminating City employment, the retirement is effective as of the 1st day of a month that falls at least 30 days after the date on which the Board received a completed application.

(4) *Non-line-of-duty disability allowance for retirement on or before October 15, 1992.*

Upon retirement for non-line-of-duty disability on or before October 15, 1992, a Class A or Class B member is entitled to receive the maximum service retirement allowance if he or she has

attained the age of 60; otherwise, he or she is entitled to receive the maximum non-line-of-duty disability retirement allowance, which shall consist of:

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

(ii) a pension, which together with his or her annuity, shall provide a total retirement allowance equal to 1.85% of his or her average final compensation in the case of Class A members, and 1.70% of his or her average final compensation in the case of Class B members, multiplied by the number of years of service. However, for members who terminate employment with the City before June 29, 1990, the preceding sentence shall be read by substituting "1.84%" for "1.85%", and by substituting "1.69%" for "1.70%".

(iii) The additional annuity provided as the result of voluntary excess contributions under §§ 8(a)(2) and 8(a)(4) shall be payable and may not be used in determining the non-line-of-duty disability pension under this subsection.

(iv) If the retirement allowance computed under this paragraph(4) is less than 25% of the member's average final compensation, then substitute for the member's actual years of service the number of years of service which would be credited to the member were his or her service to continue until the attainment of age 60. The resulting total retirement allowance may not exceed 25% of the member's average final compensation.

(5) *Non-line-of-duty disability allowance for retirement on or after October 16, 1992.*

(i) Upon retirement for non-line-of-duty disability on or after October 16, 1992, and on or before March 31, 2001, a Class A or Class B member is entitled to receive the maximum non-line-of-duty disability retirement allowance, which shall consist of:

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

(B) a pension, which together with his or her annuity, shall provide a total retirement allowance equal to 1.85% of his or her average final compensation in the case of Class A members, and 1.70% of his or her average final compensation in the case of Class B members, multiplied by the number of years of service.

(C) The additional annuity provided as the result of voluntary excess contributions under §§ 8(a)(2) and 8(a)(4) may not be used in determining the non-line-of-duty disability pension under this subsection.

(D) Provided, however, notwithstanding anything to the contrary, no member eligible for retirement under the provisions of this paragraph (5)(i) shall receive a non-line-of-duty disability allowance of less than 25% of his average final compensation.

(ii) Upon retirement for non-line-of-duty disability on or after April 1, 2001, a Class A or Class B member is entitled to receive a non-line-of-duty disability retirement 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 his or her accumulated contributions at the time of retirement; and

2. a pension that, together with his or her annuity, provides a total retirement allowance equal to 1.90% of his or her average final compensation in the case of a Class A member, and 1.75% of his or her average final compensation in the case of a Class B member, multiplied by the number of years of his or her service.

(iii) The additional annuity provided as the result of voluntary excess contributions under §§ 8(a)(2) and 8(a)(4) may not be used in determining the non-line-of-duty disability pension under this subsection.

(iv) No member eligible for retirement under paragraph (5)(ii) of this subsection may receive a non-line-of-duty disability allowance of less than 25% of his or her average final compensation.

(6) *Optional retirement allowances.*

Any Class A or Class B member who is entitled to receive the maximum non-line-of-duty disability retirement allowance may elect to receive that maximum non-line-of-duty disability retirement allowance, or may elect to receive the actuarial equivalent of that maximum non-line-of-duty disability retirement allowance, computed as of the effective date of his or her retirement, in a lesser amount payable throughout his or her life in accordance with the following provisions:

Option 1. If he or she dies before having received in total retirement benefits the present value of his or her retirement allowance as it was at the time of retirement, the balance shall be paid to his or her legal representatives or to the person that he or she nominates by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his or her death, his or her retirement allowance as it was at the time of retirement shall continue throughout the life of and be paid to the person that he or she nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his or her retirement; or

Option 3. Upon his or her death, ½ of his or her retirement allowance as it was at the time of retirement shall be continued throughout the life of and paid to the person that he or her nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his or her retirement; or

Option 4. Some other periodically paid benefit or benefits shall be paid either to the Class A or Class B member or to the person or persons that he or she nominates, provided such other benefit or benefits shall be certified by the actuary to be of equivalent actuarial value to his or her retirement allowance, and subject to approval by the Board of Trustees.

(7) (i) Any living retired Class A or Class B member has the right, within 30 days after the effective date of his or her retirement, and not later, to change his or her election of the maximum non-line-of-duty disability retirement allowance to any one of the options specified in paragraph (6) of this subsection, or to change his or her election of any one of those options to another one of those options, or to change his or her election from any one of those options to the maximum non-line-of-duty disability retirement allowance.

(ii) Any living retired Class A or Class B member has the right, within 30 days after the effective date of his or her retirement, to change his or her designation of a beneficiary; but thereafter no such change may be made in connection with any option that provides for the payment of a retirement allowance to, and throughout the life of, the beneficiary designated.

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

(8) If any living retired Class A or Class B member changes the type or kind of retirement allowance elected by him or her, then any payments that may have been made to him or her before that change are to be taken into account in arriving at the amount to be paid to him or her in connection with the retirement allowance finally selected.

(9) Any Class A or Class B member who retires and dies within 30 days after the effective date of his or her retirement, and who has been granted a retirement allowance of maximum benefits for non-line-of-duty disability under this subsection, or who has elected to receive one of the several optional retirement allowances available, is considered to be a member dying in active service, and the non-line-of-duty death benefits provided for in § 6(h) shall be paid in lieu of the benefits provided for in this subsection.

(10) Any non-line-of-duty disability retirement allowance payments made to any retired Class A or Class B member, who dies within 30 days after the effective date of his or her retirement, shall be offset against any amounts payable under the provisions of § 6(h).

(11) *Offset for Workers's Compensation benefits*.

(i) *On or before March 31, 2001*.

Any amounts paid or payable by the City of Baltimore on or before March 31, 2001, under any Workers' Compensation or similar law to a Class A or Class B member or to the dependents of a member on account of any disability or death shall be offset against and payable in lieu of any benefits payable out of funds provided by the City under this subtitle on account of the same disability or death. If the present value of the total commuted benefits under the Workers' Compensation or similar law is less than the pension reserve for the benefits otherwise payable from funds provided by the City under this subtitle, then the present value of the commuted payments shall be deducted from the pension reserve and the benefits as may be provided by the pension reserve so reduced shall be payable under this subtitle.

(ii) *On or after April 1, 2001*.

Workers' Compensation benefits shall be offset against non-line-of-duty disability benefits paid on or after April 1, 2001, in accordance with subsection (k) of this section.

(12) (i) If a member who was an employee on or after June 29, 1989, 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 a least 1 year immediately prior to retirement, an amount equal to 35% (or such different amount as set forth below) of the allowance that the member was receiving shall be paid to the surviving spouse to continue as long as he or she remains unmarried.

(ii) If there is no eligible surviving spouse or if the spouse dies or remarries before the youngest unmarried child of the deceased member has attained the age of 18 years or, if the child is a full-time student, before he or she has attained the age of 22 years, then an amount equal to 35% (or such different amount as set forth below) of the allowance that the member was receiving shall be paid to the child or children, divided in the manner that the Board of Trustees in its discretion determines, to continue for the benefit of the child or children until the last child marries, dies, or attains either age 18 or, if a full-time student, age 22.

(iii) For members who terminate employment with the City before June 29, 1990, subparagraphs (i) and (ii) shall be read by substituting "33⅓%" for "35%" wherever those amounts appear.

(iv) Effective June 28, 1992, any eligible surviving spouse, child, or children of a member who retired and elected, or who will retire and elect, the maximum benefit under this paragraph (12), shall receive 40% of the allowance the member was receiving.

(d) *Ordinary disability retirement benefit for Class A or Class B member who was an employee on or after July 1, 1987, but not after June 28, 1989.*

Any Class A or Class B member who has acquired 5 or more years of service and who has been determined by a hearing examiner to be mentally or physically incapacitated for the further performance of the duties of his job classification in the employ of Baltimore City, and that such incapacity is likely to be permanent, shall be retired by the Board of Trustees on an ordinary disability retirement, not less than 30 and not more than 90 days next following the date of filing his application for ordinary disability retirement benefits.

Upon retirement for ordinary disability a Class A or Class B member shall be entitled to receive the maximum service retirement allowance if he has attained the age of 60; otherwise he shall be entitled to receive the maximum ordinary disability retirement allowance which shall consist of:

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

(2) a pension which, together with his annuity, shall provide a total retirement allowance equal to 1.70% of his average final compensation in the case of Class A members, and 1.57% of his average final compensation in the case of Class B members, multiplied by the number of years of his service if such retirement allowance exceeds ¼ of his average final compensation; otherwise a pension which, together with his annuity, shall provide a total retirement allowance equal to 1.70% of his average final compensation in the case of Class A members, and 1.57% of his average final compensation in the case of Class B members, multiplied by the number of years which would be credited to him were his service to continue until the attainment of age 60, so far as the resulting total retirement allowance shall not exceed ¼ of his average final compensation.

The additional annuity provided as the result of voluntary excess contributions under §§ 8(a)(2) and 8(a)(4) shall be payable and shall not be used in determining the ordinary disability pension under this subsection.

(3) *Optional retirement allowances.*

Any Class A or Class B member who is entitled to receive the maximum ordinary disability retirement allowance may elect to receive such maximum ordinary disability retirement allowance, or he may elect to receive the actuarial equivalent of such maximum ordinary disability retirement allowance, computed as of the effective date of his retirement, in a lesser amount payable throughout his life in accordance with the following provisions:

Option 1. If he dies before he has received in total retirement benefits 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 2. Upon his death, his retirement allowance as it was at the time of his retirement shall continue throughout the life of and be paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 3. Upon his death, ½ of his retirement allowance as it was at the time of his retirement shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Some other periodically paid benefit or benefits shall be paid either to the Class A or Class B member or to such person or persons as he shall nominate, provided such other benefit or benefits shall be certified by the actuary to be of equivalent actuarial value to his retirement allowance, and subject to approval by the Board of Trustees.

(4) Any living retired Class A or Class B 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 ordinary disability retirement 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 ordinary disability retirement allowance. Any living retired Class A or Class B 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 portion hereinbefore set forth which provides for the payment of a retirement 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 Retirement Systems Office of the City of Baltimore and filed with said office.

(5) If any living retired Class A or Class B member changes the type or kind of retirement allowance elected by him, as provided hereinbefore, then any payments which may have been made to him prior to such change are to be taken into account in arriving at the amount to be paid to him in connection with the retirement allowance finally selected.

(6) Any Class A or Class B member who retires and dies within 30 days after the effective date of his retirement, and who has been granted a retirement allowance of maximum benefits for ordinary disability under this subsection, or who has elected to receive one of the several optional retirement allowances available in lieu thereof, shall be considered as a member's dying in active service, and the ordinary death benefits provided for in § 6(h) shall be paid in lieu of the benefits provided for in this subsection.

(7) Any ordinary disability retirement allowance payments made to any retired Class A or Class B member, who dies within 30 days after the effective date of his retirement, shall be offset against any amounts payable under the provisions of § 6(h).

(8) *Offset for Workers's Compensation benefits*.

(i) *Benefits paid on or before March 31, 2001*.

Any amounts paid or payable on or before March 31, 2001, by the City of Baltimore under any Workers' Compensation or similar law to a Class A or Class B member or to the dependents of a member on account of any disability or death shall be offset against and payable in lieu of any benefits payable out of funds provided by the City under this subtitle on account of the same disability or death. If the present value of the total commuted benefits under the Workers' Compensation or similar law is less than the pension reserve for the benefits otherwise payable from funds provided by the City under this subtitle, then the present value of the commuted payments shall be deducted from the pension reserve and the benefits as may be provided by the pension reserve so reduced shall be payable under this subtitle.

(ii) *Benefits paid on or after April 1, 2001*.

Workers' Compensation benefits shall be offset against ordinary disability benefits paid on or after April 1, 2001, in accordance with subsection (k) of this section.

(9) The panel of hearing examiners may, at its discretion but not more frequently than once in any 1 year, require any retired Class A or Class B member, who is receiving a disability retirement allowance and, who has not yet attained age 60, to undergo a medical examination to determine whether he has become fit to resume duties in the nature of those he was performing prior to his retirement. Such examination shall be made in the place of residence of said retiree, or other place mutually agreed upon by the retiree and a physician or physicians designated by the panel of hearing examiners. The examining physician shall report his findings to the panel of hearing examiners. If in the opinion of the examining physician, said retiree is able to resume said duties, the City of Baltimore Occupational Medical Service shall thereafter conduct a reexamination of said retiree; and if it concurs in the opinion of the examining physicians, it shall certify to the panel of hearing examiners that said retiree is fit for the further performance of duties in the nature of those he was performing prior to his retirement. If the examining physicians' opinions do not concur, the

panel of hearing examiners shall schedule a hearing to determine the fitness of a retiree to perform his former duties. The panel of hearing examiners shall thereafter submit its determination to the head of the department in which the retiree was employed prior to his retirement, and in the case of classified employees, to the Civil Service Commission. For purpose of reemployment, the retiree shall be treated by the head of his department and by the Civil Service Commission as if he were an employee on leave of absence without pay. Until he is actually reemployed he shall continue to receive his ordinary disability retirement allowance.

A disability retiree who has been certified as fit for further performance of his duties and is restored to active service at a compensation not less than the annual rate of compensation being paid currently to persons in the same grade and step as the retiree was at the time of his retirement, plus the amount of any longevity payments currently being paid for the length of service the retiree had at the time of his retirement, shall cease to receive his retirement allowance. He shall again become a Class A or Class B member of the Retirement System and shall contribute thereafter at the current rate of contribution. Any previous service credit on the basis of which his service was computed at the time of his retirement shall be restored to full force and effect and in addition, upon his subsequent retirement, he shall be credited with all his service as a member.

Should such disability retiree who has been certified as fit for the further performance of his duties refuse to accept an offer of reemployment by the City involving duties in the nature of those he was performing prior to his retirement and at a salary not less than the rate of annual compensation being paid currently to persons in the same grade and step as the retiree was at the time of his retirement, plus the amount of any longevity payments currently being paid for the length of service the retiree had at the time of his retirement, all rights in and to his pension shall be revoked by the Board of Trustees, upon recommendation made by the panel of hearing examiners.

Should such disability retiree refuse to submit to the medical examinations herein provided for, his ordinary disability retirement allowance may be discontinued until the withdrawal of said refusal, and should his refusal continue for 1 year, all rights in and to his pension shall be revoked by the Board of Trustees upon recommendation made by the panel of hearing examiners.

(10) A Class A or Class B disability retiree may, without reduction of his retirement allowance, earn annually an amount, hereinafter referred to as “earnings”, equal to the rate of the annual earnable compensation currently being paid to persons in the same grade and step as the retiree was at the time of his retirement, plus the amount of any longevity payments currently being paid for the length of service the retiree had at the time of his retirement, said rate of earnable compensation plus longevity payments, if any, hereinafter referred to as “base amount”. Should such a retiree earn an annual amount which is greater than his base amount, the pension otherwise payable to him shall be reduced in the following manner:

For the first $5,000 of earnings in excess of the base amount, a reduction of $1 in pension benefits shall be made for each $2 earned. For any earnings in excess of $5,000 over the base amount, a reduction of $2 in pension benefits shall be made for each $5 earned.

In the calendar year of retirement, the base amount shall be prorated on a monthly basis. Benefits which may be payable to a beneficiary of a deceased disability retiree under the provisions of this subtitle, shall not be reduced by reason of any excess earnings said retiree may have had; and the base for calculating said beneficiary's benefits shall be the total unreduced retirement allowance of the disability retiree, notwithstanding the fact that said retiree was receiving a reduced retirement allowance in the year of his death.

The term "earnings" as used in this subsection shall mean income derived from wages, salaries, tips, commissions, other employee compensation, and self-employment. In all cases of doubt the Board of Trustees shall decide what are and what are not "earnings" for the purposes of administering the provisions of this subsection.

Such disability retiree who has not been certified as fit to perform duties in the nature of those he was performing prior to his retirement may, nevertheless, accept suitable employment with the City, subject to the "earnings" provisions contained herein; provided, however, that such an employee shall not again become a member of any retirement system supported in whole or in part by the Mayor and City Council of Baltimore.

(11) On or before May 1 of each year following his disability retirement, a Class A or Class B disability retiree shall submit, on a form issued by the Board of Trustees or on its equivalent as approved by the Board of Trustees, a signed statement setting forth his total gross earnings, if any, in the preceding calendar year and the source of said earnings. The execution of said forms by a disability retiree shall have the same effect as a statement sworn to by him before a notary public. Should any disability retiree fail to submit said signed statement, his retirement allowance may thereafter be discontinued by the Board of Trustees until he has complied; and should he fail to submit said signed and completed statement by May 1, of the succeeding year, all rights in and to his pension may be revoked by the Board of Trustees.

(12) (i) If a member who was an employee on or after July 1, 1987, but not after June 28, 1989, 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 5% of the allowance the member was receiving shall be paid to the surviving spouse to continue as long as he or she remains unmarried. If there is no surviving spouse or if the spouse dies or remarries before the youngest unmarried child of the deceased member attains age 18 or, if the child is a full-time student, before he or she attains age 22, then an amount equal to 5% of the allowance the member was receiving shall be paid to the child or children, divided in the manner that the Board of Trustees in its discretion determines, to continue for the benefit of the child or children until the last child marries, dies, or attains age 18 or, if a full-time student, 22.

(ii) Effective April 1, 2001, any eligible surviving spouse, child, or children of a member who retired and elected the maximum benefit under subparagraph (i) of this paragraph (12), shall receive 40% of the allowance the member was receiving.

(d-1) *Ordinary disability retirement benefits for Class A or Class B member who terminated employment on or before June 30, 1987.*

(1) *Survivorship benefits for members who selected maximum benefits and die on or before March 31, 2001.*

No benefit is payable to the beneficiary(ies), next of kin, or the estate of a member who selected maximum benefits and dies on or before March 31, 2001.

(2) *Survivorship benefits for members who selected maximum benefits and die on or after April 1, 2001.*

(i) If a member who was an employee and retired before July 1, 1987, and elected to receive maximum benefits without optional modification dies on or after April 1, 2001, and is survived by a spouse to whom the member had been married for at least 1 year immediately before retirement, an amount equal to 40% of the allowance the member was receiving shall be paid to the surviving spouse to continue as long as he or she remains unmarried.

(ii) If there is no surviving spouse or if the spouse dies or remarries before the youngest unmarried child of the deceased member attains age 18 or, if the child is a full-time student, before he or she attains age 22, then an amount equal to 40% of the allowance the member was receiving shall be paid to the child or children, divided in the manner that the Board of Trustees in its discretion determines, to continue for the benefit of the child or children until the last child marries, dies, or attains either age 18 or, if a full-time student, 22.

(3) *Offset for Workers's Compensation benefits.*

(i) *Benefits paid on or before March 31, 2001*

Workers' Compensation benefits shall be offset against ordinary disability benefits paid on or before March 31, 2001, in accordance with subsection (j) of this section.

(ii) *Benefits paid on or after April 1, 2001.*

Workers' Compensation benefits shall be offset against ordinary disability benefits paid on or after April 1, 2001, in accordance with subsection (k) of this section.

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

(1) *Eligibility requirements.*

A Class A or Class B member shall be retired on a line-of-duty disability retirement if 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 natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, without willful negligence on his or her part.

(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 line-of-duty disability retirement.*

A line-of-duty disability retirement under this subsection takes effect as follows:

(i) if the member applied for disability retirement before terminating City employment, the retirement is effective as of the 1st day of the month immediately following the member's last day of City employment; and

(ii) if the member applied for disability retirement after terminating City employment, the retirement is effective as of the 1st day of a month that falls at least 30 days after the date on which the Board received a completed application.

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

(1) Upon retirement for line-of-duty disability, a Class A or Class B member is entitled to receive the maximum line-of-duty disability retirement allowance, which shall consist of:

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

(ii) a pension, in addition to the annuity, of 66⅔% of his average final compensation.

(2) *Optional retirement allowances.*

Any Class A or Class B member who is entitled to receive the maximum line-of-duty disability retirement allowance may elect to receive that maximum line-of-duty disability retirement allowance, or may elect to receive the actuarial equivalent of that maximum line-of-duty disability retirement allowance, computed as of the effective date of his or her retirement, in a lesser amount payable throughout his or her life in accordance with the following provisions:

Option 1. If he or she dies before having received in total retirement benefits the present value of his or her retirement allowance as it was at the time of retirement, the balance shall be paid to his or her legal representatives or to the person that he or she nominates by written designation duly acknowledged and filed with the Board of Trustees; or

Option 2. Upon his death, his retirement allowance as it was at the time of his retirement shall be continued throughout the life of and paid to the person that he or she nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his or her retirement; or

Option 3. Upon his or her death, ½ of his or her retirement allowance as it was at the time of retirement shall be continued throughout the life of and paid to the person that he or she nominates by written designation duly acknowledged and filed with the Board of Trustees at the time of his retirement; or

Option 4. Some other periodically paid benefit or benefits shall be paid either to the Class A or Class B member or to the person or persons that he or she nominates, provided such other benefit or benefits shall be certified by the actuary to be of equivalent actuarial value to his or her retirement allowance, and subject to approval by the Board of Trustees.

(3) (i) Any living retired Class A or Class B member has the right, within 30 days after the effective date of his or her retirement, and not later, to change his or her election of the maximum line-of-duty disability retirement allowance to any one of the options specified in paragraph (2) of this subsection, or to change his or her election of any one of those options to another one of those options, or to change his or her election from any one of those options to the maximum line-of-duty disability retirement allowance.

(ii) Any living retired member has the right, within 30 days after the effective date of his or her retirement, to change his or her designation of a beneficiary; but thereafter no such change may be made in connection with any option that provides for the payment of a retirement allowance to, and throughout the life of, the beneficiary designated.

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

(4) If any living retired Class A or Class B member changes the type or kind of retirement allowance elected by him or her, then any payments that may have been made to him or her before that change are to be taken into account in arriving at the amount to be paid to him or her in connection with the retirement allowance finally selected.

(5) (i) Any Class A or Class B member who retires and dies within 30 days after the effective date of his or her retirement, and who has been granted a retirement allowance of maximum benefits for line-of-duty disability under this subsection, or who has elected to receive one of the several optional retirement allowances available, is considered to be a member's dying in active service, and the non-line-of-duty death benefits provided for in § 6(h) shall be paid in lieu of the benefits provided for in this subsection.

(ii) If a hearing examiner determines that the member's death is the result of injuries sustained in the line of duty or was directly attributable to the inherent hazards of the duties performed by the employee and that the death was not caused by willful negligence on the part of the member, then there shall be paid in lieu of the non-line-of-duty death benefit provided for in § 6(h), the line-of-duty death benefit provided for in § 6(i), subject to the conditions of those sections.

(6) Any line-of-duty disability retirement allowance payments made to any retired Class A or Class B member, who dies within 30 days after the effective date of his or her retirement, shall be offset against any amounts payable under the provisions of §§ 6(h) or 6(i).

(7) *Offset for Workers's Compensation benefits.*

(i) *Benefits paid on or before March 31, 2001.*

Any amounts paid or payable by the City of Baltimore on or before March 31, 2001, under any Workers' Compensation or similar law to a Class A or Class B member or to the dependents of a member on account of any disability or death shall be offset against and payable in lieu of any benefits payable out of funds provided by the City under this subtitle on account of the same disability or death. If the present value of the total commuted benefits under the Workers' Compensation or similar law is less than the pension reserve for the benefits otherwise payable from funds provided by the City under this subtitle, then the present value of the commuted payments shall be deducted from the pension reserve and the benefits as may be provided by the pension reserve so reduced shall be payable under this subtitle.

(ii) *Benefits paid on or after April 1, 2001.*

Workers' Compensation benefits shall be offset against line-of-duty disability benefits paid on or after April 1, 2001, in accordance with subsection (k) of this section.

(8) (i) If a member who was an employee on or after July 1, 1987, but not after June 28, 1989, 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 5% of the allowance the member was receiving shall be paid to the surviving spouse to continue as long as he or she remains unmarried.

(ii) If there is no eligible surviving spouse or if the spouse dies or remarries before the youngest unmarried child of the deceased member attains age 18 or, if the child is a full-time student, before he or she attains age 22, then an amount equal to 5% of the allowance the member was receiving shall be paid to the child or children, divided in the manner that the Board of Trustees in its discretion determines, to continue for the benefit of the child or children until the last child marries, dies, or attains either age 18 or, if a full-time student, age 22.

(iii) Effective April 1, 2001, any eligible surviving spouse, child, or children of a member who retired and elected the maximum benefit under this paragraph (8), shall receive 40% of the allowance the member was receiving.

(9) (i) If a member who was an employee on or after June 29, 1989, 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 35% (or such different amount as set forth below) of the allowance that the member was receiving shall be paid to the surviving spouse to continue as long as he or she remains unmarried.

(ii) If there is no eligible surviving spouse or if the spouse dies or remarries before the youngest unmarried child of the deceased member has attained the age of 18 years or, if the child is a full-time student, before he or she has attained the age of 22 years, then an amount equal to 35% (or such different amount as set forth below) of the allowance that the member was receiving shall be paid to the child or children, divided in the manner that the Board of

Trustees in its discretion determines, to continue for the benefit of the child or children until the last child marries, dies, or attains either age 18 or, if a full-time student, age 22.

(iii) For members who terminate employment with the City before June 29, 1990, subparagraphs (i) and (ii) shall be read by substituting "33⅓%" for "35%" wherever those amounts appear.

(iv) Effective June 28, 1992, any eligible surviving spouse, child, or children of a member who retired and elected, or who will retire and elect, the maximum benefit under this paragraph (9), shall receive 40% of the allowance the member was receiving.

(10) *Survivorship benefits for beneficiaries of members who terminated employment on or before June 30, 1987 and selected maximum benefits.*

(i) *Members who died on or before March 31, 2001*.

No benefit is payable to the beneficiary(ies), next of kin, or the estate of a member who selected maximum benefits and dies on or before March 31, 2001.

(ii) *Members who die on or after April 1, 2001.*

(A) If a member who was an employee and retired before July 1, 1987, and elected to receive maximum benefits without optional modification dies on or after April 1, 2001, and is survived by a spouse to whom the member had been married for at least 1 year immediately before retirement, an amount equal to 40% of the allowance the member was receiving shall be paid to the surviving spouse to continue as long as he or she remains unmarried.

(B) If there is no eligible surviving spouse or if the spouse dies or remarries before the youngest unmarried child of the deceased member attains age 18 or, if the child is a full-time student, before he or she attains age 22, then an amount equal to 40% of the allowance the member was receiving shall be paid to the child or children, divided in the manner that the Board of Trustees in its discretion determines, to continue for the benefit of the child or children until the last child marries, dies, or attains either age 18 or, if a full-time student, age 22.

(g) *{Vacant}*

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

(1) *Scope of subsection.*

This subsection (h) applies to a Class A or Class B 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.*

(i) On receipt of a written application and proper proof of the death of a Class A or Class B 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 paragraph (3) of this subsection.

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

A. the member's accumulated contributions; plus

B. if the Class A or Class B 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.

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

A. to the member's designated beneficiary;

B. if there is no designated beneficiary or if the designated beneficiary predeceases the member, to the member's surviving spouse;

C. if there is no designated beneficiary and no surviving spouse, to the member's children, in equal shares;

D. if there is no designated beneficiary, surviving spouse, or surviving child, to the member's surviving parents, in equal shares; and

E. otherwise, to the member's estate.

(3) *100% survivorship death benefit.*

(i) If the Class A or Class B member was eligible for a service retirement allowance on the date of the member's death, or would have become eligible for a service retirement allowance within 90 days after the date of the member's death, and a proper application is filed under subparagraph (v) of this paragraph, 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 §§ 6(a)(5) and 6(b)(6) of this section had the member elected that survivorship benefit in favor of that beneficiary and retired as of the date of death.

(ii) The benefit shall be paid:

A. 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 5 years immediately before the date of the member's death; or

2. one of the member's surviving parents; or

B. 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 5 years immediately before the date of the member's death.

(iii) If a Class A or Class B 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.

(iv) The benefit provided by this paragraph (3) is in place of all benefits provided under paragraph (2) of this subsection.

(v) 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) *40% survivorship death benefit.*

(i) Beginning April 1, 2001, if the member had at least 20 years of service as of the date of his or her death, without regard to whether the member was eligible for a service retirement benefit on the date of the member's death, and if a proper application is filed under subparagraph (vii) of this paragraph (4), the Board of Trustees shall pay a retirement benefit equal to 40% of the member's accrued maximum service retirement benefit based on the number of years of service credit as of the member's date of death and as if the member had attained age 60 as of the date of his or her death.

(ii) This benefit shall be paid:

A. 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 unmarried minor children, to be paid to each child in equal shares, until that child marries or is no longer a minor, as defined in § 47(h) of this article; or

B. 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; or

C. if there is no qualifying surviving spouse under subparagraph A or B, or if the surviving spouse dies or remarries, then to the member's unmarried minor children, to be paid to each child in equal shares, until that child marries or is no longer a minor, as defined in § 47(h) of this article.

(iii) For purposes of this paragraph (4), "surviving spouse" means a spouse to whom the member was married for at least 1 year immediately before the date of the member's death.

(iv) For purposes of this paragraph (4), when a member's child marries or is no longer a minor and, consequently, ceases to receive benefits under this paragraph (4), each remaining unmarried minor child will 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 marries or is no longer a minor.

(v) 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.

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

(vii) 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 notice of this benefit is provided to the spouse or minor children after the death of the member.

(viii) Any death benefits paid by this System and received by the beneficiary of a member under paragraphs (2) or (3) of this subsection shall be offset against any death benefits payable under this paragraph (4).

(ix) For purposes of this paragraph, the deceased member's pre-enrollment or pre-membership employment:

(A) shall be included in figuring the minimum 20 years of service credit needed to be eligible to receive this death benefit; but

(B) may not be counted as service credit for purpose of calculating the amount of the death benefit, unless purchased as service credit in accordance with § 16 of this article.

(5) *Death without beneficiaries 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:

(i) a member dies without designating a beneficiary;

(ii) that member has no heirs, as enumerated in paragraphs 2(iii), 3(ii), and 4(ii) of this subsection (h); and

(iii) no estate for that member is opened within 2 years of the member's death.

(6) *Death of retired Class A or Class B member within 30 days of retirement.*

(i) *Scope of paragraph.*

Except as specified in subparagraph (ii), this paragraph applies to a retired member who:

A. has been granted a service or disability retirement allowance; and

B. dies within 30 days of his or her retirement date.

(ii) *Exception.*

This paragraph does not apply to a former member who terminates employment before reaching age 60 without immediate entitlement to retirement benefits.

(iii) *Death deemed to be during active service.*

A retired Class A or Class B member described in subparagraph (i) of this paragraph (6) is deemed to have died while still employed by the City and, instead of any other service or disability benefits under this System, a non-line-of-duty death benefit will be paid as if he or she died during active service.

(iv) *Benefit in place of others.*

The benefit provided by subparagraph (iii) of this paragraph (6) is in place of all benefits provided under §§ 6(a), 6(b), 6(c), or 6(d).

(v) *Offset of payments received.*

Any pension benefits paid by this System and received by the retired member before he or she died shall be offset against the death benefits payable under this subsection (h) of this section.

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

(1) *Scope of subsection.*

This subsection applies only to an individual:

(i) who dies while a Class A or Class B member of this System; and

(ii) whose death has been determined by a hearing examiner to:

A. have arisen from injuries sustained in the line of duty; or

B. be directly attributable to the inherent hazards of the duties performed by the member; and

C. have arisen without willful negligence on the part of the member.

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

(i) 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:

A. the member's accumulated contributions:

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

B. a pension of 100% of the member's current compensation:

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

2. if there is no surviving spouse or if the surviving spouse dies or remarries, 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; or

3. 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 mother and or father in equal shares, to continue for life.

(ii) For purposes of subparagraph (i)(B) of this paragraph (2), "dependent" means the level of dependency required by Internal Revenue Code §152.

(iii) 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.

(iv) 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.

(3) *Death without beneficiaries 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:

(i) a member dies without designating a beneficiary;

(ii) that member has no heirs, as enumerated in paragraphs 2(i)(A) and 2(i)(B) of this subsection (i); and

(iii) no estate for that member is opened within 2 years of the member's death.

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

(i) This paragraph (4) applies to any member:

A. who retires under the provisions of §§ 6(e) and 6(f);

B. who dies within 30 days after the effective date of the member's retirement;

C. whose death is the result of an accidental injury sustained in the line of duty or was directly attributable to the inherent hazards of the duties performed by such employee; and

D. whose death a hearing examiner has determined was not caused by willful negligence on the part of the member.

(ii) A member described in subparagraph (i) of this paragraph (4) is considered, for purposes of paragraph (1) of this subsection, to have died as a member in service. Thus, to the extent to which they are entitled under paragraphs (1) and (2) of this subsection (i), the beneficiaries of the member shall receive line-of-duty death benefits under this subsection (i).

(iii) Any retirement allowance which is payable pursuant to § 6(f) of this article, and which is made to any retired Class A or Class B member who dies within 30 days after his effective date of retirement, shall be offset against any line-of-duty death benefits payable under the provisions of this subsection.

(5) *Minimum line-of-duty death pension benefit at June 30, 1994*.

(i) This paragraph (5) 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 $10,000 annually.

(ii) Line-of-duty death benefits for beneficiaries described in subparagraph (i) of this paragraph (5) shall be increased to no less than the lower of:

A. an annual benefit of $10,000; or

B. an annual benefit equivalent to the June 30, 1994, salary for an active Class A or Class B member in the same job classification (e.g., class, grade, level, and longevity) as the Class A or Class B member on the date of the member's death.

(iii) 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.

(iv) For purposes of this paragraph (5), the pension benefit includes any post-retirement benefit increases paid as of June 30, 1994.

(v) 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 §17 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.

(vi) 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 (5).

(j) *Offset for Workers' Compensation benefits — Benefits paid on or before March 31, 2001.*

(1) Any amounts paid or payable by the City of Baltimore on or before March 31, 2001, under any Workers' Compensation or similar law to a Class A or Class B member or to the dependents of a Class A or Class B member on account of any disability or death shall be offset against and payable in lieu of any benefits payable out of funds provided by the City under this subtitle on account of the same disability or death.

(2) If the present value of the total commuted benefits under the Workers' Compensation or similar law is less than the pension reserve on the benefits otherwise payable from funds provided by the City under this subtitle, then the present value of the commuted payments shall be deducted from the pension reserve and the benefits as may be provided by the pension reserve so reduced shall be payable under this subtitle.

(k) *Offset for Workers' Compensation benefits — Benefits paid on or after April 1, 2001.*

(1) *Scope of subsection.*

This subsection applies to a member or beneficiaries of a member:

(i) the payment of whose retirement benefit commences on or after April 1, 2001, either:

(A) on account of a non-line-of-duty disability under subsection (c), (d), or (d-1), or

(B) on account of a line-of-duty disability under subsection (e) or (f); or

(ii) who dies on or after April 1, 2001, and is awarded either:

(A) a non-line-of-duty death benefit under subsection (h), or

(B) a line-of-duty death benefit under subsection (i).

(2) *Offset for Workers' Compensation payments.*

The Board of Trustees shall offset the amount of a member's Workers' Compensation benefits to be paid or payable by the City and awarded under the State's Workers'

Compensation Law against any disability or death benefits paid or payable by the System to a member or a member's beneficiaries, if:

(i) the Workers' Compensation award was for permanent partial or permanent total disability or for death; and

(ii) the Workers' Compensation benefit was awarded on account of the same disability or death that resulted in the system's payment of disability or death benefits.

(3) *Amounts not included in offset*.

The amount of Workers' Compensation benefits to be offset does not include amounts allocated for the payment of legal fees, medical expenses, or other payments authorized by the Workers' Compensation Commission to be made directly to third parties and not to the member or the member's beneficiary.

(4) *Method of offset*.

(i) *Non-actuarial method for lump-sum payments*.

A. The Board of Trustees shall offset the amount of a member's Workers' Compensation award, reduced by the amounts described in paragraph (3), against any lump-sum death benefits paid or payable by the System to a member's beneficiaries in the following manner.

B. The offset shall be made on a non-actuarial, dollar-for-dollar basis against any lump-sum benefit until the total amount of the Workers' Compensation benefits has been recovered.

C. If the amount of the Workers' Compensation benefits exceeds the lump-sum death benefit, then no benefit may be paid, except for the return of the member's accumulated contributions.

(ii) *Actuarial method for periodic payments*.

A. The Board of Trustees shall offset the amount of a member's Workers' Compensation award, reduced by the amounts described in paragraph (3), against any periodic disability or death benefits paid or payable by the System to a member or a member's beneficiaries in the following manner.

B. This offset shall be calculated on an actuarial basis by annuitizing the member's Workers' Compensation award, reduced by the amounts described in paragraph (3), and reducing the member's periodic disability or death benefit by the annuitized amount until the total amount of the Workers' Compensation benefits have been recovered.

C. The actuarial amount shall be calculated using an actuarial method and appropriate annuity factors recommended by the System's actuary and approved by the Board of Trustees.

D. If the annuitized amount of the Workers' Compensation benefits exceeds the System's periodic disability or death benefit payment, then no death or disability benefit may be paid until the amount of the Workers' Compensation benefit is recovered, except for the return of the member's accumulated contributions.

(5) *Restoration of offset amount against retirement benefits.*

(i) On recovering the full amount of the member's Workers' Compensation benefits, the reduced disability or death benefits payable to the member or the member's beneficiaries shall be restored to the unreduced amount of the disability or death benefits payable to the member or beneficiaries prior to the offset for Workers' Compensation.

(ii) The amount by which a reduced disability or death benefit is restored under subparagraph (i) does not include any post-retirement increases that the member or the member's beneficiaries would have been eligible to receive had the member's disability or death benefits not been reduced.

(6) *Transitional rule for those receiving reduced benefits prior to April 1, 2001.*

(i) The Board of Trustees shall implement the method of offset described in paragraph (4) of this subsection (k) for any member or beneficiary of a member:

A. whose disability or death benefits were reduced by Workers' Compensation benefits on or before March 31, 2001; and

B. whose Workers' Compensation benefits were not fully recovered as of April 1, 2001.

(ii) For members or beneficiaries whose disability or death benefits have been offset on account of Workers' Compensation benefits on or before March 31, 2001, and whose Workers' Compensation benefits are found to have been recovered under the method described in paragraph (4), all Workers' Compensation offsets shall be terminated.

(l) - (m) *{Vacant}*

(n) *Minimum benefits for Class A and Class B retirees and beneficiaries of Class A and Class B members.*

(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) The 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 date 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 30 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 30 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, commission, 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 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 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 benefits 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, including beneficiaries under subsection (n)(3) of this section, receive less than a 5%-benefit increase, except those eligible for the aforesaid $4,000 to $2,000 minimum benefits, and those who have not filed the statements in accordance with the provisions of subsection (n)(4)(d), over and above the amount of total annual retirement benefits, including supplemental payments that they were receiving under the provisions of this subtitle, on April 18, 1974, used to calculate periodic payments due a retired member or

a deceased retired member's beneficiary on the last payroll period immediately preceding April 19, 1974, regardless of the basis used for calculating the benefits, and even though the benefits may have been incorrectly determined.

(f) The basis to be used in determining the eligibility for and computation of the new minimum total retirement benefits provided by this § 6(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 "services" 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 4(d) of this subsection, shall not be reinstated upon any subsequent reemployment and eligibility for retirement as a result of such reemployment.

(i) This subsection shall not be applicable to any survivors of a retired member who elected to receive maximum benefits without optional modification to provide a periodically paid survivors benefit.

(o) *Post retirement benefits for Class A and Class B retirees and beneficiaries of Class A and Class B members.*

(1) Notwithstanding anything to the contrary contained in § 6(n), effective with the 1st day of the 1st full pay period after July 1, 1975, any retiree who has 30 years or more of service and who is eligible for the benefits provided for in § 6(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 § 6(n), effective with the 1st day of the 1st full pay period after July 1, 1975, any beneficiary of a member who had 30 years or more of service and who is eligible for the benefits provided for in § 6(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 30 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 30 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 § 6(n), any social security entitlement and earned income offsets provided for in § 6(n)(4)(d) shall, after July 1, 1975, not exceed the retiree's or the beneficiaries' offset which was used to calculate § 6(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 § 6(n) benefits, in addition to the increased benefits provided for in this subsection.

(p) *Post retirement; additional benefits.*

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 §§ 6(n) and 6(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 §§ 6(n) and 6(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 30 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 §§ 6(n) and 6(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 §§ 6(n) and 6(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 30 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 §§ 6(n) and 6(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 §§ 6(n) and 6(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 30 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.

(City Code, 1927, art. 30, §6; 1950, art. 22, §6; 1966, art. 22, §6; 1976/83, art. 22, §6.)
(Ord. 26-553; Ord. 39-942; Ord. 45-209; Ord. 47-858; Ord. 49-703; Ord. 50-1410; Ord. 51-1634; Ord. 53-899; Ord. 53-989; Ord. 55-096; Ord. 57-1100; Ord. 58-1397; Ord. 58-1565; Ord. 58-1649; Ord. 59-1864; Ord. 59-1774; Ord. 61-1039; Ord. 63-1583; Ord. 67-1022; Ord. 72-237; Ord. 73-419; Ord. 74-552; Ord. 75-975; Ord. 75-1058; Ord. 70-1055; Ord. 79-1126; Ord. 86-767; Ord. 87-988; Ord. 89-275; Ord. 91-777; Ord. 91-829; Ord. 92-086; Ord. 93-250; Ord. 93-263; Ord. 95-525; Ord. 99-587; Ord. 01-189; Ord. 04-822; Ord. 05-173; Ord. 07-422; Ord. 11-520.)

§ 7. Management of funds.

(a) *Trustee of funds.*

The Board of Trustees shall be the trustees of the several funds of the Employees' Retirement System of Baltimore created by Article 22 under this subtitle as provided in § 8. 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 has the duty and responsibility of periodically determining investment policies consistent with the capital market environment, and the actuarial characteristics of the Employees' Retirement System and to publish these investment policy guidelines by filing a copy of them with the Department of Legislative Reference.

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 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) *{Repealed}*

(b) *Interest.*

(1) (i) As of July 1, 1978, the Trustees will determine the "carrying value" of the Fund in accordance with the asset valuation method theretofore employed and the "adjusted market value" of the Fund representing an average fair market value of that date.

(ii) During the 1979 fiscal year, the Trustees will establish a "Reserve for Book Value" as of July 1, 1978, equal to the difference as of that date between the carrying value and the

adjusted market value of the Fund. On that date and on each annual valuation date thereafter, the value of the Fund assets for actuarial valuation purposes will be carried at (1) the then current adjusted market value, plus (2) the Reserve for Book Value.

(iii) The Board of Trustees annually shall credit regular interest less the investment management, custodian and investment adviser costs on the mean amount for the preceding year in each of the funds. After payment of pension fund management, custodian, and investment adviser services as provided in §§ 7(g) and 43(a), any excess of the earnings of the funds of this Retirement System as determined in accordance with an appropriate asset investment adviser services as provided in §§ 7(g) and 43(a), any excess of the earnings of the funds of this Retirement System as determined in accordance with an appropriate asset valuation method giving effect to actual earnings of the funds, over the earnings based on the regular interest rate used for valuation purposes, shall first be applied by the Board of Trustees to meet the conditions of any asset averaging method then in use under the system.

(iv) An additional amount equal to 1½% of the mean amount for the preceding year in each of the funds will be deducted from the remaining excess earnings, if any, and applied by the Board of Trustees to reduce the remaining balance, if any, in the "Reserve for Book Value"; to the extent that excess earnings are less than 1½% per annum, the City of Baltimore shall contribute the difference to the "Reserve for Book Value", averaged over a 5-year period in accordance with the asset valuation method theretofore employed. The remaining excess earnings, if any, shall next be applied by the Board in such amount or amounts as they determine (1) to decrease the amount contributed by the City of Baltimore, and/or (2) to decrease the period over which the unfunded accrued liability will be amortized as provided in § 8(c)(3), and/or (3) to reduce the remaining balance, if any, in the "Reserve for Book Value". Any deficiency of the earnings of the funds of this Retirement System, as determined in accordance with an appropriate asset valuation method giving recognition to actual earnings of the funds, below the required earnings based on the regular interest rate used for valuation purposes shall first be applied to meet the conditions of any asset averaging method then in use under the system; the remaining deficiency in earnings, if any, shall be applied by the Board of Trustees in such amount or amounts as they determine either (1) to increase the amount contributed by the City of Baltimore, and/or (2) to increase the period over which the unfunded accrued liability will be amortized as provided in § 8(c)(3).

(v) The increase or decrease of contribution and/or the increase or decrease in length of amortization period shall be determined by the Board after receiving the advice of the actuary engaged by the City, on the basis of regular interest rate used for valuation purposes, and of such mortality and other tables as shall be adopted by the Board of Trustees.

(2) The Board of Trustees shall use such portion of the net unallocated interest surplus (if any), which has not been used to reduce the City's contribution or the unfunded actuarial liability, as is deemed necessary by the actuary to cover the cost to the City of Baltimore which may result from the implementation of Ordinance 87-988, effective July 1, 1987, as it affects benefits for current members as of the date of enactment of the ordinance. All other costs of Ordinance 87-988 shall be provided for in the same manner as otherwise described in this section.

(3) The Board of Trustees shall apply the $19,633,535 restricted portion of the interest surplus, as noted in City Council Resolution 88-009, towards the cost to the City of Baltimore which results from the implementation of Ordinance 89-275.

(4) Any unallocated interest surplus as of June 30, 1990, shall be applied to reduce the current cost of the system. $1,000,000 of such surplus shall be applied for the City's fiscal year ending June 30, 1992. The remainder of such surplus shall be applied in each following fiscal year until exhausted. The amount to be applied in each such year shall be no more than $3,000,000 and no less than the lesser of $1,000,000 or the remaining amount of surplus not yet applied.

(5) The Board of Trustees shall use such portion of the net unallocated interest surplus, if any, as of June 30, 1995, as is deemed necessary by the actuary to cover the cost to the City of §§ 4(b)(2) and 9(c)(6) of this subtitle. Any additional costs of said sections shall be funded in the same manner as otherwise described in this section.

(6) The Board of Trustees shall use that portion of the net unallocated excess earnings, if any, as of June 30, 2000, that the actuary considers necessary to cover the cost to the City of §§ 6(a)(2)(iii), 6(b)(15)(i), 6(b-1), 6(c)(2)(ii), 6(c)(12)(ii), 6(d-1), 6(f)(12)(ii), 6(f)(14), 6(h)(4), 6(k), 9(e)(6), 9(j)(ii), 9(m)(8)(c) and (d), 9(o-1)(4), and 9(o-4) of this subtitle. Any additional costs of those sections shall be funded in the same manner as otherwise described in this section.

(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 the State Commercial Law Article for the express purpose of having such clearing corporations act as centralized depositories for 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 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 employees 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 Employees' Retirement System. Supervision of the several funds of the 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 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 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 § 7 of this subtitle.

(City Code, 1927, art. 30, §7; 1950, art. 23, §7; 1966, art. 22, §7; 1976/83, art. 22, §7.)
(Ord. 26-553; Ord. 33-390; Ord. 58-1264; Ord. 59-244; Ord. 64-424; Ord. 68-119; Ord. 70-758; Ord. 73-313; Ord. 73-419; Ord. 75-1058; Ord. 78-851; Ord. 81-238; Ord. 83-880; Ord. 85-492; Ord. 86-765; Ord. 86-779; Ord. 87-988; Ord. 88-058; Ord. 89-275; Ord. 90-466; Ord. 91-777; Ord. 93-210; Ord. 93-265; Ord. 96-006; Ord. 01-189; Ord. 07-570; Ord. 11-520; Ord. 12-044.)

§ 8. Method of financing.

(a) *Assets to meet obligations*. All of the assets of the Retirement System shall be credited toward meeting the aggregate obligations of the Retirement System.

(b) *Retirement System Fund*.

(1) The Retirement System shall maintain a 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 those contributions.

(2) Contributions by the City Baltimore to the Retirement System Fund shall be made as follows:

(i) On the basis of regular interest and of such mortality and other tables as are 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 for the Retirement System Fund.

(ii) The actuary shall determine for each member a normal cost that is equal to the amount of annual contribution as a constant percentage of compensation that is necessary to provide the member's benefit, if the contributions had been made annually from the member's date of entry into the system, together with any other service credit acquired under any provisions of this subtitle and under Division II of the State Personnel and Pension Article, to the member's date of retirement. The total amounts so determined shall be known as "normal cost contribution."

(iii) An accrued liability shall be calculated for each member equal to the accumulation of the annual normal cost contribution, as described in subparagraph (ii) of this paragraph (2), from the date of entry into the system, together with any other service credit acquired under any provisions of this subtitle and under Division II of the State Personnel and Pension Article, to the valuation date on the basis of the actuarial assumptions adopted by the Board of Trustees.

(iv) The accrued liability computed under subparagraph (iii) of this paragraph (2) shall be added to the reserve for retirement benefits payable to retired members from the Retirement System Fund to obtain the total accrued liability.

(v) The assets of the Retirement System Fund shall be applied against the total accrued liability, computed for all members, retirees, and beneficiaries, to determine the amount of unfunded accrued liability. An accrued liability contribution shall be determined as

the amount sufficient to meet regular interest on the unfunded accrued liability, and to amortize the principal of the unfunded accrued liability over the period of time determined by the Board of Trustees.

(vi) The required contribution by the City of Baltimore shall be the sum of the normal cost and accrued liability contribution determined in accordance with this paragraph. The aggregate payment by the City of Baltimore shall be, when combined with the amount in the Retirement System Fund, sufficient to provide the pensions and other benefits payable out of the Fund during the year then current.

(vii) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the Retirement System Fund equals the present value, as actuarially computed and approved by the Board of Trustees, of the total liability of the Fund, less the present value, computed on the basis of the normal contribution rate then in force, of the prospective normal contributions to be received on account of persons who are at that time members.

(c) *Certification of appropriation.*

(1) On or before January 1 of each year, the Board of Trustees shall certify to the Board of Estimates the amount of the appropriation necessary to pay to the Retirement System the amounts payable by the City of Baltimore, as enumerated in this article, for the fiscal year beginning on the ensuing July 1.

(2) The amount so certified is due to the System on July 1 of the fiscal year, and appropriations for that amount shall be included in the Ordinance of Estimates for that fiscal year.

(d) *Member contributions.*

(1) *Class C members.*

(i) Subject to subparagraph (ii) of this paragraph (1), and notwithstanding any other provision of this subtitle, effective with the 1st full payroll period that begins after the applicable effective date shown below, each Class C member shall contribute the percentage of his or her earnable compensation (as defined in § 1(11) of this subtitle) that corresponds to the effective date, these contributions to continue throughout the member's remaining period of service:

Effective date	*Percentage of earnable compensation*
July 1, 2013	1%
July 1, 2014	2%
July 1, 2015	3%
July 1, 2016	4%
July 1, 2017	5%

(ii) (A) The scheduled increases in a member's contribution, as provided for in subparagraph (i) of this paragraph (1), apply only for a fiscal year in which a minimum 2% raise (or in which a series of prior non-minimum annual raises, first effective after the immediately

preceding contribution increase, reaches an aggregate of 2% (the "aggregate minimum")):

1. has been subject to negotiation or meet-and-confer, as the case may be, with the certified employee organization or professional association representing that employee; and

2. has become effective for that employee and for all other employees represented by that organization or association.

(B) For any fiscal year in which a member does not receive this minimum raise (or minimum aggregate), the scheduled increase in that member's contribution is suspended and the schedule of increased contributions will resume only for the next fiscal year in which there is a minimum raise (or aggregate minimum).

(C) Notwithstanding City Code Article 12, § 5-8 {"Labor Negotiations: Time table"}, if a minimum raise (or minimum aggregate) only becomes effective after a fiscal year has begun, the contribution increase for that fiscal year is suspended until the date on which the minimum raise (or minimum aggregate) is effective and is then applied pro rata for the period from the effective date of the raise through the remainder of the fiscal year.

(D) For any fiscal year in which a raise (or aggregate of raises) exceeds 2%, the excess over 2% shall be calculated with all other subsequent raises for purposes of determining the next minimum aggregate requiring the next contribution increase.

(E) At all times, notwithstanding any suspension of a scheduled increase, a member's then required contribution, as established in prior fiscal years, remains intact.

(2) *Class D members.*

Effective with the 1st full payroll period that begins after an employee begins her or his Class D membership, the employee shall contribute 5% of his or her earnable compensation (as defined in § 1(11) of this subtitle), these contributions to continue throughout the member's remaining period of service.

(3) *"Picked-Up" status.*

(i) The contributions described in paragraphs (1) and (2) of this subsection shall be treated as being "picked up" by the City of Baltimore within the meaning of Internal Revenue Code ("IRC") § 414(h)(2).

(ii) These picked-up contributions may not be excluded from "average final compensation" in computing the amount of any retirement allowance under this System or any other benefit paid or payable in connection with the member's employment. Each member is at all times fully vested in these contributions.

(iii) 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 this System will be treated as employer contributions described in IRC

§ 414(h)(2) and will not be includible in the member's gross income for federal income tax purposes for the year in which they are contributed. If the Internal Revenue Service rules that the City's picked-up contributions do not satisfy the requirements of IRC § 414(h)(2), or if § 414(h)(2) is repealed, the contribution rates set forth in paragraphs (1) and (2) of this subsection will remain in effect, but the contributions may no longer be treated as picked up by the City and shall be paid instead directly by the member.

(iv) For each payroll period, the Department of Finance shall cause to be deducted from the earnable compensation of each Class C and Class D member the percentage of contributions described in paragraphs (1) and (2) of this subsection. These deductions shall be paid into the Retirement System Fund and credited, with regular interest (as defined in § 1(9)(i)(B) of this subtitle), on behalf of the member from whose earnable compensation the deductions were made.

(v) A member's accumulated contributions that are withdrawn by the member, or paid to the member's estate or designated beneficiary in event of death as provided in this subtitle, shall be paid from the Retirement System Fund.

(City Code, 1927, art. 30, §8; 1950, art. 23, §8; 1966, art. 22, §8; 1976/83, art. 22, §8.)
(Ord. 26-553; Ord. 50-1410; Ord. 53-899; Ord. 64-425; Ord. 65-700; Ord. 68-235; Ord. 70-759; Ord. 73-419; Ord. 74-552; Ord. 75-1058; Ord. 77-610; Ord. 79-1055; Ord 91-777; Ord. 92-086; Ord. 07-422; Ord. 13-144; Ord. 13-191; Ord. 14-216.)

§ 9. Class C membership.

(a) *Class C membership*.

Beginning July 1, 1979, there is a new class of members in the Retirement System, to be known as Class C members and defined as follows:

(1) All persons who become employees on or after July 1, 1979, with the exception of those employees who are required or eligible to join either Maryland State or other governmental retirement systems or who are required again to become Class A or Class B members shall, on the 1st day after completion of 12 consecutive months of employment, become Class C members as a condition of employment.

(1a) A Class C 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.

(1b) The prohibition set forth in paragraph (1a) of this subsection does not apply to contributions made to or benefits received from:

(i) the Baltimore City Municipal Deferred Compensation Plan, or

(ii) the Social Security System established by the Act of Congress known generally as "The Social Security Act of 1935", as amended from time to time.

(1c) Notwithstanding paragraph (1a) of this subsection, and pursuant to § 48 of this article, the following shall become Class C 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; 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) Subject to the provisions contained in paragraph (5), any Class A or Class B member, including any Class A or Class B member who is entitled to any benefits under the provisions of §§ 6(a)(11), 6(a)(12), 6(b)(12), and 6(b)(13) of this subtitle, who is interested in becoming a Class C member must file a Notice of Intent with the Board of Trustees of the Retirement System on or before June 30, 1991. Such Notice of Intent shall state that the member is considering becoming a Class C member to be effective and irrevocable after the expiration of 90 days beginning with the date that such Notice is filed; and if he does become a Class C member, whether his accumulated contributions, with or without excess voluntary contributions provided for in § 8(a)(4), with interest are to be refunded to him or are to remain in the Retirement System. Notwithstanding anything to the contrary, a member's Notice shall not become effective nor create any Class C rights in such member until the expiration of 90 days after it is filed with the Board of Trustees. During such 90-day period, the member may modify or revoke such Notice of Intent in full or in part in such written form as may be approved by the Board of Trustees. Upon the expiration of such 90 days following the filing of such Notice of Intent, if not sooner revoked, a member's Notice of Intent, including his election as to the disposition of his accumulated contributions with interest, shall become irrevocable, and he shall become a Class C member of the Retirement System at that time.

If the member elects to have said accumulated contributions remain in the Retirement System then at the time of his retirement, subject to the provisions of § 9(m), he shall receive an annuity for said accumulated contributions in addition to the benefits provided under this section. If the Class C member dies before retirement, then such accumulated contributions, if any, shall be refunded to his designation beneficiary or estate.

If the member, in the Notice of Intent, elected to receive a refund of his accumulated contributions with interest, such refund shall be paid to him in the manner prescribed by regulations promulgated by the Board of Trustees, with due consideration for the fiscal integrity of the system. Notwithstanding anything to the contrary, the refund of the member's contributions with interest, whether in a lump sum payment or annual installments, shall be paid or commenced to be paid at such time as may be determined by the Board of Trustees, but in no event earlier than 30 days after the member's becoming a Class C member or later than the expiration of 3 years from the date of his becoming a Class C member. As long as the member's contributions or any part thereof remain in the Retirement System, interest shall continue to be credited on any undistributed portion of the member's contribution account.

Notwithstanding anything to the contrary, the refund of the accumulated contributions of any Class A or Class B member who has previously pledged such contributions as security for a loan under § 11 of this subtitle, shall be reduced by an amount equal to such indebtedness of the member at the time of becoming a Class C member, and held by the City with interest until such indebtedness by the member is satisfied, or the lending institution notifies the City that the funds can be released.

(3) All existing employees on June 30, 1979, who are not then members of the Retirement System, shall become Class A members, within 2 years of the date of their employment.

(4) Notwithstanding anything to the contrary, any existing elected official or appointed official whose term is fixed by law and who is not a Class A or Class B member of the system on July 1, 1979, shall have the option of becoming a Class C member within 120 days after July 1, 1979. Should such official elect to become a Class C member, then he shall be credited for the period of time served from July 1, 1979, up to the time of becoming a Class C member. Should such official not exercise such option within the 120-day period, then his failure to elect shall be irrevocable during the term of such official's office. Any official who is elected or appointed after July 1, 1979, shall be entitled to membership in this system upon the completion of 1 year of his term, and provided that he elects to join the system within 120 days after such 1-year period. If he so elects to join the system within the 120 days of his eligibility, then the official shall be credited for service from the time of eligibility up to the date of becoming a Class C member. For purposes of receiving service credit in the system, a period of 1 year in office shall be considered as equal to 1,000 hours of work under the provisions of this section, or if such period is less than 1 year, then the proportional fraction thereon. With the exception of the maximum credit of 120 days provided heretofore, an elected or appointed official shall not receive service credit for any period of non-membership employment before electing to become a Class C member.

(5) Any Class A or Class B member who becomes a Class C member pursuant to the provisions of paragraph (2) or (4), shall be deemed to have relinquished any claims for any and all injuries or medical conditions, actual or potential, sustained while a Class A or Class B member, and any and all other benefits to which he may have been entitled as a Class A or Class B member. Upon becoming a Class C member he shall be entitled to any benefits provided for Class C members for which he qualifies, regardless of whether claim for such benefits arose prior to or subsequent to his becoming a Class C member.

Any Class A or Class B member, who has filed any disability claim or any other claim for benefits before July 1, 1979, or during such period covering the member's Notice of Intent under paragraph (2) or (4), shall not be eligible to become a Class C member.

(b) *Forms*.

A Class C member shall execute such form or forms and provide such supporting evidence as may be required from time to time, and must answer truthfully all questions pertinent to administration of the Retirement System.

(c) *Class C service credit.*

(1) All Class A and Class B members of the Retirement System who elect to become Class C members as provided for in § 9(a) shall receive service credit as follows:

(i) all service standing to their credit as Class A or Class B members at the time of their effective date of transfer to Class C membership.

(ii) all employment for which they, as Class A or Class B members, are eligible to receive service credit at the time of filing a Notice of Intent to become a Class C member, whether by purchase or repurchase, or by transfer of the applicable funds.

(iii) any employment beginning with the 1st anniversary of the initial date of their current employment and ending with their date of membership, not to exceed 1 year's service credit for such employment.

(iv) However, notwithstanding anything to the contrary, a Class C member shall not receive credit for any employment or membership service earned in any other pension system if said employment or service results in the member's being entitled to any current or future benefits for such employment or service in such other pension system, even though the member would have been eligible to receive credit in this system for such employment or service.

(2) Beginning July 1, 1979, each new employee shall become a Class C member on the 1st day following his completion of 12 consecutive months of employment.

(3) (A) For any Class C member who terminates employment on or before April 30, 1996, all service in a fiscal year after the date of becoming a Class C member, shall be credited as follows: Any Class C member employed by the City in a job classification which requires 1,000 or more hours of work in a fiscal year shall receive credit for 1 year of service provided such member was in a pay status for each and every payroll period in the fiscal year. If such member was not in a pay status for each and every payroll period in the fiscal year, service for that fiscal year shall be credited pro rata, calculated as follows:

(i) 1 year's service credit, multiplied by

(ii) a fraction, the numerator of which shall be the number of payroll periods in the Fiscal year such member was in a pay status, and the denominator of which shall be the total number of payroll periods in the fiscal year for such member's job classification.

Any Class C member employed by the City in a job classification which requires not less than 500 nor more than 1,000 hours of work in a fiscal year shall receive credit for ½ of a year of service, provided such member was in a pay status for each and every payroll period in the fiscal year. If such member was not in a pay status for each and every payroll period in the fiscal year, service for that fiscal year shall be credited pro rata, calculated as follows:

(i) ½ of a year's service credit, multiplied by

(ii) a fraction, the numerator of which shall be the number of payroll periods in the fiscal year such member was in a pay status, and the denominator of which shall be the total number of payroll periods in the fiscal year for such member's job classification.

Any Class C member employed by the City in a job classification which requires less 500 hours of work in a fiscal year shall not be eligible to receive any service credit for any such employment. However, such member shall be considered as an active Class C member.

(B) For any Class C member who terminates employment on or after May 1, 1996, all service in a fiscal year after the date of becoming a Class C member shall be credited as follows: Any Class C member employed by the City in a job classification that requires more than 1,000 hours of work in a fiscal year shall receive credit for 1 year of service. Notwithstanding anything herein to the contrary, if, during the 1st or final fiscal year of a member's service, the member was not in pay status for each and every payroll period in the fiscal year, or for any other fiscal year in which the member was out of pay status for 7 or more bi-weekly payroll periods (or an equivalent number of weekly or monthly payroll periods), service for that fiscal year shall be credited pro rata, calculated as follows:

(i) 1 year's service credit, multiplied by

(ii) a fraction, the numerator of which shall be the number of payroll periods in the fiscal year that the member was in pay status, and the denominator of which shall be the total number of payroll periods in the fiscal year for the member's job classification.

Any Class C member employed by the City in a job classification that requires not less than 500 nor more than 1,000 hours of work in a fiscal year shall receive credit for ½ of a year of service. Notwithstanding anything herein to the contrary, if, during the 1st or final fiscal year of a member's service, the member was not in pay status for each and every payroll period in the fiscal year, or for any other fiscal year in which the member was out of pay status for 7 or more bi-weekly payroll periods (or an equivalent number of weekly or monthly payroll periods), service for that fiscal year shall be credited pro rata, calculated as follows:

(i) ½ of a year's service credit, multiplied by

(ii) a fraction, the numerator of which shall be the number of payroll periods in the fiscal year that the member was in a pay status, and the denominator of which shall be the total number of payroll periods in the fiscal year for the member's job classification.

Any Class C member employed by the City in a job classification that requires less than 500 hours of work in a fiscal year shall not be eligible to receive any service credit for that employment. However, the member shall be considered an active Class C member.

The service of a Class C member who is paid on other than a uniform, 12-month basis (e.g., a 10-month employee of the City Department of Education) shall not be pro rated under this § 9(c)(3)(B) because of the member's being out of pay status during the period that the member ordinarily would not be paid.

(4) Notwithstanding anything to the contrary contained in § 9 of this article, beginning July 1, 1985, any new employee who previously was employed by the HABC immediately becomes a member of the Employees' Retirement System on entering City employment, provided that:

(a) such employee provided services under the reimbursable service contracts between the City and the HABC, within 1 year prior to becoming a City employee,

(b) such transfer of employment to the City from the HABC contains no break in employment or interruption between the period of HABC employment and employment with the City,

(c) such previous employment with HABC was for a period of at least 1 year at the time the employee becomes a City employee,

(d) such employment with the City is in the nature of duties generally similar to that which the employee was performing with HABC immediately prior to his or her employment, and

(e) the employee exercises the option to accept City employment immediately on the transfer to the City of duties that were previously performed by the HABC under the reimbursable service contract.

On becoming a member of the Employees' Retirement System, an employee who meets the requirements of subsection (c)(4)(a) through (c)(4)(e) of this section has the option, if he or she elects, subject to Internal Revenue service approval, within 120 days of that approval or within 120 days of becoming a City employee, whichever is later, to receive credit for service in the Employees' Retirement System for all years, or any portion of a year with which the employee has been credited in the HABC retirement plan. To receive this credit, the employee and, if necessary, HABC must contribute an amount to the Employees' Retirement System equal to the past service liability (actuarial liability) that the City would have contributed for that past service if the employee had been an employee of the City for the number of years purchased. The past service liability will be calculated by the City's actuary using the same methods and assumptions used to fund the Employees' Retirement System of Baltimore City. An employee who elects this option is not subject to the provisions of §§ 9(a) and 9(c) of this article as they pertain to the receipt by the member of HABC retirement plan benefits. To receive this credit, the funds must be paid to the Employees' Retirement System within 30 days after the election of the option.

If a member elects to buy back his or her HABC retirement service credit as described above, and then dies or leaves City employment for any reason with or without any vested benefit to the member or member's beneficiary under this subtitle, then he or she or his or her beneficiary is entitled to receive in lieu of any other benefit under the Employees' Retirement System, the original HABC vested account balance contributed by the member into this system, plus interest at the rate of 5½%, in the form of a lump sum.

(5) *Additional opportunity to purchase credit for service for Baltimore City employment.*

(i) A Class C member is entitled to purchase service credit for any employment or membership service earned by regular and permanent employment with the City of Baltimore, regardless of retirement or pension system membership, as long as:

(A) the employment or service did not result in the member's being entitled to any current or future benefits for that employment or service in any other retirement or pension system; and

(B) the Class C member pays to the Employees' Retirement System, by a single payment, an amount equal to the current salary of the employee in the year of purchase, multiplied by the sum of the employer rate for the normal cost and the employee contribution rate under § 8(d)(1) for the year of purchase, multiplied by the number of years or part of a year being purchased.

(ii) In addition, any Class C member is entitled to purchase service credit for the member's 1st year of service with the City of Baltimore under the same conditions as subparagraph (i)(B) of this paragraph (5).

(iii) If a member purchases service credit under this paragraph (5) and later dies or leaves City employment for any reason, with or without any vested benefit due to the member or the member's beneficiary under this subtitle, the member or the beneficiary is entitled to receive, in lieu of any other benefit under this System, a lump sum equal to the total amount paid by the member for the purchase, plus interest at the rate of 5½% per year through June 30, 2013, and, effective July 1, 2013, at a rate equal to regular interest (as defined in § 1(9)(i)(b) of this subtitle).

(6) *Additional service credit.*

(i) Notwithstanding anything to the contrary, any Class C member who was an employee of the City of Baltimore on January 1, 1996, and who separates from service with the City on or after January 1, 1996, and on or before December 31, 1996, shall receive:

1. additional years of service credit equal to the greatest of:

A. 1 year;

C. 1/6 of the number of years of existing service credit (rounding any part of an existing year to the next highest year) that the eligible member has acquired as of the date of separation from City employment; or

D. 1/40 of the member's compensable leave days. For purposes of this § 9(c)(6)(i)1.C., "compensable leave days" shall be the total of vacation, personal leave, and ⅓ of the number of sick leave days that the member has accumulated as of May 1, 1996, or, if earlier, the effective date of the member's separation from service. For purposes of calculating "compensable leave days" only, employees of the Baltimore City Police Department who were hired prior to July 1, 1973, and who, under Baltimore City Police Department personnel policies, do not accumulate sick leave days shall be deemed to have accumulated 6 sick leave days for each year of employment with the Police Department as of May 1, 1996. "Compensable leave days" shall not include accumulated vacation and personal leave cashable on other than a 1-for-1 basis, K-days, compensatory time, or any other leave not enumerated in the above definition. The Department of

Finance shall provide to the Retirement System a report showing, for each member who is an employee of the City of Baltimore, his or her accumulated balance of "compensable leave days" as defined herein as of May 1, 1996, or, if earlier, the effective date of the member's separation from service; and

2. for a member whose retirement is effective on or after May 1, 1996, and on or before July 31, 1996:

A. an additional retirement benefit equal to 5% of the member's total retirement benefit, after crediting the additional years of service granted under subparagraph (i)1. of this paragraph, payable in the same manner as the member's total retirement benefit:

B. the same post-retirement benefit increase that is payable as of January 1, 1997, to other eligible retirees and beneficiaries, notwithstanding any waiting period otherwise required under this subtitle for eligibility; and

C. payment of his or her retirement benefits beginning as of the member's date of retirement, even if, notwithstanding the normal 30-day waiting period required by this subtitle for benefits, the date of retirement is less than 30 days after the date of application.

(ii) Notwithstanding anything to the contrary, any Class C member who was an employee of the City of Baltimore on June 30, 1995, and who on or after July 1, 1995, and on or before December 31, 1995, was removed from his or her regular permanent position with the City without fault (within the meaning of § 9(f)(3) of this subtitle), shall receive additional service credit calculated under § 9(c)(6)(i)1.A. and B., but without regard to § 9(c)(6)(i)1.C. or 2. above.

(iii) The additional service credits and benefits granted under this § 9(c)(6) shall not be applicable to Class C members who are terminated for cause as defined by Civil service Rule 56.

(iv) Any Class C member who receives additional service credit upon separation from City employment under this § 9(c)(6), and, in addition, is eligible for and elects to receive an early retirement under § 9(f)(2) effective on or after May 1, 1996, and on or before December 31, 1996, shall only have ½ of the otherwise applicable early commencement reduction under § 9(f)(2) applied to the portion of his or her benefit attributable to the additional service credit granted under this § 9(c)(6).

(v) The additional service credit granted under this § 9(c)(6) shall be added to the service credit that the member has acquired at the date of separation, and the new total service credit shall be used to determine all other benefit and service eligibility under this subtitle as if the new total were the member's service credit at the time of separation. For purposes of this § 9(c)(6), the date of separation of service shall be the date of cut-off as shown on the member's cut-off notice.

(vi) Should a Class C member who has been separated from service and who has received additional service credits and benefits under this § 9(c)(6) return to City employment, the

additional service credits and benefits granted under this § 9(c)(6) shall be forfeited and voided and the member's previous service credit and applicable benefits as of the member's date of separation and prior to the inclusion of any additional service credit or benefit shall be restored to full force and effect.

(vii) All additional benefit payments provided herein shall be prospective from the effective date of this § 9(c)(6) or the member's date of retirement, whichever is later.

(viii) The additional service credit granted under this § 9(c)(6) shall provide credit toward benefits in the Employees' Retirement System only and shall not be transferable to any other retirement or pension system.

(ix) To the extent any additional benefit provided to any member by this § 9(c)(6) constitutes a discriminatory benefit under regulations applicable to governmental plans issued by the Secretary of the Treasury under Internal Revenue Code § 401(A)(4) (when such regulations are effective), such additional benefit for any member shall be null and void.

(d) *Military personnel – 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 (6) of this subsection, is on unpaid leave of absence from paid City employment;

(ii) 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 reemployed by the City of Baltimore as a regular and permanent employee;

(iii) does not take any employment, other than employment described in item (ii) 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

(iv) applies for service credit with the system.

(2) *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)(ii) of this subsection retains the status and rights as a member during a period of absence from employment for military service.

(3) *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 reemployment of the member under paragraph (1)(ii) of this section is paid employment; and

(ii) membership in this system is a requirement of that employment.

(4) *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.

(5) *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.

(6) *"Military service" defined.*

(i) In this subsection, "military service" means any:

(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 Pension Article §38-101(d);

(ii) "Military service" includes 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.

(7) *Member contributions.*

(i) Except as otherwise provided in subparagraph (ii) of this paragraph, a member of this System who is reemployed under paragraph (1)(ii) of this subsection shall be credited with, at the City's sole expense, the contributions that the member otherwise would have made under § 8(d)(1) had the member not been absent, plus regular interest (as defined in § 1(9)(i)(B) of this subtitle) on those contributions.

(ii) If a member terminates City employment, other than by reason of death, before becoming eligible for a retirement benefit or a deferred vested pension benefit under this § 9, the member is not entitled to receive any part of the contributions made on his or her behalf under subparagraph (i) of this paragraph (7). However, the contributions made on behalf of a member will be used to fund a retirement benefit or a deferred vested pension benefit payable to the member under this § 9. In addition, the contributions made on behalf of a member will be used to fund a periodic death benefit payable to the member's beneficiary

under this § 9 or, if the member's beneficiary is entitled to receive a lump sum death benefit under this § 9, will be paid to the beneficiary.

(iii) The Board of trustees shall refund to a member any contributions made to this System during a period of absence from employment for military service while the member is otherwise exempted under this paragraph (7) from paying contributions into the System.

(8) *Rules and regulations.*

The Board of Trustees may adopt rules and regulations to carry out this subsection.

(d-1) *Military personnel – Credit for military service prior to employment.*

(1) Notwithstanding any other provision of this subtitle, upon proper application to the retirement system, up to 3 years of credit shall be granted for military service, as defined in § 9(d)(1) of this subtitle, to any Class C member who has served in the military prior to employment with the City, provided:

(i) if the member terminates employment on or before June 28, 1993, the member has acquired at least 10 years of service and has attained at least age 65, or the member has acquired 35 years of service, and has attained at least age 62;

(ii) if the member terminates employment on or after June 29, 1993, and on or before December 31, 1995, the member has acquired at least 10 years of service and has attained at least age 62, or the member has acquired 30 or more years of service, regardless of age;

(iii) if the member terminates employment on or after January 1, 1996, the member has acquired at least 10 years of service and has attained at least age 62, or the member has acquired 20 or more years of service, regardless of age.

(2) However, a member may 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 may not exceed 3 years. The City shall make all necessary contributions to the pension and annuity funds for the funding of military service credit.

(3) The Board of Trustees is hereby authorized to issue rules and regulations to carry out the provisions of this section, notwithstanding any present rules and regulations to the contrary.

(e) *Service retirement benefits.*

Any Class C member in service may retire upon his written application to the Board of Trustees setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired, provided that the said member at the time so specified for his retirement shall have complied with the applicable provisions of the retirement benefit applied for.

(1) *Normal retirement for any Class C member employed on or after June 29, 1989, and who terminates employment on or before June 28, 1993.*

This § 9(e)(1) shall not apply to Class C members who became employees after June 27, 1991. Any Class C member, who has acquired at least 5 years of service at the normal retirement date of age 65, shall have a nonforfeitable right to receive a maximum pension commencing at the normal retirement date, age 65, or an optional pension which shall be the actuarial equivalent of the maximum pension as provided in § 9(m). In addition, any Class C member who has not attained the normal retirement date of age 65, but who has acquired 30 years of service and has attained the age of at least 62, shall be entitled to receive a maximum pension calculated as if the member had attained his normal retirement date, age 65. The maximum pension shall be equal to 1.85% of the member's average final compensation multiplied by his years of service (and fractions thereof) reduced by 1.33% of the member's Primary Social Security Benefit multiplied by his years of service (and fractions thereof) not to exceed 30. However, for members who terminate employment with the City before June 29, 1990, the preceding sentence shall be read by substituting "1.84%" for "1.85%", and by substituting "1.37%" for "1.33%".

Effective June 28, 1992, the maximum pension for any Class C member who was an employee on or after June 28, 1991, and who is eligible to retire under the above paragraph shall be the greater of the retirement benefit provided in § 9(e)(1) or § 9(e)(4).

(2) *Normal retirement for any Class C member employed on or after July 1, 1987, and who terminated employment on or before June 28, 1989.*

Any Class C member, who has acquired at least 5 years of service at the normal retirement date of age 65, shall have a nonforfeitable right to receive a maximum pension commencing at the normal retirement date, age 65, or an optional pension which shall be the actuarial equivalent of the maximum pension as provided in § 9(m). In addition, any Class C member who has not attained the normal retirement date of age 65, but who has acquired 30 years of service and has attained the age of at least 62, shall be entitled to receive a maximum pension calculated as if the member had attained his normal retirement date, age 65. The maximum pension shall be equal to 1.70% of the member's average final compensation multiplied by his years of service (and fractions thereof), reduced by 1.5% of the member's Primary Social Security Benefit multiplied by his years of service (and fractions thereof) not to exceed 30.

(3) *Offset to normal retirement benefit.*

There shall be offset from any normal retirement benefit payable the full amount of any benefit or payment currently payable on or after normal retirement on account of unemployment compensation insurance under any Federal, State or City law, when the City either pays the cost of said benefit by means of the reimbursement method or the City's experience rate is affected as a result of the taxing method.

(4) *Normal retirement for any Class C member employed on or after June 28, 1991, and who terminates employment on or before June 28, 1993.*

Members who became employees on or after June 28, 1991, and who terminate employment on or before June 28, 1993, shall have their retirement benefit determined under this § 9(e)(4) without regard to § 9(e)(1). Any Class C member, who has acquired at least 5 years of service at

the normal retirement date of age 65, shall have a nonforfeitable right to receive a maximum pension commencing at the normal retirement date, age 65, or an optional pension which shall be the actuarial equivalent of the maximum pension as provided in § 9(m). In addition, any Class C member who has not attained the normal retirement date of age 65, but acquired 30 years of service and has attained the age of at least 62, shall be entitled to receive a maximum pension calculated as if the member had attained his normal retirement date, age 65. The maximum pension shall be equal to: (a) 1.425% of the member's average final compensation plus 0.425% of the member's average final compensation in excess of his covered compensation, multiplied by his years of service (and fractions thereof) not in excess of 30, plus (b) 1.85% of the member's average final compensation multiplied by his years of service (and fractions thereof) in excess of 30. For members who retire on or after June 28, 1991, and before June 28, 1992, the preceding sentence shall read by substituting "1.40%" for "1.425%" and by substituting "0.45%" for "0.425%". The maximum pension benefit provided by this § 9(e)(4) shall be taken into account when determining the benefit to which a member is entitled under § 9(f) (early retirement), § 9(h) (postponed retirement), § 9(i) (ordinary disability retirement) and § 9(l) (termination of employment). This § 9(e)(4) is subject to the offset set forth in § 9(e)(3) above.

Effective June 28, 1992, the maximum pension for any Class C member who was an employee on or after June 28, 1991, and who is eligible to retire under § 9(e)(1) shall be the greater of the retirement benefit provided in § 9(e)(1) or § 9(e)(4).

(5) *Normal retirement for Class C member who was an employee on or after June 29, 1993, and who terminates employment on or before March 31, 2001.*

Notwithstanding anything to the contrary, any Class C member, who has acquired at least 5 years of service at the normal retirement date of age 65, shall have a nonforfeitable right to receive a maximum pension commencing at the normal retirement date, age 65, or an optional pension as provided in § 9(m), which shall be the actuarial equivalent of the maximum pension. In addition, any Class C member who has not attained the normal retirement age 65, but who has acquired 30 years or more of service, regardless of age, shall be entitled to receive a maximum or optional pension calculated as if the member had attained his normal retirement date, age 65. The maximum pension shall be equal to: (a) 1.50% of the member's average final compensation, plus 0.35% of the member's average final compensation in excess of his covered compensation, multiplied by his years of service (and fractions thereof) not in excess of 30, plus (b) 1.85% of the member's average final compensation multiplied by his years of service (and fractions thereof) in excess of 30. The benefit provided by this § 9(e)(5) is subject to the offset set forth in § 9(e)(3) above.

(6) *Normal retirement for Class C member who was an employee on or after April 1, 2001.*

Notwithstanding anything to the contrary, any Class C member who has acquired at least 5 years of service at the normal retirement date, age 65, has a nonforfeitable right to receive a maximum pension commencing at the normal retirement date, age 65, or an optional pension as provided in § 9(m), which is the actuarial equivalent of the maximum pension. In addition, any Class C member who has not attained the normal retirement age 65, but who has acquired 30 years or more of service, regardless of age, is entitled to receive a maximum or optional pension calculated as if the member had attained his or her normal retirement date, age 65. The maximum pension is equal to: (a) 1.60% of the member's average final compensation, plus

0.25% of the member's average final compensation in excess of his or her covered compensation, multiplied by his or her years of service (and fractions of those years of service) not in excess of 30, plus (b) 1.85% of the member's average final compensation multiplied by his or her years of service (and fractions of those years of service) in excess of 30. The benefit provided by this § 9(e)(6) is subject to the offset set forth in § 9(e)(3) above.

(f) *Early retirement.*

(1) Any Class C member who has acquired 30 years of service and who terminates employment with the City on or before June 28, 1993, or any Class C member or who has attained age 55 and has acquired 5 years of service, shall have a nonforfeitable right to receive a maximum pension commencing at the normal retirement date of age 65, calculated in accordance with the following rules:

(i) The pension shall be determined under § 9(e) based on the member's average final compensation and years of service (and fractions thereof) as of the date he ceased being an employee.

(ii) The offset of the Primary Social Security Benefit will be calculated on the assumption that the member would have continued to receive until his normal retirement date, age 65, compensation at the rate in effect at the time of his retirement.

(2) If such member as described in subsection (f)(1) above elects to have his maximum or optional pension commence prior to normal retirement date, age 65, the amount of said maximum or optional pension shall be permanently reduced as follows:

(i) *30 or more years of service and employed on or after July 1, 1987.*

(a) If a member who was an employee on or after July 1, 1987, but not after June 28, 1989, has at least 30 years of service as of the date he ceased being an employee, the amount of his pension shall be reduced by 0.25% for each full month (or fraction thereof) by which the commencement of his pension precedes his normal retirement date, age 65.

(b) If a member who was an employee on or after June 29, 1989, but not after June 27, 1991, has at least 30 years of service as of the date he ceased being an employee, the amount of his pension shall be reduced by 0.17% for each full month (or fraction thereof) by which the commencement of his pension precedes his normal retirement date, age 65. However, for members who terminate employment with the City before June 29, 1990, the preceding sentence shall be read by substituting "0.21%" for "0.17%".

(c) If a member who was an employee on or after June 28, 1991, and who terminates employment on or before June 28, 1993, has at least 30 years of service as of the date he ceased being an employee, the amount of his pension shall be reduced by 0.17% for each full month (or fraction thereof) by which the commencement of his pension precedes his 62nd birthday. The provisions of this § 9(f)(2)(i)(c) become effective June 28, 1992.

(ii) *Less than 30 years of service and employed on or after July 1, 1987.*

If a member who was an employee on or after July 1, 1987, has less than 30 years of service as of the date he ceased being an employee, the amount of his pension shall be reduced by 1/180 for each of the first 60 months (or fraction thereof) by which the commencement of his pension precedes his normal retirement date, and by 1/360 for each additional month (or fraction thereof) by which the commencement of his pension precedes his normal retirement date.

(iii) *Employed prior to July 1, 1987.*

A member who ceased being an employee prior to July 1, 1987, shall have his maximum or optional pension calculated according to Ordinance 79-1055. If said member elects to have his maximum or optional pension commence prior to normal retirement date, age 65, his maximum or optional pension shall be actuarially reduced based upon the unisex table approved by the Board of Trustees and known as "The Actuarial Reduction for Early Payment Class C Members Only Table, effective August 1, 1983."

(3) *Retirement on account of job removal.*

(i) *Scope of paragraph.*

(A) 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:

1. 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,

2. 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 the agency and pursuant to its absolute discretion, and is not being removed for poor performance in the job,

3. the member is being removed from his or her position without fault on his or her part due to physical or mental incapacity,

4. 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

5. 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.

(B) 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.

(ii) *Job Removal Retirement Benefit.*

Should any member appointed for a fixed term set by law not be reappointed either voluntarily or involuntarily, after acquiring 20 years of service, or should a Class C member be removed from a regular permanent position of the City without fault on his or her part after the acquisition of 20 years of service (30 years of service if removed before July 1, 1987), prior to attaining the age of 65, such member shall be entitled to receive a retirement benefit based on the actual years of service credit and equal to the pension the member would receive if he or she had already attained the age of 65, the normal retirement age. The reduction contained in paragraph (2) shall not apply.

(iii) *Preemployment military service credit.*

Effective June 24, 1990, any preemployment military service credit claim shall be subject to the conditions contained in § 9(d)(2) of this subtitle, except the military service credit claim shall not be subject to the age 65 requirement contained in § 9(d)(2). 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.

(iv) *Special effective date.*

Effective December 2, 1991, the provisions of the above paragraph shall apply to any member who retired under § 9(f)(3). Any increased benefits due to such a retired member shall be paid prospectively from the effective date of this ordinance. Furthermore, variable benefits, if any, paid to such a retired member shall not be changed as a result of this ordinance.

(4) *Offset to early retirement benefit.*

There shall be offset from any early retirement benefit payable the full amount of any benefit or payment currently payable on or after early retirement on account of unemployment compensation insurance under any Federal, State or City law, when the City either pays the cost of said benefit by means of the reimbursement method or the City's experience rate is affected as a result of the taxing method.

(g) *Social Security Equalization Benefit — early retirement.*

A Class C member who is entitled to receive an early retirement benefit, commencing between the ages of 55 and 62, may elect to receive in lieu thereof an adjusted retirement benefit of equivalent actuarial value payable in a greater amount during the period the Class C member is between the ages of 55 and 62, and a correspondingly reduced amount, actuarially determined, after the

attainment of age 62, so that the retiree's total income (including both the adjusted retirement benefit payable herein and the Social Security Benefit to which the Class C member shall be entitled to receive at age 62) shall be as nearly uniform as possible both before and after the commencement of said Social Security Benefits.

(h) *Postponed retirement.*

A Class C member who continues in the employment of the City beyond the normal retirement date of age 65 shall be deemed to be on postponed retirement. If a member is on postponed retirement, such member will continue to be a member until the mandatory retirement age of 70 as provided in § 3(f). However, if the member is an elected or appointed official, whose term is fixed by law, he may remain in service as a member until he is not reelected or reappointed. Upon retirement, such member shall be entitled to receive the maximum pension as provided in § 9(e) commencing on his actual retirement date based on his service and his average final compensation as of the date of his actual retirement, his Primary Social Security Benefit at age 65, and subject to the offset provisions of normal retirement contained in § 9(e).

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

(1) *Eligibility requirements.*

A Class C 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 her or his job classification in the employ of the 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 takes effect as follows:

(i) if the member applied for disability 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 disability retirement after terminating City employment, the retirement is effective 30 days after the date on which the Board received a completed application.

(4) *Non-line-of-duty disability allowance for retirement on or before October 15, 1992.*

(i) Upon retirement for non-line-of-duty disability on or before October 15, 1992, a member who has not attained the age of 60 is entitled to receive a maximum pension equal to the pension determined in accordance with § 9(e) as if he or she remained employed by the City until the normal retirement date, age 65, multiplied by the greater of:

(A) a fraction, the numerator of which is the number of years (and fractions thereof) of the member's service prior to the time he or she ceased to be employed by the City, and the denominator of which is the number of years (and fractions thereof) of service that the member would have had if he or she had continued to be employed by the City until normal retirement date, age 65; or

(B) ½.

(ii) However, the non-line-of-duty disability benefit provided for by this subsection may not be greater than the early retirement benefit a member would be entitled to receive at age 60, as if he or she remained employed until that time, and based upon the assumption that there would be no change in his or her average final compensation.

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

(A) Upon retirement for non-line-of-duty disability on or after October 16, 1992, a member is entitled to receive a maximum pension that is equal to the greater of:

(i) the member's accrued service retirement benefit, as determined in accordance with § 9(e); or

(ii) 15% of the member's average final compensation.

(6) *Offsets for Worker's Compensation benefits.*

(i) *On or before March 31, 2001.*

Effective with the date beginning 5 years prior to the date of the member's retirement on non-line-of-duty disability, the full amount of any past or future benefit or payment that may be paid or payable by the City of Baltimore under any Workers' Compensation or similar law for any permanent disability, whether partial or total, or for death shall be offset from any non-line-of-duty disability retirement benefit payable by the City on or before March 31, 2001. The benefits under the Workers' Compensation or similar law shall be offset dollar-for-dollar, pro tanto, from the benefits otherwise payable from funds provided by the City under this subtitle, and the benefits so reduced shall be payable under this subtitle.

(ii) *On or after April 1, 2001.*

Workers' Compensation benefits shall be offset against non-line-of-duty disability benefits paid on or after April 1, 2001, in accordance with subsection (o-4) of this section.

(j) *Line-of-duty disability retirement benefit.*

(1) *Eligibility requirements.*

A Class C member shall be retired on a line-of-duty disability retirement if a hearing examiner determines that:

(i) the member is permanently incapacitated for the further performance of the duties of his or her job classification in the employ of the City due to one or more of the impairments listed in the schedule provided in this subsection; and

(ii) the member sustained the scheduled impairment as the direct result of bodily injury through an accident independent of all other causes and independent of any preexisting physical or medical conditions, job-related or otherwise, occurring while in the actual performance of duty with the City at a definite time and place, without willful negligence on the part of the member.

(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:

(A) no later than 1 year following the member's last day of City employment; and

(B) within 5 years of the date of the accident resulting in the member's impairment.

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

A line-of-duty disability retirement under this subsection takes effect as follows:

(i) if the member applied for disability 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 disability retirement after terminating City employment, the retirement is effective 30 days after the date on which the Board received a completed application.

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

(i) Upon retirement on line-of-duty disability, a Class C member is entitled to receive a maximum pension benefit in an amount equal to 66⅔% of the member's average final compensation.

(ii) Notwithstanding anything to the contrary, if a Class C member is not eligible for line-of-duty disability benefits solely because the degree of impairment did not meet the standards listed in the schedule below, the member is eligible, regardless of years of service, for non-line-of-duty disability retirement subject to all other conditions for non-line-of-duty disability retirement.

(5) *Disability loss requirements.*

(i) For line-of-duty disability retirement benefits awarded on or before March 31, 2001, a 75% anatomical loss of the use of any 1 or a 50% or more anatomical loss of each of 2 or more of the impairments listed in subparagraph (iii).

(ii) For line-of-duty disability retirement benefits awarded on or after April 1, 2001, a 50% anatomical loss of the use of any 1 or a 25% or more anatomical loss of each of 2 or more of the impairments listed in subparagraph (iii).

(iii) Schedule of impairments:

(1) speech

(2) sight

(3) neck

(4) back

(5) vital bodily organ

(6) a part of the central nervous system

(7) arm

(8) leg

(9) shoulder

(10) hearing

(11) mentally incapacitated whereby a member applies for and is granted a disability benefit under the Federal Old-Age Survivor's and Disability Insurance Act.

(6) *Offsets for Workers' Compensation benefits.*

(i) *On or before March 31, 2001.*

Effective with the date beginning 5 years prior to the date of the accident that qualified the member for line-of-duty disability retirement benefits under this section, the full amount of any past or future benefit or payment that may be paid or payable by the City of Baltimore under any Workers' Compensation or similar law for any permanent disability, whether partial or total, or for death shall be offset from any line-of-duty disability retirement benefit payable by the City on or before March 31, 2001. The benefits under the Workers' Compensation or similar law shall be offset dollar-for-dollar, pro tanto, from the benefits otherwise payable from funds provided by the City under this subtitle, and the benefits so reduced shall be payable under this subtitle.

(ii) *On or after April 1, 2001.*

Workers' Compensation benefits shall be offset against line-of-duty disability benefits paid on or after April 1, 2001, in accordance with subsection (o-4) of this section.

(k) *Dismemberment disability retirement benefits.*

(1) *Eligibility requirements.*

A Class C member shall be retired on a dismemberment disability retirement if a hearing examiner determines that:

(i) the member sustained any 1 of the losses listed in the schedule provided in this subsection; and

(ii) the member sustained the scheduled loss as the direct result of bodily injury arising through an accident independent of all other causes occurring while in the actual performance of duty with the City at a definite time and place, without willful negligence on the part of the member; and

(iii) the accident occurred not more than 180 days before the loss was sustained.

(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:

(A) no later than 1 year following the member's last day of City employment; and

(B) within 5 years of the date of the accident resulting in the member's loss.

(3) *Effective date of dismemberment disability retirement.*

A dismemberment disability retirement under this subsection takes effect as follows:

(i) if the member applied for disability 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 disability retirement after terminating City employment, the retirement is effective 30 days after the date on which the Board received a completed application.

(4) *Allowance on dismemberment disability retirement.*

Upon retirement on dismemberment disability, a Class C member is entitled to receive a maximum pension benefit in an amount equal to 100% of the member's average final compensation. Not more than 100% of average final compensation will be paid for all losses sustained by a member as the result of any one accident.

(5) *Schedule of losses*.

(i) Both hands or both feet

(ii) 1 hand and 1 foot

(iii) 1 hand and sight of 1 eye

(iv) 1 foot and sight of 1 eye

(v) Sight of both eyes

(6) *Definitions.*

(i) With respect to hands or feet, "loss" means dismemberment by severance at or above the wrist or ankle joint.

(ii) With respect to eyes, "loss of sight of 1 eye" means central visual acuity of 20/200 or less in 1 eye with the use of correcting lenses, or visual acuity of greater than 20/200 if accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(iii) "Loss of sight of both eyes" means central acuity of 20/200 or less in the better eye with the use of correcting lenses, or visual acuity greater than 20/200 if accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(7) *Offsets for Workers' Compensation benefits.*

(i) *On or before March 31, 2001.*

Effective with the date beginning 5 years prior to the date of the accident that qualified the member for dismemberment disability retirement benefits under this section, the full amount of any past or future benefit or payment that may be paid or payable by the City of Baltimore under any Workers' Compensation or similar law for any permanent disability, whether partial or total, or death shall be offset from any dismemberment disability retirement benefit payable by the City on or before March 31, 2001. The benefits under the Workers' Compensation or similar law shall be offset dollar-for-dollar, pro tanto, from the benefits otherwise payable from funds provided by the City under this subtitle, and the benefits so reduced shall be payable under this subtitle.

(ii) *On or after April 1, 2001.*

Workers' Compensation benefits shall be offset against dismemberment disability benefits paid on or after April 1, 2001, in accordance with subsection (o-4) of this section.

(l) *Deferred vested pension benefits on termination of employment.*

(1) (i) This paragraph (1) applies to any Class C member who leaves City employ:

A. before attaining age 55 and after acquiring 10 years of service; or

B. after attaining age 55 and acquiring 5 years of service, but without having elected an immediate early retirement benefit under § 9(f).

(ii) A member described in subparagraph (i) of this paragraph (1) is entitled to receive a maximum deferred vested pension benefit (payable in accordance with the provisions of normal retirement contained in § 9(m) and subject to the offset provisions of normal retirement contained in § 9(e)) to commence on the member's normal retirement date of age 65, calculated in accordance with the following rules:

A. The pension shall be determined under § 9(e) based on the member's average final compensation and years of service (and fractions thereof) as of the date the member ceased being an employee.

B. The offset of the Primary Social Security Benefit will be calculated on the assumption that the member would have continued to receive, until the member's normal retirement date of age 65, compensation at the rate in effect at the time the member ceased being an employee.

C. The member may elect to have payment of this benefit commence at any time after the member has attained age 55. The benefit shall be actuarially reduced in accordance with the same rules applicable for early retirement benefits under § 9(f)(2), if its commencement precedes the member's normal retirement date.

D. If the member dies before attaining age 65 and before the benefit commences, then no benefits are payable, with the exception of the return of the member's accumulated contributions, if any.

(2) (i) This paragraph (2) applies to any Class C member:

A. whose regular permanent position with the City is eliminated before attaining age 55 and after acquiring 5 years of service; or

B. who was appointed for a fixed term and, either voluntarily or otherwise, was not reappointed before attaining age 55 and after acquiring 5 years of service.

(ii) A member described in subparagraph (i) of this paragraph (2) is entitled to a pension payable in accordance with the provisions of § 9(m) and subject to the offset provisions of normal retirement contained in § 9(e) to commence on the member's normal retirement date of age 65, calculated as follows:

A. The pension shall be determined under § 9(e) based on the member's average final compensation and years of service (and fractions thereof) as of the date the member ceased being an employee.

B. The offset of the Primary Social Security Benefit will be calculated on the assumption that the member would have continued to receive, until the member's normal retirement date of age 65, compensation at the rate in effect at the time the member ceased being an employee.

C. The member may elect to have payment of this benefit commence at any time after the member has attained age 55. The benefit shall be actuarially reduced in accordance with the same rules applicable for early retirement benefits under § 9(f)(2), if its commencement precedes the member's normal retirement date.

D. If the member dies before attaining age 65 and before the benefit commences, then no benefits are payable, with the exception of the return of the member's accumulated contributions, if any.

(m) *Method of payment*.

(1) *Maximum retirement allowance*.

(A) Any Class C member eligible to receive a retirement allowance under this subtitle is entitled to receive the maximum benefit without actuarial modification.

(B) On receipt of proper proof of death of a retired member receiving the maximum benefit, the Board of Trustees shall pay an amount equal to 40% of the retired member's retirement allowance as of the date of the retired member's death, to one of the following beneficiaries:

(i) if the retired member is survived by a spouse to whom the retired member was married for at least 1 year immediately before the retired member's retirement date, the benefit shall be paid to the surviving spouse, to continue for life or until remarriage; or

(ii) if there is no qualifying surviving spouse or if the surviving spouse dies or remarries, then the benefit shall be paid to the retired member's minor children, in equal shares, to continue until the children are no longer minor, as defined in § 47(h) of this article.

(C) For purposes of this paragraph (1), when a retired member's child is no longer a minor and consequently ceases to receive benefits under this paragraph (1), 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 youngest child is no longer a minor.

(D) If a retired member who has elected the maximum retirement allowance under this paragraph (1) dies before the member has received benefit payments in a sum equal to the amount of his or her accumulated contributions at the time of retirement, and if there is no surviving spouse or minor child entitled to receive benefits on the member's death, the difference between the amount of the deceased member's accumulated contributions and the sum of the benefit payments shall be paid as a lump sum to the deceased member's designated beneficiary or, if no beneficiary has been designated, to the deceased member's estate.

(2) *Elections for retirement allowance with actuarial modification.*

(A) *In general.*

Instead of the allowance provided for in paragraph (1) of this subsection, a Class C member who is entitled to receive a retirement allowance from this system may elect to receive a lesser retirement allowance for life from among the options set forth in subparagraphs (B) through (E) of this paragraph (2). The lesser optional retirement allowance that the retired member will receive, when combined with the optional survivorship benefit selected by the retired member, will equal the actuarial equivalent of the retired member's maximum retirement allowance computed as of the retired member's retirement date.

(B) *Reserve guarantee option.*

(i) On the retired member's death, the balance of the retired member's actuarial reserve at the time of retirement, after deducting the total amount of periodical payments received by the retired member during his or her life, will be payable as a lump sum:

1. to the retired member's designated beneficiary; or

2. if there is no designated beneficiary or if the designated beneficiary predeceases the retired member, to the retired member's estate.

(ii) A member selecting this reserve guarantee option may change his or her designated beneficiary at any time throughout retirement.

(C) *Joint and survivor options.*

(i) On the retired member's death, the member's designated beneficiary will receive a lifetime benefit of either, as elected by the member:

1. 100% of the periodical allowance the retired member was receiving at the time of death; or

2. 50% of the periodical allowance the retired member was receiving at the time of death.

(ii) Within 30 days of the retired member's retirement date, the retired member may elect to change the designated beneficiary for benefits under this subparagraph (C).

(iii) If the designated beneficiary predeceases the retired member while still within 30 days of the retirement date, the retired member may designate a new beneficiary within 30 days of the designated beneficiary's death.

(iv) If the designated beneficiary predeceases the retired member while within 30 days of the retirement date and the retired member does not designate a new beneficiary within 30 days of the designated beneficiary's death or if the designated beneficiary dies on or after the 31st day following the retirement date:

1. the retired member continues to receive a lesser retirement allowance under this survivorship option;

2. no new beneficiary may be designated; and

3. on the retired member's death, no survivorship benefit is payable.

(D) *"Pop-up" joint and survivor options.*

(i) On the retired member's death, the member's designated beneficiary will receive a lifetime benefit of either, as elected by the member:

1. 100% of the periodical allowance the retired member was receiving at the time of death; or

2. 50% of the periodical allowance the retired member was receiving at the time of death.

(ii) Within 30 days of the retired member's retirement date, the retired member may elect to change the designated beneficiary for benefits under this subparagraph (D).

(iii) If the designated beneficiary predeceases the retired member while still within 30 days of the retirement date, the retired member may designate a new beneficiary within 30 days after the designated beneficiary's death.

(iv) If the designated beneficiary predeceases the retired member while within 30 days of the retirement date and the retired member does not designate a new beneficiary within 30 days after the designated beneficiary's death or if the designated beneficiary dies on or after the 31st day following the retirement date:

1. the retired member receives the maximum retirement allowance, effective from the 1st day after the death of the designated beneficiary;

2. no other beneficiary may be designated; and

3. on the retired member's death, no survivorship benefit is payable, whether under this survivorship option or the maximum retirement allowance.

(E) *Specific benefit option.*

(i) On the retired member's death, the member's designated beneficiary will receive, as elected by the member before the member's retirement date:

1. a specific lump-sum amount; or

2. a specific periodical allowance, payable to the designated beneficiary for life.

(ii) This predetermined benefit must be approved, at the time of the member's retirement, by the Board of Trustees pursuant to the recommendation of the system's actuary.

(iii) Within 30 days of the retired member's retirement date, the retired member may elect to change the designated beneficiary for benefits under this subparagraph (E).

(iv) If the designated beneficiary predeceases the retired member while still within 30 days of the retirement date, the retired member may designate a new beneficiary within 30 days after the designated beneficiary's death.

(v) If the designated beneficiary predeceases the retired member while within 30 days of the retirement date and the retired member does not designate a new beneficiary within 30 days after the designated beneficiary's death or if the designated beneficiary dies on or after the 31st day following the retirement date:

1. the retired member continues to receive a lesser retirement allowance under this survivorship option;

2. no other beneficiary may be designated; and

3. on the retired member's death, no survivorship benefit is payable.

(3) *Change of election within 30 days.*

(A) Any retired member may elect to make the changes authorized in this paragraph (3) on or before the later of:

(i) the 30th day after the retired member's retirement date; or

(ii) if the retired member's designated beneficiary predeceases the retired member while within 30 days of the retirement date, the 30th day after the designated beneficiary's death.

(B) Within the periods specified, a retired member may elect to change:

(i) the retired member's maximum allowance under paragraph (1) of this subsection to any one of the actuarially modified retirement allowances under paragraph (2) of this subsection;

(ii) the retired member's election for an actuarially modified retirement allowance under paragraph (2) of this subsection to the maximum allowance under paragraph (1) of this subsection; or

(iii) the retired member's election for one actuarially modified retirement allowance under paragraph (2) of this subsection to any other of the allowances under paragraph (2) of this subsection.

(C) Any payments made to a retired member under the original election shall be taken into account in computing the allowance to be paid under the subsequent election.

(4) *{Vacant}*

(5) *Social Security equalization election.*

A Class C member who is entitled to receive an early retirement benefit, beginning between the ages of 55 and 61, both inclusive, may elect to receive instead an adjusted retirement benefit of equivalent actuarial value, payable in a greater amount while the Class C member is between the ages of 55 and 61, both inclusive, and a correspondingly reduced amount, actuarially determined, on becoming 62 years old, so that the retired member's total income (including both the adjusted retirement benefit payable under this paragraph and the Social Security benefit to which the Class C member is entitled to receive at age 62 will be as nearly uniform as possible both before and after the Social Security benefits begin.

(6) *Election to receive transferred-in accumulated contributions on deposit.*

(A) In addition to receiving a maximum retirement allowance or a modified retirement allowance at retirement, any retired Class C member may elect to receive a refund, with interest, of the retired member's transferred-in accumulated contributions on deposit that did not result in any retirement benefit from this system.

(B) The benefits under this paragraph (6) shall be paid in a lump sum or annuity. If a retired member elects to receive the benefits in the form of an annuity, the method of paying the annuity shall be consistent with the method of paying the retired member's principal retirement allowance under paragraphs (1) and (2) of this subsection.

(C) The payment of benefits under this paragraph (6) is subject to the approval of the Board of Trustees.

(7) *Election to receive lump-sum payment.*

(A) Any Class C member or former Class C member who has ceased all permanent full-time and permanent part-time employment with the City may elect to receive the present value of the member's total pension benefit, in a single lump-sum payment, if:

(i) the member is entitled to:

1. a normal service retirement benefit under § 9(e) of this article;

2. an early service retirement benefit under § 9(f) of this article; or

3. a deferred vested benefit under § 9(l); and

(ii) the present value of the total pension benefit is no more than the lump-sum cashout limit.

(B) For purposes of this paragraph, "lump-sum cashout limit" means the greater of:

(i) $12,500; or

(ii) an amount that is calculated by the system's actuary to reflect any increases in the average salary of active members and that is approved by the Board of Trustees.

(C) A member who receives a lump-sum payment under this paragraph (7) ceases to be entitled to any other benefits from this system.

(D) A Class C member entitled to receive both a disability or dismemberment benefit and 1 of the 3 service benefits listed in paragraph (7)(A) of this subsection, may waive his or her rights to the disability or dismemberment benefits and elect to receive a lump-sum payment under this paragraph.

(E) The present value of the benefit payable under this paragraph (7) shall be calculated as of the date the member ceases all permanent full-time and permanent part-time employment with the City, using actuarial assumptions as of that date approved by the Board of Trustees pursuant to the recommendation of the system's actuary.

(7-a) *Return of accumulated contributions*.

(i) If a Class C member terminates employment with the City, other than by reason of death, before becoming eligible for a retirement benefit or a deferred vested pension benefit under this § 9, the member is entitled to receive the value of his or her accumulated contributions, payable in a lump sum distribution as soon as administratively practicable following the termination of employment.

(ii) If a Class C member dies while actively employed, his or her accumulated contributions will be used to fund a periodic death benefit payable to the member's beneficiary under subsections (o-1) or (o-2) of this § 9 or will be paid to the member's beneficiary if the beneficiary is entitled to receive a lump sum death benefit under subsections (o-1) or (o-2) of this § 9.

(8) *Transitional rules*.

(A) For members who terminated employment on or after July 1, 1987, and on or before June 28, 1989, paragraph (1)(B) of this subsection (m) shall be read by substituting "5%" for "40%".

(B) For members who terminated employment on or before June 30, 1987, paragraph (1) of this subsection (m) shall be read by deleting subparagraph (B) and substituting the following:

"(B) Other than a return of accumulated contributions or purchases of service that resulted in no benefit, no death benefit is payable to the beneficiaries, next of kin, or the estate of any Class C member who dies after electing to receive maximum benefits without actuarial modification."

(C) Beginning April 1, 2001, for members who terminated employment on or after July 1, 1987, and on or before June 28, 1989, and who selected maximum benefits, their beneficiaries are entitled to the 40% survivorship benefits provided in paragraph (1)(b) of this subsection (m), as long as the retired member is receiving retirement benefits at April 1, 2001.

(D) Beginning April 1, 2001, for members who terminated employment on or before June 30, 1987, and who selected maximum benefits, their beneficiaries are entitled to the 40% survivorship benefits provided in paragraph (1)(b) of this subsection (m), as long as the retired member is receiving retirement benefits at April 1, 2001.

(n) *Reemployment*.

(1) *Reemployment following retirement.*

Any Class C member retired on or after July 1, 1979, and who is subsequently reemployed by the City, shall cease to receive any retirement benefits except as provided for in §§ 9(i), 9(j), and 9(k) and shall again immediately become a Class C member of the Retirement System. Any previous service credit on the basis of which the member's service was computed at the time of retirement shall be restored to full force and effect; and in addition, upon the member's subsequent retirement, he shall be credited with all his service as a member.

(2) *Reemployment following termination of previous employment.*

On or after July 1, 1979, a Class C member who has terminated employment with the City for more than 30 consecutive days and who is subsequently reemployed by the City before the expiration of a period of time equal to the parity time period as provided for in § 1(28), shall again, on the 1st day following his completion of 12 consecutive months of employment, become a Class C member of the Retirement System. Upon again becoming a Class C member, any previous service credit such member had, shall be restored to full force and effect.

Any Class A or Class B member whose employment with the City was terminated for more than 30 consecutive days and who is subsequently reemployed by the City on or after July 1, 1979, and before the expiration of a period of time equal to the parity time period as provided in § 1(28), shall, on the 1st day following his completion of 12 consecutive months of employment, become a Class C member of the Retirement System. Upon becoming a Class C member, any previous service credit such member had, shall be restored to full force and effect; and in addition, he shall receive service credit for all employment for which he would have been eligible to receive service credit on the date of reemployment whether by purchase or repurchase, or by transfer of the applicable funds, had he continued his previous City employment and his Class A or Class B membership.

(o-1) *Non-line-of-duty death benefits.*

(1) *Scope of subsection.*

This subsection (o-1) applies to a member who dies while actively employed, but whose death does not qualify under subsection (o-2) as a line-of-duty death benefit.

(2) *Lump-sum death benefit.*

(i) 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:

A. the member had acquired 1 or more years of service; and

B. no benefits are paid under paragraph (3) of this subsection.

(ii) The lump-sum amount shall consist of:

A. any accumulated contributions of the deceased member; and

B. 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.

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

A. to the member's designated beneficiary;

B. if there is no designated beneficiary or if the designated beneficiary predeceases the member, to the member's surviving spouse;

C. if there is no designated beneficiary and no surviving spouse, to the member's children, in equal shares;

D. if there is no designated beneficiary, surviving spouse, or surviving child, to the member's surviving parents, in equal shares; and

E. otherwise, to the member's estate.

(3) *100% survivorship death benefit.*

(i) If the member would have been eligible for a normal service or early service retirement not later than 90 days after the date of the member's death and a proper application is filed under subparagraph (v) of this paragraph (3), then 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 (m)(2)(C)(i)1. of this section had the member elected that survivorship benefit in favor of that beneficiary and retired as of the date of death.

(ii) The benefit shall be paid:

A. 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 5 years immediately before the date of the member's death; or

2. one of the member's surviving parents; or

B. 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 5 years immediately before the date of the member's death.

(iii) 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.

(iv) The benefit provided by this paragraph (3) is in place of all benefits provided under this subsection (o-1).

(v) 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) *40% survivorship death benefit*.

(i) Beginning April 1, 2001, if the member had at least 20 years of service as of the date of his or her death, without regard to whether the member was eligible for a service retirement benefit on the date of the member's death, and if a proper application is filed under subparagraph (vii) of this paragraph (4), the Board of Trustees shall pay a retirement benefit equal to 40% of the member's accrued maximum service retirement benefit based on the number of years of service credit as of the member's date of death and as if the member had attained age 65 as of the date of his or her death. The reduction contained in § 9(f)(2) does not apply.

(ii) This benefit shall be paid:

A. 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 unmarried minor children, to be paid to each child, in equal shares, until that child marries or is no longer a minor, as defined in §47(h) of this article; or

B. 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; or

C. if there is no qualifying surviving spouse under subparagraph A or B, or if the surviving spouse dies or remarries, then to the member's unmarried minor children, to be paid to each child in equal shares, until that child marries or is no longer a minor, as defined in §47(h) of this article.

(iii) For purposes of this paragraph (4), "surviving spouse" means a spouse to whom the member was married for at least 1 year immediately before the date of the member's death.

(iv) For purposes of this paragraph (4), when a member's child marries or is no longer a minor and, consequently, ceases to receive benefits under this paragraph (4), each remaining unmarried minor child will 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 marries or is no longer a minor.

(v) 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.

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

(vii) 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 notification of this benefit is provided to the spouse or minor children after the death of the member.

(viii) Any death benefits paid by this System and received by the beneficiary of a member under paragraphs (2) or (3) of this subsection shall be offset against any death benefits payable under this paragraph (4).

(ix) For purposes of this paragraph, the deceased member's first year of employment:

(A) shall be included in figuring the minimum 20 years of service credit needed to be eligible to receive this death benefit; but

(B) may not be counted as service credit for purpose of calculating the amount of the death benefit, unless purchased as service credit in accordance with § 9(c)(5) of this article.

(5) *Death without beneficiaries or estate*.

The amounts that would have been paid under this subsection (o-1), excluding membership contribution accounts, with interest, forever remain assets of the System if:

(i) a member dies without designating a beneficiary;

(ii) that member has no heirs, as enumerated in paragraphs 2(iii), 3(ii), 3(iii), and 4(ii) of this subsection (o-1); and

(iii) no estate for that member is opened within 2 years of the member's death.

(6) *Death of retired member within 30 days of retirement.*

(i) *Scope of paragraph.*

Except as specified in subparagraph (B), this paragraph applies to:

A. a retired member who:

1. has been granted a service or disability retirement allowance; and

2. dies within 30 days of his or her retirement date; or

B. a retired member who:

1. retires before reaching age 65;

2. when applying for retirement, elects to postpone receipt of his or her retirement allowance until age 65; and

3. dies within 30 days after reaching age 65.

(ii) *Exception.*

This paragraph does not apply to a former member who terminates employment before reaching age 65 without immediate entitlement to retirement benefits.

(iii) *Death deemed to be during active service.*

A retired member or vested former member described in subparagraph (i) of this paragraph (6) is deemed to have died while still employed by the City and, instead of any other service or disability benefits under this System , a non-line-of-duty death benefit will be paid as if he or she died during active service.

(iv) *Offset of payments received.*

Any pension benefits paid by this System and received by the retired member or former member before he or she died shall be offset against the death benefits payable under this paragraph.

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

(1) *Scope of subparagraph.*

This subsection applies only to an individual:

(i) who dies while a member of this System; and

(ii) whose death has been determined by a hearing examiner to:

A. be the direct result of bodily injury through accidental means, independent of other causes and any preexisting physical or medical conditions, job related or otherwise;

B. have occurred while in the course of actual performance of duty; and

C. have occurred without willful negligence on the part of the member.

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

(i) 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:

A. any accumulated contributions of the deceased member to:

1. 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

B. a pension of 100% of the member's current compensation to:

1. the member's surviving spouse, to continue for life or until remarriage provided the member has not designated his children as his beneficiaries;

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, provided:

i. there is no surviving spouse on the date of the member's death;

ii. the surviving spouse has died or remarried after having received benefits payments under paragraph (2)(i)(B) of this subsection (o-2); or

iii. the member designated his children as his beneficiaries; or

3. the member's surviving parents in equal shares, to continue for life, provided:

i. there is no surviving spouse on the date of the member's death;

ii. the member has not designated his children as his beneficiaries; and

iii. the member has no minor children at the date of his death.

(ii) 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.

(iii) 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.

(iv) If any benefits are paid to either the member's surviving spouse or minor children under paragraph (2)(i)(B) of this subsection (o-2), the member's surviving parents will be disqualified from ever receiving benefits under paragraph (2)(i)(B).

(v) If there is no beneficiary who qualifies for a line-of-duty death benefit under this subsection (o-2), a non-line-of-duty death benefit may be paid under either subsections (o-1)(2) or (o-1)(3) of this § 9 if the member's beneficiary is eligible for a non-line-of-duty death benefit pursuant to the provisions of those subsections.

(3) *Death without beneficiaries or estate.*

The amounts that would have been paid under this subsection (o-2), excluding membership contribution accounts, with interest, forever remain assets of the System if:

(i) a member dies without designating a beneficiary;

(ii) that member has no heirs, as enumerated in paragraphs 2(i)(A) and 2(i)(B) of this subsection (o-2); and

(iii) no estate for that member is opened within 2 years of the member's death.

(4) *Minimum line-of-duty death pension benefit at June 30, 1994.*

(i) This paragraph (4) applies to those beneficiaries who, as of June 30, 1994, are receiving a line-of-duty death benefit in accordance with this subsection (o-2) and whose total benefit on June 30, 1994, amounts to less than $10,000 annually.

(ii) Line-of-duty death benefits for beneficiaries described in subparagraph (i) of this paragraph (4) shall be increased to no less than the lower of:

A. an annual benefit of $10,000; or

B. 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.

(iii) 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.

(iv) For purposes of this paragraph (4), the pension benefit includes any post-retirement benefit increases paid as of June 30, 1994.

(v) 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 § 17 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.

(vi) 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 (4).

(o-3) *Workers' Compensation benefits offset against benefits paid on or before March 31, 2001.*

Effective with the date beginning 5 years prior to the date of death of the member, the full amount of any past or future benefit or payment that may be paid or payable by the City of Baltimore under any Workers' Compensation or similar law for any permanent disability, whether partial or total, or for death shall be offset against and payable in lieu of any disability, dismemberment, or death benefits payable on or before March 31, 2001, out of funds provided by the City under this subtitle. The benefits under the Workers' Compensation or similar law shall be offset dollar-for-dollar, pro tanto, from the benefits otherwise payable from funds provided by the City under this subtitle, and the benefits so reduced shall be payable under this subtitle.

(o-4) *Workers' Compensation benefits offset against disability and death benefits paid on or after April 1, 2001.*

(1) *Scope of subsection.*

This subsection applies to a member or beneficiaries of a member:

(i) the payment of whose retirement benefit commences on or after April 1, 2001, either:

A. on account of a non-line-of-duty disability under subsection (i),

B. On account of a line-of-duty disability under subsection (j), or

C. on account of a dismemberment disability under subsection (k); or

(ii) who dies on or after April 1, 2001, and is awarded either:

A. a non-line-of-duty death benefit under subsection (o-1), or

B. a line-of-duty death benefit under subsection (o-2).

(2) *Offset for Workers' Compensation payments*.

The Board of Trustees shall offset the amount of a member's Workers' Compensation award paid or payable by the City against any disability or death benefits paid or payable by the System to a member or a member's beneficiaries, if:

(i) the member or any beneficiary of a member was awarded Workers' Compensation benefits under the State's Workers' Compensation Law to be paid or payable by the City;

(ii) the Workers' Compensation award was for permanent partial or permanent total disability or for death;

(iii) the Workers' Compensation award was awarded on account of the same disability or death that resulted in the System's payment of disability or death benefits; and

(iv) the Workers' Compensation award was awarded by the Workers' Compensation Commission no more than 5 years before:

A. the effective date of the member's retirement on account of non-line-of-duty disability,

B. the date of the accident qualifying the member for line-of-duty disability or dismemberment benefits, or

C. the date of the member's death qualifying the member's beneficiaries to receive a System death benefit.

(3) *Amounts not included in offset*.

The amount of Workers' Compensation benefits to be offset does not include amounts allocated for the payment of legal fees, medical expenses, or other payments authorized by the Workers' Compensation Commission to be made directly to third parties and not to the member or the member's beneficiary.

(4) *Method of offset*.

(i) *Non-actuarial method for lump-sum payments*.

A. The Board of Trustees shall offset the amount of a member's Workers' Compensation award, reduced by the amounts described in paragraph (3), against any lump-sum disability, dismemberment, or death benefits paid or payable by the System to a member or a member's beneficiaries in the following manner.

B. The offset shall be made on a non-actuarial, dollar-for-dollar basis against any lump-sum benefit until the total amount of the Workers' Compensation benefits has been recovered.

C. If the amount of the Workers' Compensation benefits exceeds the lump-sum disability, dismemberment, or death benefit, then no disability, dismemberment, or death benefit may be paid, except for the return of the member's accumulated contributions, if any.

(ii) *Actuarial method for periodic payments*.

A. The Board of Trustees shall offset the amount of a member's Workers' Compensation award, reduced by the amounts described in paragraph (3), against any periodic disability, dismemberment, or death benefits paid or payable by the System to a member or a member's beneficiaries in the following manner.

B. This offset shall be calculated on an actuarial basis by annuitizing the member's Workers' Compensation award, reduced by the amounts described in paragraph (3), and reducing the member's periodic disability, dismemberment, or death benefit by the annuitized amount until the total amount of the Workers' Compensation benefits have been recovered.

C. The actuarial amount shall be calculated using an actuarial method and appropriate annuity factors recommended by the System's actuary and approved by the Board of Trustees.

D. If the annuitized amount of the Workers' Compensation benefits exceeds the System's periodic disability, dismemberment, or death benefit payment, then no disability, dismemberment, or death benefit may be paid, except for the return of the member's accumulated contributions, if any.

(5) *Restoration of offset amount against retirement benefits*.

(i) On recovering the full amount of the member's Workers' Compensation benefits, the reduced disability, dismemberment, or death benefits payable to the member or the member's beneficiaries shall be restored to the unreduced amount of the disability, dismemberment, or death benefits payable to the member or beneficiaries prior to the offset for Workers' Compensation.

(ii) The amount by which a reduced disability, dismemberment, or death benefit is restored under subparagraph (i) does not include any post-retirement increases that the member or the member's beneficiaries would have been eligible to receive had the member's disability, dismemberment, or death benefits not been reduced.

(6) *Transitional rule for those receiving reduced benefits prior to April 1, 2001*.

(i) The Board of Trustees shall implement the method of offset described in paragraph (4) of this subsection (o-4) for any member or beneficiary of a member:

A. whose disability, dismemberment, or death benefits were reduced by Workers' Compensation benefits on or before March 31, 2001; and

B. whose Workers' Compensation benefits were not fully recovered as of April 1, 2001.

(ii) For members or beneficiaries whose disability, dismemberment, or death benefits have been offset on account of Workers' Compensation benefits on or before March 31, 2001, and whose Workers' Compensation benefits are found to have been recovered under the method described in paragraph (4), all Workers' Compensation offsets shall be terminated.

(p) *Panel of hearing examiners.*

(1) *Panel established.*

There is a panel of hearing examiners, to be composed of persons with a demonstrated knowledge and competence in disability claims evaluation.

(2) *Appointment of panel members.*

(i) The hearing examiners shall be appointed on a contract basis by the Board of Estimates.

(ii) The Board of Estimates may determine, in its sole discretion:

(A) the number and composition of the panel; and

(B) the fees and other conditions of the hearing examiners' contracts.

(iii) Whenever a vacancy occurs on the panel, the Board of Trustees has the right to submit to the Board of Estimates a list of recommended candidates to fill the vacancy.

(iv) In all events, however, the Board of Estimates may make its selection of hearing examiners without regard to the Board of Trustees' recommendations.

(3) *Compensation of panel members; expenses.*

The compensation of the panel members, 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.

(4) *Claims for disability benefit – Applications.*

(i) *Application to Board*

A person who seeks a non-line-of-duty disability benefit, a line-of-duty disability benefit, or a dismemberment disability benefit must first apply to the Board of Trustees.

(ii) *Required contents* .

The application must include, in the form that the Board prescribes:

(A) a medical certification of disability;

(B) all supporting medical documentation;

(C) a consent form that authorizes the Board to obtain all medical records pertaining to any accidents or illnesses that the member might have suffered at any time in the past; and

(D) a statement in which the member:

1. states that he or she has suffered a disability;

2. states that the disability prevents him or her from further performance of the duties of his or her job classification;

3. states that the incapacity is likely to be permanent; and

4. states, in the manner and detail that the Board requires, the relevant facts and circumstances under which the member claims to be eligible for the applicable benefit.

(5) *Claims for disability benefits – Medical examination.*

(i) *Board to refer.*

On receipt of a completed application and required supporting documentation, the Board of Trustees shall have the member medically examined by a physician selected by the Board.

(ii) *Scope of examination.*

The examination shall include whatever tests and additional examinations the physician finds necessary or appropriate.

(iii) Upon completion of the examination, the physician shall submit a written report to the Board of Trustees.

(6) *Claims for line-of-duty death benefits.*

(i) *Application to Board*

A person who seeks a line-of-duty death benefit, must first apply to the Board of Trustees.

(ii) *Required contents* .

The application must include, in the form that the Board prescribes:

(A) a consent form that authorizes the Board to obtain all medical records pertaining to the member's death and to any accidents or illnesses that the member might have suffered at any time in the past; and

(B) a statement in which the claimant:

1. states that the member suffered a line-of-duty death; and

2. describes, in the manner and detail that the Board requires, the relevant facts and circumstances under which the member's death occurred.

(7) *Hearings – In general.*

A hearing examiner shall conduct hearings on all matters involving non-line-of-duty disability claims, dismemberment disability claims, line-of-duty disability claims, line-of-duty death benefit claims, and any related matters arising out of these claims.

(8) *Hearings - Nature and conduct.*

(i) Each hearing is in the nature of an adversary proceeding.

(ii) 1 hearing examiner from the panel shall hear a particular claim for benefits.

(iii) The hearing examiner shall conduct the hearing:

(A) in an informal manner;

(B) with sufficient latitude to provide a fair and impartial hearing to all of the parties; and

(C) without requiring strict compliance with the rules of evidence.

(iv) Testimony at the hearing shall be under oath and recorded.

(v) 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) *Hearings - Counsel.*

At the hearing:

(i) the Board of Trustees shall be represented by an attorney from the City Solicitor's Office or from the System's Office of Legal Affairs; and

(ii) the member has the right to counsel of his or her own choosing.

(10) *Hearings - Burden of proof.*

(i) *Disability benefit*.

At the hearing on a claim for a disability benefit, the member has the burden of proving, by a preponderance of the evidence:

(A) the nature and extent of her or his disability;

(B) that the disability prevents her or him from the further performance of the duties of her or his job classification in the employ of Baltimore City; and

(C) that, under the relevant facts and circumstances, she or he otherwise meets all of the eligibility requirements set by law for the applicable benefit.

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

At the hearing on a claim for a line-of-duty death benefit, the applicant has the burden of proving, by a preponderance of the evidence:

(A) that the member's death occurred under facts and circumstances required by law to be eligible for the benefit; and

(B) that the applicant otherwise meets all of other eligibility requirements set by law for the benefit.

(11) *Hearings - Examiner's determination.*

(i) The hearing examiner shall:

(A) make the determinations specified in this paragraph (11); and

(B) issue written findings of fact that set forth the reasons for his or her determination.

(ii) If the claim is for a non-line-of-duty disability benefit, the hearing examiner shall determine:

(A) generally, whether the member's disability qualifies under § 6(c), § 9(j), or § 22(b) of this article, as applicable; and

(A) specifically, 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.

(iii) If the claim is for a dismemberment disability benefit, the hearing examiner shall determine:

(A) generally, whether the member's disability qualifies under § 9(k) of this article, and

(B) specifically, whether the member's scheduled loss is, independent of all other causes, the direct result of bodily injury arising through an accident that occurred:

1. within 180 days of the date the scheduled loss was sustained;

2. within 5 years of the date of the member's application;

3. while in the actual performance of duty at some definite time and place; and

4. without willful negligence on the member's part.

(iv) If the claim is for line-of-duty disability benefits, the hearing examine shall determine:

(A) generally, whether the member's disability qualifies under § 9(j) of this article, and

(B) specifically, whether the member's disability is, independent of any preexisting physical or medical condition, whether job-related or otherwise, the direct result of a bodily injury arising through an accident that occurred:

1. within 5 years of the date of the member's application;

2. while in the actual performance of duty at some definite time and place; and

3. without willful negligence on the member's part.

(v) If the claim is for line-of-duty death benefits, the hearing examiner shall determine:

(A) generally, whether the member's death qualifies under § 9(o-2) of this article, and

(B) specifically, whether:

1. the member's death was, independent of all other causes and independent of any preexisting physical or medical condition, whether job-related or otherwise, the direct result of bodily injury through accidental means;

2. the accident occurred while in the actual performance of duty; and

3. the member's death was not caused by the member's willful negligence.

(vi) If the claim is by a Class A member or by a member of the Elected Officials' Retirement System for a line-of-duty disability benefit, the hearing examiner shall determine:

(A) generally, whether the member's disability qualifies under § 6(e) or § 22(c) of this article, as applicable; and

(B) specifically, whether:

1. the mental or physical incapacity is the natural and proximate result of an accident;

2. the accident occurred while in the actual performance of duty at some definite time and place; and

3. the accident was without willful negligence on the member's part.

(vii) If the claim is for a Class A line-of-duty death benefit, the hearing examiner shall determine:

(A) generally, whether the member's death qualifies under the §6(i) of this article; and

(B) specifically, whether the member's death:

1. was the direct result of injuries sustained in the line of duty or was directly attributable to the inherent hazards of the duties performed by the member; and

2. was not caused by the member's willful negligence.

(viii) If the claim is for an Elected Officials' Retirement System line-of-duty death benefit, the hearing officer shall determine:

(A) generally, whether the member's disability qualifies under §22(g) of this article; and

(B) specifically, whether the member's death occurred:

1. from the natural and proximate result of the actual performance of duty; and

2. without willful negligence on the member's part.

(12) *Judicial and appellate review.*

(i) If either party to the hearing is aggrieved by the hearing examiner's determination, that party may seek judicial review of that determination by petition to the Circuit Court for Baltimore City.

(ii) The review shall be sought and heard as provided in the Maryland Rules of Procedure, except that the review shall be heard on the record only, on a right-of-way basis.

(iii) The determination of the hearing examiner is presumptively correct and may not be disturbed on review unless it is arbitrary, illegal, capricious, or discriminatory.

(iv) 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.

(v) Judicial review under this paragraph (12) 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.

(13) *Finality of decision.*

If neither party seeks judicial review within 30 days after mailing of the hearing examiner's written finding of fact, the hearing examiner's determination is final and binding.

(q) *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 in Internal Revenue Code § 415 and the regulations adopted under it.

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

(1) Distributions under this subtitle shall be made in accordance with a reasonable good faith interpretation of Internal Revenue Code § 401(a)(9), as applicable to this System. This subsection is intended to comply with a reasonable good faith interpretation of Internal Revenue Code § 401(a)(9) to the extent applicable to this System, and may not be interpreted to impose any requirements on this System or on any member or beneficiary of this System beyond those required to comply with a reasonable good faith interpretation of § 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 designated 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 designated 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 had been paid to a surviving spouse if that amount is paid to the surviving spouse when that child reaches the age of majority.

(s) *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).

(t) *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.

(iii) 1. A portion of a distribution does not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax employee contributions that are not includible in gross income.

2. However, the portion may be transferred only to:

i. an individual retirement account or annuity described in Internal Revenue Code § 408(a) or (b);

ii. for taxable years beginning after December 31, 2001, and before January 1, 2007, to a qualified trust that is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

iii. for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Internal Revenue Code § 403(B), if the trust or contract provides for separate accounting for amounts so transferred (including interest on those amounts), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(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 annuity contract described in Internal Revenue Code § 403(b);

(vi) an eligible plan described in Internal Revenue Code § 457(b), if it is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and it agrees to separately account for amounts transferred into that plan from this System; or

(vii) for distributions made on or after January 1, 2008, a Roth IRA described in Internal Revenue Code § 408A, subject to the restrictions that apply to rollovers to a Roth IRA.

(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.

(iii) Effective July 1, 2010, a "distributee" also includes the employee's or former employee's nonspouse designated beneficiary. In the case of a nonspouse beneficiary,

the direct rollover may be made only to an individual retirement account or annuity described in Internal Revenue Code § 408(a) or (B) ("IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA under § 402(c)(11).

(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.

(u) *Vesting on System termination.*

Notwithstanding any other provision of this subtitle, on the effective date of a termination or partial termination of this System, as determined under applicable Internal Revenue Service regulations and rulings, all affected members who are not already vested in their accrued benefits become immediately vested in those benefits, to the extent the benefits are funded.

(City Code, 1976/83, art. 22, §9.)
(Ord. 79-1055; Ord. 81-552; Ord. 84-114; Ord. 85-494; Ord. 85-504; Ord. 86-663; Ord. 786-067; Ord. 87-988; Ord. 87-1152; Ord. 87-1156; Ord. 88-005; Ord. 89-275; Ord. 90-557; Ord. 91-725; Ord. 91-777; Ord. 91-829; Ord. 92-086; Ord. 93-163; Ord. 93-250; Ord. 93-263; Ord. 95-525; Ord. 95-632; Ord. 96-006; Ord. 96-051; Ord. 97-168; Ord. 98-290A; Ord. 99-587; Ord. 01-189; Ord. 04-672; Ord. 04-822; Ord. 05-173; Ord. 07-422; Ord. 07-584; Ord. 11-520; Ord. 12-043; Ord. 13-144; Ord. 13-191.)

§ 9.1. Election between plans.

(a) *Definitions.*

(1) *In general.*

In this section, the following terms have the meanings indicated.

(2) *Class D member.*

"Class D member" means a Class D member of this System, as described in § 9.2 {"Class D membership"} of this subtitle.

(3) *Hybrid member.*

"Hybrid member" has the meaning stated in City Code Article 22A {"Retirement Savings Plan"}, § 1-1 {"Definitions"}.

(4) *Non-hybrid member.*

"Non-hybrid member" has the meaning stated in City Code Article 22A {"Retirement Savings Plan"}, § 1-1 {"Definitions"}.

(5) *Retirement Savings Plan.*

"Retirement Savings Plan" means the Retirement Savings Plan of the City of Baltimore, as established by City Code Article 22A {"Retirement Savings Plan"}.

(b) *Employee to elect Plan.*

(1) An employee who, on or after July 1, 2014, is initially employed or is reemployed under § 9.2(l)(2)(ii) of this article must, within 150 days after the date on which his or her employment or reemployment began, file a plan-election form with the Board of Trustees of the Retirement Savings Plan.

(2) The form shall indicate whether the member elects to become:

(i) both a Class D member of this System and a hybrid member of the Retirement Savings Plan; or

(ii) a non-hybrid member of the Retirement Savings Plan.

(3) During this 150-day period, the member may file a new form to modify or revoke any previous election. However, the final election becomes effective and irrevocable on the 150th day after the date of employment or reemployment.

(4) If a member does not make a written election within 150 days, the member will automatically become both a Class D member of this System and a hybrid member of the Retirement Savings Plan.

(Ord. 14-216.)

§ 9.2. Class D membership.

(a) *Definitions; General provisions.*

(1) *Definitions.*

(i) *In general.*

In this section, the following terms have the meanings indicated.

(ii) *hybrid member; non-hybrid member; Retirement Savings Plan .*

"Hybrid member", "non-hybrid member", and "Retirement Savings Plan" have the meanings stated in City Code Article 22A {"Retirement Savings Plan"}, § 1-1 {"Definitions"}.

(iii) *Other City retirement plan.*

"Other City retirement plan" means:

(A) the Fire and Police Employees' Retirement System of the City of Baltimore;

(B) the Elected Officials' Retirement System of the City of Baltimore; or

(C) the Retirement Savings Plan of the City of Baltimore.

(2) *Commencement of membership.*

An employee who, under § 9.1 of this subtitle, elects to become a Class D member of this System, will become a Class D member on the 1st annual anniversary of the date on which her or his employment or reemployment, as the case may be, began.

(3) *Non-participation in other City plans – General.*

(i) Except as otherwise provided in subparagraph (ii) of this paragraph or in paragraph (4) of this subsection, a Class D member may not make contributions to, receive any pension or retirement income from, or accrue any service credit in any other City retirement plan while at the same time accruing service credit in this System.

(ii) Subparagraph (i) of this paragraph does not apply to contributions made to or benefits received from the Retirement Savings Plan by a hybrid member of that Plan.

(4) *Non-participation in other City plans – Exception.*

Notwithstanding paragraph (3) of this subsection, and pursuant to § 48 of this article, the following may become Class D members of this System and accrue service credit in this System while an employee covered by this System:

(i) members of another City retirement plan who were eligible to begin receiving retirement benefits from that other plan but postponed receipt of those benefits after transferring to a position covered by this System; or

(ii) retirees who were receiving retirement benefits from another City retirement plan but suspended receipt of those benefits after reemployment in a position covered by this System.

(b) *Forms.*

A Class D member shall execute the form or forms and provide the supporting evidence that may be required from time to time, and must answer truthfully all questions pertinent to administration of this System.

(c) *Class D service credit.*

(1) *In general.*

All service in a fiscal year after the date of becoming a Class D member shall be credited as provided in this subsection.

(2) *Job requiring more than 1,000 hours per year.*

(i) A Class D member who is employed by the City in a job classification that requires more than 1,000 hours of work in a fiscal year shall receive credit for 1 year of service.

(ii) If, however, during the 1st or final fiscal year of the member's service, the member was not in pay status for every payroll period in the fiscal year, or for any other fiscal year in which the member was out of pay status for 7 or more bi-weekly payroll periods (or an equivalent number of weekly or monthly payroll periods), service for that fiscal year shall be credited pro rata, calculated as follows:

(A) 1 year's service credit, multiplied by

(B) a fraction, the numerator of which is the number of payroll periods in the fiscal year that the member was in pay status, and the denominator of which is the total number of payroll periods in the fiscal year for the member's job classification.

(3) *Job requiring 500-1,000 hours per year.*

(i) A Class D member who is employed by the City in a job classification that requires not less than 500 nor more than 1,000 hours of work in a fiscal year shall receive credit for ½ year of service.

(ii) If, however, during the 1st or final fiscal year of a member's service, the member was not in pay status for every payroll period in the fiscal year, or for any other fiscal year in which the member was out of pay status for 7 or more bi-weekly payroll periods (or an equivalent number of weekly or monthly payroll periods), service for that fiscal year shall be credited pro rata, calculated as follows:

(A) ½ year's service credit, multiplied by

(B) a fraction, the numerator of which is the number of payroll periods in the fiscal year that the member was in pay status, and the denominator of which is the total number of payroll periods in the fiscal year for the member's job classification.

(4) *Job requiring less than 500 hours per year.*

A Class D member who is employed by the City in a job classification that requires less than 500 hours of work in a fiscal year is not eligible to receive any service credit for that employment. However, the member will be considered an active Class D member.

(5) *Pay based on less than 12-month basis.*

The service of a Class D member who is paid on other than a uniform, 12-month basis (e.g., a 10-month employee of the Baltimore City Public School System) may not be pro rated under this subsection because of the member's being out of pay status during the period that the member ordinarily would not be paid.

(6) *Additional opportunity to purchase credit for service with City.*

(i) A Class D member is entitled to purchase service credit for any City employment, regardless of retirement plan membership, as long as:

(A) the employment did not result in the member's being entitled to any current or future benefits for that employment in any other City retirement plan; and

(B) the Class D member pays to the Employees' Retirement System, by a single payment, an amount equal to:

1. the current salary of the employee in the year of purchase, multiplied by

2. the sum of the employer rate for the normal cost and the employee contribution rate, computed under § 8(d)(1) of this subtitle for the year of purchase, multiplied by

3. the number of years or part of a year being purchased.

(ii) In addition, a class D member is entitled to purchase service credit for the member's 1st year of service with the City under the same conditions as provided in subparagraph (i)(B) of this paragraph.

(iii) If a member purchases service credit under this paragraph and later dies or leaves City employment for any reason, with or without any vested benefit due to the member or the member's beneficiary under this subtitle, the member or the beneficiary is entitled to receive, in lieu of any other benefit under this System, a lump-sum cash payment equal to the total amount paid by the member for the purchase, plus interest at the rate equal to regular interest (as defined in § 1(9)(i)(B) of this subtitle).

(d) *Military personnel – Credit for military service during City employment.*

(1) *"Military service" defined.*

(i) In this subsection, "military service" means any:

(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 Pension Article § 38-101(d).

(ii) "Military service" includes 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.

(2) *Scope of subsection.*

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

(i) on account of military service, is on leave of absence from City employment;

(ii) is eligible for reemployment with the City under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, 38 U.S.C. §§ 4301-4344 ("USERRA");

(iii) is reemployed by the City as an employee; and

(iv) applies for service credit with this System.

(3) *Service credit.*

(i) A member of this System shall receive service credit for the period of absence while in military service as though he or she remained continuously employed as an employee.

(ii) To the extent required under USERRA, this service credit shall include the period, if any, between the date the member completes military service and the date of reemployment.

(4) *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 within Maryland.

(5) *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.

(6) *Member contributions.*

(i) Except as otherwise provided in subparagraph (ii) of this paragraph, a member of this System who is reemployed under paragraph (2) of this subsection shall be credited with, at the City's sole expense, the contributions that the member otherwise would have made under § 8(d)(2) had the member not been absent, plus regular interest (as defined in § 1(9)(i)(B) of this subtitle) on those contributions.

(ii) (A) If a member terminates City employment, other than by reason of death, before becoming eligible for a retirement benefit or for a deferred vested pension benefit under this section, the member is not entitled to receive any part of the contributions made on his or her behalf under subparagraph (i) of this paragraph.

(B) However, the contributions made on behalf of a member will be used to fund a retirement benefit or a deferred vested pension benefit payable to the member under this section.

(C) In addition, the contributions made on behalf of a member:

1. will be used to fund a periodic death benefit payable to the member's beneficiary under this section; or

2. if the member's beneficiary is entitled to receive a lump-sum death benefit under this section, will be paid to the beneficiary.

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

(e) *Military personnel – Credit for military service before City employment.*

(1) Subject to paragraph (2) of this subsection, but notwithstanding any other provision of this subtitle, on proper application to this System, up to 3 years of credit shall be granted for military service, as defined in subsection (d) of this section, to any Class D member who:

(i) has served in the military prior to employment with the City; and

(ii) has either:

(A) acquired at least 10 years of service (disregarding this military service credit) and attained age 62; or

(B) acquired at least 20 years of service (disregarding this military service credit), regardless of age.

(2) (i) Except as provided in subparagraph (ii) of the paragraph, the member may not receive credit for a period of military service if, under any other retirement system (whether a City retirement plan or otherwise), the member has received credit for the same period of military service for which retirement benefits have been or will be received by him or her.

(ii) Subparagraph (i) of this paragraph does not apply to:

(A) any credit for military service provided by the federal Social Security System; or

(B) any benefit provided under Title 10, Chapter 1223, § 12731 through § 12741 of the U.S. Code.

(f) *Service retirement benefits – Application and filing period.*

A Class D member in service may retire under subsection (g) of this section if:

(1) the member files the appropriate application with the Board of Trustees, in the form and containing the information that the Board requires;

(2) the member specifies on the form the date on which the member desires his or her benefits to commence;

(3) the date so specified is not less than 30 days nor more than 90 days after the date of filing the application; and

(4) as of the date so specified, the member will have complied with the applicable conditions of the retirement benefit applied for.

(g) *Service retirement – Types and conditions.*

(1) *Normal retirement.*

(i) A Class D member who retires at or after age 65 with at least 5 years of service or who, regardless of age, retires with at least 30 years of service is entitled to receive, commencing on the 1st day of the month immediately following his or her retirement, a normal retirement benefit, calculated as provided in subparagraph (ii) of this paragraph.

(ii) Except for a Class D member for whom an enhanced benefit is provided under paragraph (4) of this subsection, the normal retirement benefit is equal to 1.0% of the member's average final compensation, multiplied by his or her years of service (and fractions of those years of service).

(iii) Every 5 years, the Board of Trustees shall:

(A) reassess the percentage multiplier used to compute the normal retirement benefit; and

(B) report to the Mayor and the City Council its findings and recommendations.

(2) *Early retirement.*

(i) A Class D member who terminates City employment on or after attaining age 55 with at least 5 years of service is entitled to receive an early retirement benefit, calculated as provided in paragraph (1)(ii) of this subsection based on the member's average final compensation and years of service (and fractions of those years of service) as of the date the member terminated employment.

(ii) (A) If a member described in subparagraph (i) of this paragraph elects to have her or his early retirement benefit commence before the 1st day of the month immediately following her or his 65th birthday, the amount of the benefit shall be reduced, unless the member terminated employment with at least 30 years of service.

(B) the amount of the reduction shall be:

1. 1/180 for each of the first 60 months (or fraction of a month) by which commencement of the member's pension precedes the 1st day of the month immediately following her or his 65th birthday; and

2. 1/360 for each additional month (or fraction of a month) by which commencement of the member's pension precedes the 1st day of the month immediately following her or his 65th birthday.

(3) *Deferred vested pension.*

(i) This paragraph applies to any Class D member who terminates City employment:

(A) before attaining age 55 and after acquiring 10 years of service; or

(B) after attaining age 55 and acquiring 5 years of service, but without having elected an immediate early retirement benefit under paragraph (2)(ii) of this subsection.

(ii) A member described in subparagraph (i) of this paragraph is entitled to receive, commencing on the 1st day of the month immediately following his or her 65th birthday, a deferred vested pension benefit, calculated in accordance with the following rules:

(A) The pension shall be calculated as provided in paragraph (1)(ii) of this subsection based on the member's average final compensation and years of service (and fractions of years of service) as of the date the member terminated employment.

(B) The member may elect to have payment of this benefit commence at anytime after the member has attained age 55 and before the 1st day of the month immediately following the member's 65th birthday. If the member does so:

1. the benefit shall be actuarially reduced in accordance with the same rules applicable to early retirement benefits under paragraph (2)(ii) of this subsection; and

2. if the member dies before the deferred vested benefit commences, then no benefits are payable except for the return of the member's accumulated contributions, if any.

(4) *Enhanced benefit.*

(i) This paragraph applies to any Class D member who, at or after age 62 with at least 20 years of service:

(A) retires and is entitled to 1 of the following benefits, as otherwise applicable to that member:

1. a normal retirement benefit under paragraph (1) of this subsection;

2. an early retirement benefit under paragraph (2) of this subsection;

3. a deferred vested pension benefit under paragraph (3) of this subsection; or

4. a non-line-of-duty disability retirement benefit under subsection (h) of this section; or

(B) dies while actively employed and whose beneficiary is entitled to:

1. a 100% survivorship death benefit under subsection (m)(3) of this section; or

2. a 40% survivorship death benefit under subsection (m)(4) of this section.

(ii) For purposes of calculating the benefit to which the member or beneficiary described in subparagraph (i) of this paragraph is entitled, the percentage multiplier described in paragraph (1)(ii) of this subsection shall be 1.1% (instead of the 1.0% specified in that paragraph).

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

(1) *Eligibility requirements.*

A Class D member is entitled to retire 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 from the further performance of the duties of her or his City job classification; and

(B) the incapacity is likely to be permanent.

(2) *Application and filing deadline.*

To retire under this subsection, the member must:

(i) complete the appropriate application, in the form and containing the information required by subsection (p)(4) of this section; 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 non-line-of-duty disability retirement takes effect as follows:

(i) if the member applied for disability retirement before terminating City employment, the retirement is effective as of the 1st day of the month immediately following the member's last day of City employment; and

(ii) if the member applied for disability retirement after terminating City employment, the retirement is effective as of the 1st day of the month immediately following the 30th day after the date on which the Board received a completed application.

(4) *Benefit on retirement.*

On retirement, the Class D member is entitled to receive a pension equal to the greater of:

(i) the member's accrued service retirement benefit, as calculated under subsection (g)(1)(ii) or (4) of this section; or

(ii) 15% of the member's average final compensation.

(5) *Offsets for Workers' Compensation benefits.*

Workers' Compensation benefits shall be offset against non-line-of-duty disability benefits, in accordance with subsection (o) of this section.

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

(1) *Eligibility requirements.*

A Class D member is entitled to retire on a line-of-duty disability retirement if a hearing examiner determines that:

(i) the member is permanently incapacitated from the further performance of the duties of his or her City job classification due to 1 or more of the impairments listed in paragraph (5) of this subsection; and

(ii) the member's impairment:

(A) is, independent of all other causes and independent of any preexisting physical or medical conditions, whether job-related or otherwise, the direct result of bodily injury arising through an accident; and

(B) the accident occurred:

1. while the member was in the actual performance of his or her City duties at some definite time and place; and

2. without willful negligence on the member's part.

(2) *Application and filing deadline.*

To retire under this subsection, the member must:

(i) complete the appropriate application, in the form and containing the information required by subsection (p)(4) of this section; and

(ii) submit the application to the Board:

(A) no later than 1 year following the member's last day of City employment; and

(B) within 5 years of the date of the accident resulting in the member's impairment.

(3) *Effective date of retirement.*

A line-of-duty disability retirement takes effect as follows:

(i) if the member applied for disability retirement before terminating City employment, the retirement is effective as of the 1st day of the month immediately following the member's last day of city employment; and

(ii) if the member applied for disability retirement after terminating City employment, the retirement is effective as of the 1st day of the month immediately following the 30th day after the date on which the Board received a completed application.

(4) *Benefit on retirement.*

(i) On retirement, the Class D member is entitled to receive a pension equal to 66⅔% of the member's average final compensation.

(ii) If a Class D member is not eligible for line-of- duty disability benefits solely because the degree of impairment does not meet the conditions of paragraph (5) of this subsection, a non-line-of-duty disability benefit will be paid under subsection (h) of this section as long as the member qualifies for non-line-of-duty disability retirement under that subsection.

(5) *Disability loss requirements.*

(i) The award of a line-of-duty disability retirement benefit requires:

(A) a 50% anatomical loss of the use of any 1 impairment; or

(B) a 25% or more anatomical loss of each of 2 or more of the impairments listed in subparagraph (ii) of this paragraph.

(ii) The schedule of impairments is as follows:

1. speech

2. sight

3. neck

4. back

5. vital bodily organ

6. a part of the central nervous system

7. arm

8. leg

9. shoulder

10. hearing

11. mental incapacitation for which a member has been granted a disability benefit under the federal Social Security System.

(6) *Offsets for Workers' Compensation benefits.*

Workers' Compensation benefits shall be offset against line-of-duty disability benefits, in accordance with subsection (o) of this section.

(j) *Dismemberment disability retirement.*

(1) *Eligibility requirements.*

A Class D member is entitled to retire on a dismemberment disability retirement if a hearing examiner determines that:

(i) the member sustained any 1 of the losses listed in paragraph (5) of this subsection;

(ii) the member sustained the loss, independent of all other causes, as the direct result of bodily injury arising through an accident; and

(iii) the accident occurred:

(A) while the member was in the actual performance of his or her City duties at some definite time and place;

(B) without willful negligence on the member's part; and

(C) not more than 180 days before the date on which the loss was sustained.

(2) *Application and filing deadline.*

To retire under this subsection, the member must:

(i) complete the appropriate application, in the form and containing the information required by subsection (p)(4) of this section; and

(ii) submit the application to the Board:

(A) no later than 1 year following the member's last day of City employment; and

(B) within 5 years of the date of the accident resulting in the member's loss.

(3) *Effective date of retirement.*

A dismemberment disability retirement takes effect as follows:

(i) if the member applied for disability retirement before terminating City employment, the retirement is effective as of the 1st day of the month immediately following the member's last day of city employment; and

(ii) if the member applied for disability retirement after terminating City employment, the retirement is effective as of the 1st day of the month immediately following the 30th day after the date on which the Board received a completed application.

(4) *Benefit on retirement.*

On retirement, the Class D member is entitled to receive a pension equal to 100% of the member's average final compensation. In no event, however, will more than 100% of average final compensation be paid for all losses sustained by a member as the result of any one accident.

(5) *Schedule of losses.*

(i) *Losses specified.*

The schedule of losses is as follows:

1. both hands or both feet
2. 1 hand and 1 foot
3. 1 hand and sight of 1 eye
4. 1 foot and sight of 1 eye
5. sight of both eyes

(ii) *"Loss" defined.*

(A) With respect to hands or feet, "loss" means dismemberment by severance at or above the wrist or ankle joint.

(B) With respect to "sight of 1 eye", "loss" means central visual acuity of 20/200 or less in 1 eye with the use of correcting lenses, or visual acuity of greater than 20/200 if accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(C) With respect to "sight of both eyes", "loss" means central visual acuity of 20/200 or less in the better eye with the use of correcting lenses, or visual acuity greater than 20/200 if accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(6) *Offsets for Workers' Compensation benefits.*

Workers' Compensation benefits shall be offset against dismemberment disability benefits, in accordance with subsection (o) of this section.

(k) *Method of payment.*

(1) *Maximum retirement allowance.*

(i) A Class D member who is eligible to receive a retirement benefit under this subtitle is entitled to receive, without actuarial modification, the full benefit for which he or she is qualified, payable in periodic payments during the retired member's lifetime (the "maximum retirement allowance").

(ii) As of the 1st day of the month immediately after the death of a retired member who is receiving this maximum retirement allowance, the following beneficiaries are entitled to receive periodic payments in an amount equal to 40% of the periodic payment that the retired member was receiving at the time of his or her death:

(A) if the retired member is survived by a spouse to whom the retired member was married for at least 1 year immediately before the member's retirement date, the benefit shall be paid to the surviving spouse, to continue during the spouse's lifetime or until his or her remarriage; or

(B) if there is no qualifying surviving spouse or if the surviving spouse dies or remarries, then the benefit shall be paid to the retired member's minor children, in equal shares, to continue until the children are no longer minors, as defined in § 47(h) of this article.

(iii) For purposes of this paragraph, when a retired member's child is no longer a minor and consequently ceases to receive benefits under this paragraph, 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 youngest child is no longer a minor.

(iv) If a retired member who is receiving the maximum retirement allowance dies before the member has received benefit payments in a sum equal to the amount of his or her accumulated contributions at the time of retirement, and if there is no surviving spouse or minor child entitled to receive benefits on the member's death, the difference between the amount of the deceased member's accumulated contributions and the sum of the benefit payments shall be paid in the form of a lump-sum cash payment as follows:

(A) to the deceased member's designated beneficiary; or

(B) if no benefiary has been designated or if the designated beneficiary predeceases the retired member, to the deceased member's estate.

(2) *Benefit options.*

(i) *In general.*

(A) Instead of the maximum retirement allowance provided for in paragraph (1) of this subsection, a Class D member who is entitled to receive a retirement benefit from this System may elect to receive the benefit in the form of 1 of the options set forth in subparagraphs (ii) through (v) of this paragraph.

(B) A member who elects to receive 1 of these options will receive his or her benefit in the form of periodic payments during her or his lifetime.

(C) The member's benefit shall be in an amount that, when combined with the corresponding survivorship benefit under the option elected, will equal the actuarial equivalent of the retired member's maximum retirement allowance, computed as of his or her retirement date.

(ii) *Reserve guarantee option.*

(A) As soon as administratively practicable after the death of a retired member who elected this reserve guarantee option, the balance of the retired member's actuarial reserve at the time of retirement, after deducting the total amount of periodic payments received by the retired member during her or his lifetime, shall be paid in the form of a lump-sum cash payment as follows:

1. to the retired member's designated beneficiary; or

2. if no designated beneficiary has been designated or if the designated beneficiary predeceases the retired member, to the retired member's estate.

(B) A member who elects this option may change his or her designated beneficiary at any time throughout the member's retirement.

(iii) *Joint-and-survivor option.*

(A) As of the 1st day of the month immediately after the death of a retired member who elected this joint-and-survivor option, the member's designated beneficiary is entitled to receive periodic payments during the beneficiary's lifetime in either of the following amounts, as elected by the member:

1. 100% of the periodic payment that the retired member was receiving at the time of her or his death; or

2. 50% of the periodic payment that the retired member was receiving at the time of her or his death.

(B) A member who elects this option may change her or his designated beneficiary within 30 days after the member's retirement date.

(C) If the designated beneficiary predeceases the retired member within 30 days after the retirement date, the retired member may designate a new beneficiary within 30 days after the designated beneficiary's death.

(D) If the designated beneficiary predeceases the retired member within 30 days after the retirement date and the retired member does not designate a new beneficiary within 30 days after the designated beneficiary's death or if the designated beneficiary dies on or after the 31st day following the retirement date:

1. the retired member continues during her or his lifetime to receive periodic payments in the same amount that the member has been receiving;

2. no new beneficiary may be designated; and

3. on the retired member's death, no survivorship benefit is payable.

(iv) *"Pop-up" joint-and-survivor option.*

(A) As of the 1st day of the month immediately after the death of a retired member who elected this "pop-up" joint-and-survivor option, the member's designated beneficiary is entitled to receive periodic payments during the beneficiary's lifetime in either of the following amounts, as elected by the member:

1. 100% of the periodic payment that the retired member was receiving at the time of his or her death; or

2. 50% of the periodic payment that the retired member was receiving at the time of his or her death.

(B) A member who elects this option may change his or her designated beneficiary within 30 days after the member's retirement date.

(C) If the designated beneficiary predeceases the retired member within 30 days after the retirement date, the retired member may designate a new beneficiary within 30 days after the designated beneficiary's death.

(D) If the designated beneficiary predeceases the retired member within 30 days after the retirement date and the retired member does not designate a new beneficiary within 30 days after the designated beneficiary's death or if the designated beneficiary dies on or after the 31st day following the retirement date:

1. the retired member commences, as of the 1st day of the month immediately after the designated beneficiary's death, to receive the maximum retirement allowance, payable in periodic payments during the retired member's lifetime;

2. no other beneficiary may be designated; and

3. on the retired member's death, no survivorship benefit is payable, whether under this option or the maximum retirement allowance.

(v) *Specific benefit option.*

(A) Subject to the approval required by sub-subparagraph (B) of this subparagraph, on the death of a retired member who elected this specific benefit option, the member's designated beneficiary is entitled to receive the following, as elected by the member before the member's retirement date:

1. a specific lump-sum cash payment, payable as soon as administratively practicable after the retired member's death; or

2. a specific periodic benefit, payable to the designated beneficiary during her or his lifetime, effective as of the 1st day of the month immediately after the retired member's death.

(B) This benefit option must be approved, at the time of the member's retirement, by the Board of Trustees pursuant to the recommendation of this System's actuary.

(C) A member who elects this option may change his or her designated beneficiary within 30 days after the member's retirement date.

(D) If the designated beneficiary predeceases the retired member within 30 days after the retirement date, the retired member may designate a new beneficiary within 30 days after the designated beneficiary's death.

(E) If the designated beneficiary predeceases the retired member within 30 days after the retirement date and the retired member does not designate a new beneficiary within 30 days after the designated beneficiary's death or if the designated beneficiary dies on or after the 31st day after the retirement date:

1. the retired member continues during his or her lifetime to receive periodic payments in the same amount that the member has been receiving;

2. no other beneficiary may be designated; and

3. on the retired member's death, no survivorship benefit is payable.

(3) *Change of election within 30 days.*

(i) A retired member may elect to make the changes authorized in this paragraph on or before the later of:

(A) the 30th day after the retired member's retirement date; or

(B) if the retired member's designated beneficiary predeceases the retired member within 30 days after the retirement date, the 30th day after the designated beneficiary's death.

(ii) Within the periods specified, the retired member may elect to change:

(A) the retired member's maximum retirement allowance under paragraph (1) of this subsection to any one of the benefit options provided under paragraph (2) of this subsection;

(B) the retired member's election of a benefit option under paragraph (2) of this subsection to the maximum retirement allowance provided under paragraph (1) of this subsection; or

(C) the retired member's election of a benefit option under paragraph (2) of this subsection to any other benefit option provided under paragraph (2) of this subsection.

(iii) Any payments made to a retired member under the original election shall be taken into account in computing the benefit to be paid under the subsequent election.

(4) *Transferred-in accumulated contributions.*

(i) In addition to receiving a maximum retirement allowance or a benefit option at retirement, a retired Class D member will receive a refund, with interest, of the retired member's transferred-in accumulated contributions that did not result in any retirement benefit from this System.

(ii) The benefits under this paragraph shall be paid in the form of a lump-sum cash payment or an annuity, as elected by the member. If the member elects to receive the benefits in the form of an annuity, the method of paying the annuity shall be consistent with the method of paying the retired member's principal retirement benefit under paragraph (1) or (2) of this subsection, as the case may be.

(5) *Election to receive lump-sum payment.*

(i) A Class D member who terminates City employment may elect to receive the present value of the member's total pension benefit in a lump-sum cash payment, if:

(A) the member is entitled to service retirement benefit under subsection (g) of this section; and

(B) the present value of the total pension benefit is no more than the greater of:

1. $12,500; or

2. an amount that is calculated by this System's actuary to reflect any increases in the average salary of active members and that is approved by the Board of Trustees.

(ii) A member who receives a lump-sum cash payment under this paragraph ceases to be entitled to any other benefits from this System.

(iii) If a Class D member is entitled to receive both a service retirement benefit under subsection (g) of this section and a disability retirement benefit under subsection (h), (i), or (j) of this section, the member may waive his or her rights to the disability benefit and elect to receive a lump-sum cash payment under this paragraph.

(iv) The present value of the benefit payable under this paragraph shall be calculated as of the date the member terminates City employment, using actuarial assumptions as of that date approved by the Board of Trustees pursuant to the recommendation of this System's actuary.

(6) *Return of accumulated contributions*.

(i) If a Class D member terminates City employment, other than by reason of death, before becoming eligible for a retirement benefit or a deferred vested pension benefit under this section, the member is only entitled to receive the value of his or her accumulated contributions, payable in the form of a lump-sum cash payment, as soon as administratively practicable following the termination of employment.

(ii) If a Class D member dies while actively employed, his or her accumulated contributions will be used to fund a periodic death benefit payable to the member's beneficiary under subsection (m) or (n) of this section or will be paid to the member's beneficiary if the beneficiary is entitled to receive a lump-sum death benefit under subsection (m) or (n) of this section.

(l) *Reemployment.*

(1) *Following termination of Class D member.*

(i) *After becoming eligible for certain benefits.*

If a Class D member terminates City employment after becoming eligible for a retirement benefit or a deferred vested pension benefit under this section and is subsequently reemployed as an employee, the employee:

(A) must cease or postpone receiving any retirement benefits from this System; and

(B) immediately on reemployment:

1. will again become a Class D member; and

2. will be credited with his or her prior Class D service.

(ii) *Before becoming eligible for certain benefits.*

If a Class D member terminates City employment before becoming eligible for a retirement benefit or a deferred vested pension benefit under this section and is subsequently reemployed as an employee, the employee:

(A) on the 1st annual anniversary of her or his reemployment, will again become a Class D member; and

(B) will be credited with his or her prior Class D service as follows:

1. immediately on reemployment, unless before reemployment the member received the value of his or her accumulated contributions under subsection (k)(6)(i) of this section; or

2. if before reemployment the member received the value of his or her accumulated contributions under subsection (k)(6)(i) of this section, then only if the member purchases the service credit under subsection (c)(6)(i) of this section.

(2) *Following pre-July 1, 2014, City employment.*

(i) *Termination after earning vested benefit.*

(A) This subparagraph applies to any employee who:

1. was employed by the City on or before June 30, 2014;

2. terminated that employment for more than 30 consecutive days after earning a vested benefit under this System or another City retirement plan; and

3. is reemployed by the City on or after July 1, 2014.

(B) Notwithstanding any other provision of this subtitle, an employee described in sub-subparagraph (A) of this subparagraph:

1. shall, as of after his or her reemployment with the City, cease or postpone receiving any City retirement benefits in accordance with § 48 {"Contemporaneous benefits from 2 or more City systems"} of this article;

2. may not, as of his or her reemployment with the City, again become a member of this System or any other City retirement plan, except as provided in item 3 of this sub-subparagraph (B): and

3. automatically becomes, on the 30th day after the date on which his or her reemployment began, a non-hybrid member of the Retirement Savings Plan.

(C) Prior service earned under this System or any other City retirement plan is not credited under the Retirement Savings Plan, and the employee is not entitled to any contributions under the Retirement Savings Plan with respect to that prior service.

(ii) *Termination before earning vested benefit.*

(A) This subparagraph applies to any employee who:

1. was employed by the City on or before June 30, 2014;

2. terminated that employment for more than 30 consecutive days before earning a vested benefit under this System or another City retirement plan; and

3. is reemployed by the City on or after July 1, 2014.

(B) Notwithstanding any other provision of this subtitle, an employee described in sub-subparagraph (A) of this subparagraph:

1. shall make an election in accordance with § 9.1 of this subtitle; and

2. based on that election, will become either:

a. a Class D member of this System, commencing on the 1st annual anniversary of his or her reemployment, and a hybrid member of the Retirement Savings Plan, commencing on the 180th day after the date on which his or her reemployment began; or

b. a non-hybrid member of the Retirement Savings Plan, commencing on the 180th day after the date on which his or her reemployment began.

(C) On commencement of participation in the Retirement Savings Plan and, if applicable, as a Class D member of this System, the employee will be credited with the prior service that she or he earned under this System or another City retirement plan.

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

(1) *Scope of subsection.*

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

(2) *Lump-sum death benefit.*

(i) *"Beneficiary" defined.*

In this paragraph, "beneficiary" means the member's designated beneficiary or surviving spouse, minor children, or parents, as qualified and prioritized under subparagraph (v)(A)-(D) of this paragraph.

(ii) *Eligibility requirements.*

The beneficiary is entitled to a lump-sum benefit under this paragraph only if:

(A) the member had acquired 1 or more years of service; and

(B) no benefits are paid under paragraph (3) or (4) of this subsection.

(iii) *Application and filing deadline.*

To receive this benefit, the beneficiary must:

(A) complete the appropriate application, in the form and containing the information, including proof of death, that the Board requires; and

(B) submit the application to the Board on or before the 60th day after the Board has provided a post-death notice of this benefit to the beneficiary.

(iv) *Amount of benefit.*

The lump-sum benefit shall equal:

(A) any accumulated contributions of the deceased member; and

(B) 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.

(v) *Qualifications and priorities of potential beneficiaries.*

The lump-sum benefit shall be paid as follows:

(A) to the member's designated beneficiary;

(B) if there is no designated beneficiary or if the designated beneficiary predeceases the member, to the member's surviving spouse;

(C) if there is no designated beneficiary and no surviving spouse, to the member's children, in equal shares;

(D) if there is no designated beneficiary, surviving spouse, or surviving child, to the member's surviving parents, in equal shares; and

(E) otherwise, to the member's estate.

(3) *100% survivorship death benefit.*

(i) *Definitions.*

(A) *In general.*

In this paragraph, the following terms have the meanings indicated.

(B) *Beneficiary.*

"Beneficiary" means the member's surviving spouse or parents, as qualified and prioritized under subparagraph (v) of this paragraph.

(C) *Surviving spouse.*

"Surviving spouse" means a surviving spouse to whom the member was married for at least 5 years immediately before the date of the member's death.

(ii) *Eligibility requirements.*

The beneficiary is entitled to a 100% survivorship death benefit only if the member would have been eligible for a normal service or early service retirement before his or her death or within 90 days after the date of his or her death,

(iii) *Application and filing deadline.*

To receive this benefit, the beneficiary must:

(A) complete the appropriate application, in the form and containing the information, including proof of death, that the Board requires; and

(B) submit the application to the Board on or before the 60th day after the Board has provided a post-death notice of this benefit to the beneficiary.

(iv) *Amount of benefit.*

The benefit shall be equal to that which would have been paid to a surviving beneficiary under the joint and survivor 100% benefit option provided for in subsection (k)(2)(iii)(A)1. of this section had the member elected that option, designated that beneficiary, and retired as of the date of death.

(v) *Qualifications and priorities of potential beneficiaries.*

(A) The benefit shall be paid as follows:

1. to the member's designated beneficiary, to continue during his or her lifetime, if that designated beneficiary is:

   a. the member's surviving spouse; or

   b. one of the member's surviving parents; or

2. if the designated beneficiary is not one of the persons listed in sub-subparagraph (A) of this subparagraph and that beneficiary predeceases the member, or if there is no designated beneficiary, then to the member's surviving spouse, to continue during her or his lifetime.

(B) If a member designates a beneficiary other than one of the persons listed in sub-subparagraph (A) of this subparagraph, and if that beneficiary does not predecease the member, the benefit provided by this paragraph is not payable.

(vi) *Benefit instead of all others under subsection.*

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

(4) *40% survivorship death benefit.*

(i) *Definitions.*

(A) *In general.*

In this paragraph, the following terms have the meanings indicated.

(B) *Beneficiary.*

"Beneficiary" means the member's surviving spouse or unmarried minor children, as qualified and prioritized under subparagraph (v) of this paragraph,

(C) *Surviving spouse.*

"Surviving spouse" means a surviving spouse to whom the member was married for at least 1 year immediately before the date of the member's death.

(ii) *Eligibility requirements.*

The beneficiary is entitled to a 40% survivorship death benefit only if the member had at least 20 years of service as of the date of his or her death.

(iii) *Application and filing deadline.*

To receive this benefit, the beneficiary must:

(A) complete the appropriate application, in the form and containing the information, including proof of death, that the Board requires; and

(B) submit the application to the Board on or before the 60th day after the Board has provided a post-death notice of this benefit to the beneficiary.

(iv) *Amount of benefit.*

(A) The benefit shall be equal to 40% of the member's accrued service retirement benefit, calculated as provided in subsection (g)(1)(ii) or (4) of this section based on the member's average final compensation and years of service (and fractions of those years) as of the date of the member's death.

(B) The calculation required by sub-subparagraph (A) of this paragraph shall be made with the assumption that the member had attained age 65 as of the date of his or her death; accordingly, the reduction contained in subsection (g)(2)(ii) of this section does not apply.

(v) *Qualifications and priorities of potential beneficiaries.*

(A) The benefit shall be paid as follows:

1. to the member's designated beneficiary, if that designated beneficiary is:

    a. the member's surviving spouse, to continue during the spouse's lifetime or until his or her remarriage; or

    b. the member's unmarried minor children, to be paid to each child, in equal shares, until that child marries or is no longer a minor, as defined in § 47(h) of this article;

2. if the designated beneficiary is not one of the persons listed in sub-subparagraph (A) of this subparagraph and that beneficiary predeceases the member, or if there is no designated beneficiary, then to the member's surviving spouse, to continue during the spouse's lifetime or until his or her remarriage; or

3. if there is no qualifying surviving spouse under sub-subparagraph (A) or (B) of this subparagraph, or if the surviving spouse dies or remarries, then to the member's unmarried minor children, to be paid to each child in equal shares until that child marries or is no longer a minor, as defined in § 47(h) of this article.

(B) If a member designates a beneficiary other than one of the persons listed in sub-subparagraph (A) of this subparagraph, and if that beneficiary does not predecease the member, the benefit provided by this paragraph is not payable.

(vi) *Allocations among children.*

For purposes of this paragraph, when a member's child marries or is no longer a minor and, consequently, ceases to receive benefits under this paragraph, each remaining unmarried minor child will 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 marries or is no longer a minor.

(vii) *Rules dealing with 1st year of employment.*

For purposes of this paragraph, the deceased member's 1st year of employment:

(A) is included in computing the minimum 20 years of service credit needed to be eligible to receive this death benefit; but

(B) may not be counted as service credit for purpose of calculating the amount of the death benefit, unless purchased as service credit in accordance with subsection (c)(6) of this section.

(vii) *Benefit in place of all others under subsection.*

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

(5) *Death without beneficiaries or estate.*

The amounts that would have been paid under this subsection, excluding accumulated contributions, forever remain assets of this System if:

(i) a member dies without designating a beneficiary;

(ii) that member has no beneficiaries, as enumerated in paragraphs (2)(v), (3)(v), and (4)(v) of this subsection ; and

(iii) no estate for that member is opened within 2 years of the member's death.

(6) *Death of retired member within 30 days of retirement.*

(i) *Scope of paragraph.*

Except as specified in subparagraph (ii) of this paragraph, this paragraph applies to:

(A) a retired member who:

1. has been granted a service or disability retirement benefit under this section; and

2. dies within 30 days of his or her retirement date; or

(B) a retired member who:

1. retires before reaching age 65;

2. elects to postpone receipt of his or her retirement benefit until age 65; and

3. dies within 30 days after reaching age 65.

(ii) *Exception.*

This paragraph does not apply to a former member who terminates employment before reaching age 65 without immediate entitlement to retirement benefits.

(iii) *Death deemed to be during active service.*

A retired member or vested former member described in subparagraph (i) of this paragraph is deemed to have died while still employed by the City and, instead of any other service or disability benefits under this System, a non-line-of-duty death benefit will be paid as if he or she died during active service.

(iv) *Offset of payments received.*

Any pension benefits paid by this System and received by the retired member or former member before he or she died shall be offset against the death benefits payable under this paragraph.

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

(1) *"Beneficiary" defined.*

In this subsection, "beneficiary" means the member's designated beneficiary or surviving spouse, children, or parents, as qualified and prioritized under paragraph (4)(i)(A)-(D) or paragraph (4)(ii) of this subsection, as the case may be.

(2) *Eligibility requirements..*

This subsection applies only:

(i) to an individual who dies while a member of this System; and

(ii) if a hearing examiner determines that:

(A) the member's death was, independent of all other causes and independent of any preexisting physical or medical conditions, whether job-related or otherwise, the direct result of bodily injury arising through an accident; and

(B) the accident occurred:

1. while the member was in the actual performance of his or her City duties at some definite time and place; and

2. without willful negligence on the member's part.

(3) *Application and filing deadline.*

To receive this benefit, the beneficiary must:

(i) complete the appropriate application, in the form and containing the information required by subsection (p)(6); and

(ii) submit the application to the Board on or before the 60th day after the Board has provided a post-death notice of this benefit to the beneficiary.

(4) *Amount of benefit; Qualifications and priorities of potential beneficiaries* .

On an award by the hearing examiner, the Board of Trustees shall pay:

(i) any accumulated contributions of the deceased member to:

(A) the member's designated beneficiary;

(B) if there is no designated beneficiary, or if the designated beneficiary predeceases the member, to the member's surviving spouse;

(C) if there is no designated beneficiary and no surviving spouse, to the member's children, in equal shares;

(D) if there is no designated beneficiary, surviving spouse, or surviving child, to the member's surviving parents, in equal shares; and

(E) otherwise, to the member's estate; and

(ii) a pension of 100% of the member's current compensation to:

(A) the member's surviving spouse, to continue during the spouse's lifetime or until his or her remarriage, unless the member has designated his or her children as beneficiaries;

(B) the member's minor children, to be paid to each child in equal shares until that child is no longer a minor, as defined in § 47(h) of this article, if:

1. the member designated his or her children as beneficiaries;

2. there is no surviving spouse on the date of the member's death; or

3. the surviving spouse has died or remarried after having received benefits payments under item 1 of this sub-subparagraph; or

(C) the member's surviving parents in equal shares, to continue during their lifetimes, if:

1. the member has not designated his or her children as beneficiaries;

2. there is no surviving spouse on the date of the member's death; and

3. the member has no minor children at the date of his or her death.

(5) *Allocations among children or between parents.*

(i) For purposes of this paragraph, when a member's child is no longer a minor and, consequently, ceases to receive a benefit under this paragraph, each remaining minor child shall then 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.

(ii) For purposes of this paragraph, if 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 to receive, in addition to his or her existing benefit, the benefit formerly paid to the deceased parent.

(6) *If no beneficiary eligible.*

If no beneficiary is eligible for a line-of-duty death benefit under this subsection, a non-line-of-duty death benefit will be paid under either subsection (m)(2), (m)(3), or (m)(4) of this section as long as the member's beneficiary qualifies for a non-line-of-duty death benefit under 1 of those subsections.

(7) *Death without beneficiaries or estate.*

The amounts that would have been paid under this subsection, excluding accumulated contributions, forever remain assets of this System if:

(i) a member dies without designating a beneficiary;

(ii) that member has no beneficiaries, as enumerated in paragraph (4) of this subsection; and

(iii) no estate for that member is opened within 2 years of the member's death.

(o) *Workers' Compensation benefits offset against disability and death benefits.*

(1) *Scope of subsection*.

This subsection applies to a member or beneficiaries of a member:

(i) the payment of whose retirement benefit is on account a disability retirement benefit under subsection (h), (i), or (j) of this section; or

(ii) who dies and is awarded a death benefit under subsection (m) or (n) of this section.

(2) *Offset for Workers' Compensation payments.*

The Board of Trustees shall offset the amount of a member's Workers' Compensation award paid or payable by the City against any disability or death benefits paid or payable by this System to a member or a member's beneficiaries, if:

(i) the member or beneficiary was awarded Workers' Compensation benefits under the State's Workers' Compensation Law to be paid or payable by the City;

(ii) the Workers' Compensation award was for permanent partial or permanent total disability or for death;

(iii) the Workers' Compensation award was awarded on account of the same disability or death that resulted in this System's payment of disability or death benefits; and

(iv) the Workers' Compensation award was awarded by the Workers' Compensation Commission no more than 5 years before:

(A) the effective date of the member's retirement on account of non-line-of- duty disability;

(B) the date of the accident qualifying the member for line-of-duty disability benefits or for dismemberment disability benefits, or

(C) the date of the member's death qualifying the member's beneficiaries to receive a death benefit under this section.

(3) *Amounts not included in offset.*

The amount of Workers' Compensation benefits to be offset does not include amounts allocated for the payment of legal fees, medical expenses, or other payments authorized by the Workers' Compensation Commission to be made directly to third parties and not to the member or the member's beneficiary.

(4) *Method of offset.*

(i) *Non-actuarial method for lump-sum payments.*

(A) The Board of Trustees shall offset the amount of a member's Workers' Compensation award, reduced by the amounts described in paragraph (3), against any lump-sum disability or death benefit paid or payable by this System to a member or a member's beneficiary in the following manner.

(B) The offset shall be made on a non-actuarial, dollar-for-dollar basis against any lump-sum benefit until the total amount of the Workers' Compensation benefits has been recovered.

(C) If the amount of the Workers' Compensation benefits exceeds the lump-sum disability or death benefit, then no disability or death benefit may be paid, except for the return of the member's accumulated contributions, if any.

(ii) *Actuarial method for periodic payments.*

(A) The Board of Trustees shall offset the amount of a member's Workers' Compensation award, reduced by the amounts described in paragraph (3), against any periodic disability or death benefits paid or payable by this System to a member or a member's beneficiaries in the following manner.

(B) This offset shall be calculated on an actuarial basis by annuitizing the member's Workers' Compensation award, reduced by the amounts described in paragraph (3), and reducing the member's periodic disability or death benefit by the annuitized amount until the total amount of the Workers' Compensation benefits have been recovered.

(C) The actuarial amount shall be calculated by using an actuarial method and appropriate annuity factors recommended by this System's actuary and approved by the Board of Trustees.

(D) If the annuitized amount of the Workers' Compensation benefits exceeds this System's periodic disability or death benefit payment, then no disability or death benefit may be paid, except for the return of the member's accumulated contributions, if any.

(5) *Restoration of offset amount against retirement benefits.*

(i) On recovering the full amount of the member's Workers' Compensation benefits, the reduced disability or death benefits payable to the member or the member's beneficiaries shall be restored to the unreduced amount of the disability or death benefits payable to the member or beneficiaries prior to the offset for Workers' Compensation.

(ii) The amount by which a reduced disability or death benefit is restored under subparagraph (i) of this paragraph does not include any post-retirement increases that the member or the member's beneficiaries would have been eligible to receive had the member's disability or death benefits not been reduced.

(p) *Panel of hearing examiners.*

(1) *Panel established.*

There is a panel of hearing examiners, to be composed of persons with a demonstrated knowledge and competence in disability claims evaluation.

(2) *Appointment of panel members.*

(i) The hearing examiners shall be appointed on a contract basis by the Board of Estimates.

(ii) The Board of Estimates may determine, in its sole discretion:

(A) the number and composition of the panel; and

(B) the fees and other conditions of the hearing examiners' contracts.

(iii) Whenever a vacancy occurs on the panel, the Board of Trustees has the right to submit to the Board of Estimates a list of recommended candidates to fill the vacancy.

(iv) In all events, however, the Board of Estimates may make its selection of hearing examiners without regard to the Board of Trustees' recommendations.

(3) *Compensation of panel members; expenses.*

The compensation of the panel members, 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.

(4) *Claims for disability benefit – Applications.*

(i) *Application to Board.*

A person who seeks a non-line-of-duty disability benefit, a line-of-duty disability benefit, or a dismemberment disability benefit must first apply to the Board of Trustees.

(ii) *Required contents.*

The application must include, in the form that the Board requires:

(A) a medical certification of disability;

(B) all supporting medical documentation;

(C) a consent form that authorizes the Board to obtain all medical records pertaining to any accidents or illnesses that the member might have suffered at any time in the past; and

(D) a statement in which the member:

1. states that he or she has suffered a disability;

2. states that the disability prevents him or her from further performance of the duties of his or her job classification;

3. states that the incapacity is likely to be permanent; and

4. states, in the manner and detail that the Board requires, the relevant facts and circumstances under which the member claims to be eligible for the applicable benefit.

(5) *Claims for disability benefits – Medical examination.*

(i) *Board to refer.*

On receipt of a completed application and required supporting documentation, the Board of Trustees shall have the member medically examined by a physician selected by the Board.

(ii) *Scope of examination.*

The examination shall include whatever tests and additional examinations the physician finds necessary or appropriate.

(iii) *Report to Board.*

On completion of the examination, the physician shall submit a written report to the Board of Trustees.

(6) *Claims for line-of-duty death benefits.*

(i) *Application to Board.*

A person who seeks a line-of-duty death benefit must first apply to the Board of Trustees.

(ii) *Required contents.*

The application must include, in the form that the Board prescribes:

(A) a consent form that authorizes the Board to obtain all medical records pertaining to the member's death and to any accidents or illnesses that the member might have suffered at any time in the past; and

(B) a statement in which the claimant:

1. states that the member suffered a line-of-duty death; and

2. describes, in the manner and detail that the Board requires, the relevant facts and circumstances under which the member's death occurred.

(7) *Hearings – In general.*

A hearing examiner shall conduct hearings on all matters involving non-line-of-duty disability claims, dismemberment disability claims, line-of-duty disability claims, line-of-duty death benefit claims, and any related matters arising out of these claims.

(8) *Hearings - Nature and conduct.*

(i) Each hearing is in the nature of an adversary proceeding.

(ii) 1 hearing examiner from the panel shall hear a particular claim for benefits.

(iii) The hearing examiner shall conduct the hearing:

(A) in an informal manner;

(B) with sufficient latitude to provide a fair and impartial hearing to all of the parties; and

(C) without requiring strict compliance with the rules of evidence.

(iv) Testimony at the hearing shall be under oath and recorded.

(v) To secure information pertinent to the hearing, the hearing examiner has the power to subpoena and require the attendance of witnesses and the production of papers and documents and to examine them.

(9) *Hearings - Counsel.*

At the hearing:

(i) the Board of Trustees shall be represented by an attorney from the City Solicitor's Office or from this System's Office of Legal Affairs; and

(ii) the member has the right to counsel of his or her own choosing.

(10) *Hearings - Burden of proof.*

(i) *Disability benefit.*

At the hearing on a claim for a disability benefit, the member has the burden of proving, by a preponderance of the evidence:

(A) the nature and extent of her or his disability;

(B) that the disability prevents her or him from the further performance of the duties of her or his job classification; and

(C) that, under the relevant facts and circumstances, she or he otherwise meets all of the eligibility requirements set by law for the applicable benefit.

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

At the hearing on a claim for a line-of-duty death benefit, the applicant has the burden of proving, by a preponderance of the evidence:

(A) that the member's death occurred under facts and circumstances required to qualify for the benefit under the applicable provisions of this section; and

(B) that the applicant otherwise meets all other requirements to qualify for the benefit.

(11) *Hearings - Examiner's determination.*

(i) *In general.*

The hearing examiner shall:

(A) make the determinations specified in this paragraph (11); and

(B) issue written findings of fact that set forth the reasons for his or her determination.

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

If the claim is for non-line-of-duty disability benefits, the hearing examiner shall determine whether the member's disability qualifies under subsection (h) of this section.

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

If the claim is for line-of-duty disability benefits, the hearing examiner shall determine whether the member's disability qualifies under subsection (i) of this section.

(iv) *Dismemberment disability benefit.*

If the claim is for dismemberment disability benefits, the hearing examiner shall determine whether the member's disability qualifies under subsection (j) of this section.

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

If the claim is for line-of-duty death benefits, the hearing examiner shall determine whether the member's death qualifies under subsection (n) of this section.

(12) *Hearings – Judicial and appellate review.*

(i) If either party to the hearing is aggrieved by the hearing examiner's determination, that party may seek judicial review of that determination by petition to the Circuit Court for Baltimore City.

(ii) The review shall be sought and heard as provided in the Maryland Rules of Procedure, except that the review shall be heard on a right-of-way basis.

(iii) The determination of the hearing examiner is presumptively correct and may not be disturbed on review unless it is arbitrary, illegal, capricious, or discriminatory.

(iv) 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.

(v) Judicial review under this paragraph 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.

(13) *Hearings – Finality of decision.*

If neither party seeks judicial review within 30 days after mailing of the hearing examiner's written finding of fact, the hearing examiner's determination is final and binding.

(Ord. 14-216; Ord. 15-329.)

§ 10. 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 § 7(b) of this article 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, 1927, art. 30, §10; 1950, art. 23, §10; 1966, art. 22, §10; 1976/83, art. 22, §10.)
(Ord. 26-553; Ord. 73-419.)

§ 11. Exemption from assignment and execution.

(a) *In general.*

(1) In this section, "system" means either the Employees' Retirement System or the Elected Official's Retirement System, as applicable to the circumstances.

(2) A person may not attach, execute, garnish, or otherwise seize any current or future benefit provided by a system or any money in a fund or an account created by a system.

(3) All current and future benefits provided by a system and all money in a fund or an account created by a system are unassignable, except as specified in this section.

(b) *Exceptions – Payroll deductions.*

A retiree or beneficiary of a system 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 a 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 a system to provide any type or form of benefit or any options not already provided by the system;

(2) requires a 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 other than an assigned percentage or amount of the member's pension benefit or survivorship benefit;

(6) does not require a 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 a 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, a 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.*

A 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.*

A 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 a similar out-of-state provision.

(h) *Exceptions – Trustee.*

A 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.*

A 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.*

A 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, 1927, art. 30, §11; 1950, art. 23, §11; 1966, art. 22, §11; 1976/83, art. 22, §11.)
(Ord. 26-553; Ord. 72-237; Ord. 75-1058; Ord. 04-882.)

§ 12. Protection against fraud; validating overpayments.

(a) Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any 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 such 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 prior to April 19, 1974, 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 before that date, and no request or demand for reimbursement thereof shall be made after April 19, 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 April 19, 1974.

(b) Any member who was retired as of April 18, 1974, and who was receiving periodically paid retirement benefits, including supplemental payments, on that date, regardless of what basis was used for calculating the benefits, and even though the benefits may have been incorrectly determined, shall continue to receive such retirement benefits on April 19, 1974, and thereafter, subject to the conditions, deductions and limitations contained in this subtitle. Those receiving

disability benefits, however, will still be subject to the offsets contained in this subtitle. Any surviving beneficiary of a member, who was retired and subsequently died before April 19, 1974, and which beneficiary was receiving periodically paid retirement benefits, including supplemental payments, on April 18, 1974, regardless of what basis was used for calculating the benefits and even though the benefits may have been incorrectly determined, shall continue to receive such retirement benefits on April 19, 1974, and thereafter, subject to the conditions, deductions and limitations contained in this subtitle.

(City Code, 1927, art. 30, §12; 1950, art. 23, §12; 1966, art. 22, §12; 1976/83, art. 22, §12.)
(Ord. 26-553; Ord. 74-552; Ord. 75-1058.)

§ 13. Limitation of other statutes.

(a) *Laws and ordinances.*

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, except as to membership in and benefits from the Social Security System, established by the Act of Congress known generally as "The Social Security Act of 1935", as amended from time to time.

Members of the Police Department in the service at the time this subtitle takes effect who elect not to join the Retirement System created herein shall be entitled to pensions for themselves, their widows or dependents, under existing laws, as if this subtitle had not been passed.

(b) *Severability provisions.*

If any section or part of any section of this subtitle is declared to be unconstitutional, the remainder of the 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, 1927, art. 30, §13; 1950, art. 23, §13; 1966, art. 22, §13; 1976/83, art. 22, §13.)
(Ord. 26-553; Ord. 58-1387.)

§ 14. Social Security Act.

The enrollment in and membership of any members of the Retirement System in the Social Security System, for benefits under the Act of Congress known generally as "The Social Security Act of 1935", as amended from time to time, shall at all times be separate and apart from and in addition to their membership in and benefits from the Retirement System; and such enrollment and membership in the Social Security System shall in no way impair, decrease or adversely affect any of the existing rights, benefits or expectancies of the members of the Retirement System.

Any plan submitted for the Mayor and City Council of Baltimore by or on behalf of the Retirement System to the State agency provided for in Title 36 {"Social Security Benefits"} of the State Personnel and Pensions Article for such enrollment and membership for the members of the Retirement System,

shall include a stipulation that such action is being taken and will be continued with full regard for and observance of the provisions of this section.

(City Code, 1966, art. 22, §14; 1976/83, art. 22, §14.)
(Ord. 58-1387.)

§ 15. ***{Vacant}***

§ 16. Additional opportunity for Class A and Class B members to obtain credit for service and prior service.

(a) *Credit for pre-enrollment or pre-membership employment.*

Any person who is a member of the Employees' Retirement System and who did not receive service credit in the Employees' Retirement System or the Maryland State Retirement System for any previous employment either as a temporary, provisional, contract, emergency or similar employee, or as an official of the City of Baltimore or of the State of Maryland, which employment ripened into regular and permanent employment with essentially the same duties which the employee was performing prior to obtaining such permanent status, shall be entitled to receive service credit for such pre-enrollment or pre-membership employment. Any person who is a member of the Employees' Retirement System and who did not receive service credit in the Employees' Retirement System or the Maryland State Retirement System for any previous regular and permanent employment, as an employee of the City of Baltimore or the State of Maryland, shall be entitled to receive service credit for such pre-enrollment or pre-membership employment. To obtain such credit the member shall file claim therefor with the Board of Trustees within 6 months after December 1, 1975, and shall pay to the Retirement System by a single payment or by an increased rate of contribution, as may be approved by the Board of Trustees, the contributions, with regular interest, which he would have paid had he been a member of the Employees' Retirement System of the City of Baltimore or the Maryland State Retirement System while such pre-enrollment or pre-membership employment was rendered, and that this payment shall be completed at least 90 days before the effective date of the member's retirement. After December 1, 1975, those existing employees who are not members of the Retirement System and who join after December 1, 1975, shall be entitled to make application to purchase any pre-enrollment or pre-membership employment credit during the period expiring 6 months after becoming a member. All persons who become new employees of the City of Baltimore after the effective date of this ordinance shall not be entitled to any credit for pre-enrollment or pre-membership employment if they have failed to join the Retirement System within 6 months of entering such employment. Any pre-membership or pre-enrollment payments which have in the past been recorded for a member as service credit under the Retirement System shall continue to be recognized as service credit entitling the member to all of the benefits under this subtitle.

(b) *Service credit for previous membership in this system.*

Any person who is now a member of the Employees' Retirement System, and who at any time in the past was a member of the Employees' Retirement System, having previously left City employment and withdrawn the contributions which he had previously made to this system, shall be entitled to receive service credit for such previous membership; provided that at any time after the completion of 6 months of continuous service since last becoming a member of the Employees' Retirement System, he shall file a claim with the Board of Trustees and shall pay to the Employees' Retirement System by a single payment or by an increased rate of contribution, as may be approved by the Board of Trustees, the contributions which he had previously withdrawn from this system, together

with interest from the date of withdrawal to the date that the redeposit is completed, and that this payment shall be completed at least 90 days before the effective date of the employees' retirement. Service shall be credited pro rata at the time each payment for such service is made.

(c) *Purchases or transfers of service credit from other retirement systems in Maryland to this system.*

All purchases of service credit for membership in other retirement systems in Maryland and all transfers of service for membership credits between retirement systems in Maryland shall be subject to the pertinent provisions contained in the State Personnel and Pensions Article and other applicable provisions of the Maryland Code and shall include any future amendments thereto of the State law pertaining to pensions.

(d) Notwithstanding anything to the contrary contained in this subtitle, any non-City employee of the Baltimore Museum of Art who became a member of the Employees' Retirement System of Baltimore City during the month of February, 1977, and who did not receive service credit in the Employees' Retirement System or the Maryland State Retirement System for any previous employment either as a temporary, provisional, contract, emergency or similar employee, or as an official of the City of Baltimore or of the State of Maryland, which employment ripened into regular and permanent employment with essentially the same duties which the employee was performing prior to obtaining such permanent status, shall be entitled to receive service credit for such pre-enrollment or pre-membership employment. Any person who is a member of the Employees' Retirement System and who did not receive service credit in the Employees' Retirement System or the Maryland State Retirement System for any previous regular and permanent employment as a non-City paid employee of the Baltimore Museum of Art or as an employee of the City of Baltimore, or the State of Maryland, shall be entitled to receive service credit for such pre-enrollment or pre-membership employment. To obtain such credit the member shall file claim therefor with the Board of Trustees of the Employees' Retirement System within 90 days after the effective date of this ordinance, and shall pay to the Employees' Retirement System, by a single payment or by an increased rate of contribution, as may be approved by the Board of Trustees of the Employees' Retirement System, the contributions, with regular interest, which the member would have paid had the member been a member of the Employees' Retirement System of the City of Baltimore or the Maryland State Retirement System while such pre-enrollment or pre-membership employment was rendered, and this payment shall be completed at least 90 days before the effective date of the member's retirement.

(e) *Additional opportunity to purchase credit for service for Baltimore City employment.*

Any Class A or Class B member shall be entitled to purchase service credit for any employment or membership service earned by regular and permanent employment with the City of Baltimore regardless of retirement or pension system membership, provided:

(1) the employment or service did not result in the member's being entitled to any current or future benefits for such employment or service in such other retirement or pension system; and

(2) the Class A or Class B member pays to the Employees' Retirement System by a single payment the employee's contribution equal to the current salary of the employee in the year of purchase multiplied by the employees' contribution rate of 5%, if the purchase is made prior to July 1, 1992, or by the employees' contribution rate of 4%, if the purchase is made after June 30, 1992, multiplied by the number of years or part of a year being purchased;

plus, the employer's contribution equal to the current salary of the employee in the year of purchase multiplied by the employer rate for the normal cost multiplied by the number of years or part of a year being purchased.

(3) In addition, any Class A or Class B member shall be entitled to purchase service credit for the member's pre-enrollment or pre-membership employment with the City of Baltimore under the same conditions as § 16(e)(2) above.

If a member purchases service credit as described above, and thereafter dies or leaves City employment for any reason with or without any vested benefit due to the member or member's beneficiary under the provisions of this subtitle, then the member or the beneficiary shall be entitled to receive in lieu of any other benefit under the provisions of the Employees' Retirement System of Baltimore City, a lump sum equal to the total amount paid by the member for such purpose, plus interest at the rate of 5½% per year.

(f) *Repurchase of previous service credited with retirement system of State or its subdivisions.*

(1) Notwithstanding anything to the contrary contained herein, any previous service credited with a retirement system of the State of Maryland and/or its subdivisions which was repurchased prior to March 25, 1988, by any member or retiree, who was a member of the Employees' Retirement 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 March 25, 1988, any previous service credited with a retirement system of the State of Maryland and/or its subdivisions may be repurchased by any member, who was a member of the Employees' Retirement System, before July 1, 1979, by paying to the Employees' Retirement System by a single payment or by an increased rate of contribution, the contributions which he had previously withdrawn from the retirement systems of the State of Maryland and/or its subdivisions, 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 March 25, 1988, any previous service credited with a retirement system of the State of Maryland and/or its subdivisions may be repurchased by any member, who was a member of the Employees' Retirement System before July 1, 1979, and who retired on or after March 25, 1988, and before March 31, 1989, from this system by paying to the 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 retirement systems of the State of Maryland and/or its subdivisions, together with interest from the date of withdrawal to the date that the repurchase is completed. Upon completion of the repurchase, the 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.

(City Code, 1950, art. 23, §15; 1966, art. 22, §16; 1976/83, art. 22, §16..)
(Ord. 43-912; Ord. 53-819; Ord. 54-1039; Ord. 56-215; Ord. 57-1102; Ord. 58-1746; Ord. 59-126; Ord. 74-552; Ord. 75-1058; Ord. 78-900; Ord. 79-1055; Ord. 87-1152; Ord. 89-233, Ord. 92-086.)

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

This section applies only to post-retirement benefit increases determined before July 1, 2007. Each retired member or beneficiary (Classes A, B, and C) who is receiving periodic benefits from the Retirement System may be eligible for an increase in the amount of those periodic benefits subject to the following provisions.

(a) *Eligibility*.

(1) For increases determined as of or before June 30, 1995, each member who has retired from active service, whether before or after the effective date of this ordinance, and each beneficiary of a deceased member who is or will be receiving periodic retirement benefits, whether before or after the effective date of this ordinance, and who receives periodic benefit payments for 2 or more years may be eligible for an increase in such periodic benefit determined according to this § 17. Such 2-year period shall be calculated commencing 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 commencing with June 30, 1983. Years retired as a beneficiary of a former retired member shall include the years that the member was retired. Eligible members and beneficiaries are also referred to herein as "persons".

(2) For increases determined as of June 30, 1996, and as of any subsequent June 30 determination date, each member who has retired from active service, whether before or after the effective date of this ordinance, and each beneficiary of a deceased member who is or will be receiving periodic retirement benefits, whether before or after the effective date of this ordinance, and who is receiving periodic benefit payments as of the June 30 determination date may be eligible for an increase in the periodic benefit determined according to this § 17. Eligibility for this increase shall be calculated commencing 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 the June 30 determination date of each year, commencing with June 30, 1996. A beneficiary of a former retired member is eligible to receive any percentage increase under this section that the retired member was eligible to receive. Eligible members and beneficiaries are also referred to herein as "persons".

(3) (i) This paragraph (3) 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 (3), 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.

(4) Notwithstanding paragraph (3) of this subsection, former members of this system who ceased all permanent full-time and permanent part-time employment covered by this system, with entitlement to deferred vested pension benefits, and who then chose to begin employment in a position covered by another City system, on vesting and ceasing all permanent full-time and permanent part-time employment with the City, shall receive benefits calculated to include only those post-retirement increases that the member otherwise would have been eligible to receive under paragraph (2) of this subsection from the commencement of the former member's actual receipt of vested benefits pursuant to §§ 6(a)(12) and 9(l) of this article.

(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 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:

Date benefit payments began	*Percent increase*
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.*

(1) Notwithstanding § 7 as it applies to excess earnings, the amount of excess investment earnings available as of each June 30 (prior to June 30, 1993) for an increase in benefits will be equal to the product of items (i), (ii), and (iii) below. Each item below except for item (ii) under this subsection (c) is determined as of each June 30 beginning with June 30, 1983, and any benefit increase shall become effective as of the following January 1. Item (ii) below 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 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 submitted pursuant to § 5(p). 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 values of the funds for the purpose of this section are assumed to be equal to the values contained in the actuary's report.

(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 June 30 thereafter shall be set aside as a Contingency Reserve Fund until the value of such 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. The Contingency Reserve Fund shall serve as a reserve to insure payment of previously accrued benefit increases for any year in which the Paid-Up Benefit Fund does not meet its interest assumption. While the Board of Trustees may fund increases through the establishment of a Paid-Up Benefit Fund, it shall also have the option of funding any increases through the purchase of annuity contracts from one or more insurance companies. For each year when the Contingency Reserve Fund is not less than 2½% of the Annuity Reserve Fund and the Pension Reserve Fund, the ¾ fraction shall not apply and the amount available to increase benefits shall be the product of items (i) and (ii).

(2) Notwithstanding § 7 as it applies to excess earnings, the amount of excess investment earnings available as of each June 30 (on or after June 30, 1993) for an increase in benefits will be equal to the product of items (i), (ii), and (iii), plus items (iv) and (v) below. For increases determined as of or before June 30, 1995, the increase provided by the excess earnings calculated herein shall be a minimum of 1% and a maximum of 5% in any 1 year. For increases determined as of or after June 30, 1996, the minimum increase shall be increased from 1% to 2% whenever the Contingency Reserve Fund shall equal the maximum 2.5% (as described in item (iii) below) as of the June 30 1 year prior to the end of the year in which the current excess investment earnings are derived.

Each item below except for item (ii) under this subsection (c)(2) is determined as of each June 30 beginning with June 30, 1993, and any benefit increase shall become effective as of the following January 1. Item (ii) below is determined as of the June 30 that is 18 months prior to the effective date of the benefit increase.

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

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 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 of each June 30. The average market value for each year shall equal ½ of the market value of the Annuity Savings Fund, the Annuity Reserve

Fund, the Pension Accumulation Fund, and the Pension Reserve Fund as of the beginning of the year plus ½ of the market value of these funds as of the end of the year minus ½ of the earnings during the year. The earnings and market values of these funds for the purpose of this section are assumed to be equal to the values contained in the actuary's report.

(ii) the ratio of the sum of the Annuity Reserve Fund plus the Pension Reserve Fund to the sum of the following 4 funds: Annuity Savings Fund, Annuity Reserve Fund, Pension Accumulation Fund, and the Pension Reserve Fund.

(iii) ¾ on June 30, 1993, 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, 1993, and each June 30 thereafter shall be set aside as a Contingency Reserve Fund until the value of such 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. The Contingency Reserve Fund shall serve as a reserve to insure payment of previously accrued benefit increases for any year in which the Paid-Up Benefit Fund does not meet its interest assumption. While the Board of Trustees may fund increases through the establishment of a Paid-Up Benefit Fund, it shall also have the option of funding any increases through the purchase of annuity contracts from one or more insurance companies. For each year when the Contingency Reserve Fund is not less than 2½% of the Annuity Reserve Fund and the Pension Reserve Fund, the ¾ fraction shall not apply.

(iv) any additional amount of funds needed (above those provided by items (i) times (ii) times (iii)) to provide the minimum benefit increase. This amount will be transferred from the Contingency Reserve Fund to the Paid-Up Benefit Fund in the month of the benefit increase, notwithstanding that such transfer creates a deficit or increases an existing deficit in the Contingency Reserve Fund.

(v) any net funds provided under items (i) to (iv) above that would result in a variable benefit increase greater than 5%. Such excess funds shall be used to provide an increase in the following years which shall be in addition to the normal variable benefit increase provided the combined increase does not exceed the 5% limit on increases. Carried over excess funds shall not be used to provide the minimum benefit or to offset any prior deficit in item (iv).

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

(i) The existence of a Paid-Up Benefit Fund and a Contingency Reserve Fund is hereby specifically authorized, § 8 to the contrary notwithstanding.

(ii) The Paid-Up Benefit Fund shall be the primary fund from which shall be paid all benefit increases provided under this section. The Paid-Up Benefit Fund shall be funded with excess investment earnings consistent with subsection (c) above. 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, such excess shall remain in the fund and thereby help insure payment of previously accrued benefit increases.

(iii) Prior to June 30, 1993, the Contingency Reserve Fund shall be a reserve to insure payment of previously accrued benefit increases for any year in which the Paid-Up Benefit Fund does not meet its interest assumption. Should there be 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 in order to offset such deficit. The Contingency Reserve Fund shall be funded with excess investment earnings consistent with subsection (c) above. 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, earnings on the Contingency Reserve Fund shall be applied by the Board of Trustees in such amount or amounts as they determine (1) to decrease the amount contributed by the City of Baltimore and/or (2) to decrease the period over which the unfunded accrued liability will be amortized.

(iv) On and after June 30, 1993, the Contingency Reserve Fund shall be a reserve to insure payment of previously accrued benefit increases for any year in which the Paid-Up Benefit Fund does not meet its interest assumption. In addition, the Contingency Reserve Fund shall be used to provide the minimum benefit consistent with § 17(c) above. Should there be 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 in order to offset such deficit, notwithstanding that such transfer creates a deficit or increases an existing deficit in the Contingency Reserve Fund. The Contingency Reserve Fund shall be funded with excess investment earnings consistent with subsection (c) above.

(v) The Board shall have the duty and responsibility of periodically determining investment policies for the Paid-Up Benefit Fund and the Contingency Reserve Fund, and such policies shall be consistent with the limitations set forth in this section.

(vi) The Board shall segregate or invest separately the Paid-Up Benefit Fund and the Contingency Reserve Fund. Furthermore, while the Board is empowered to invest and reinvest such funds in any class of investment set forth at § 7, the Board is specifically empowered to invest and reinvest the Paid-Up Benefit Fund and/or the Contingency Reserve Fund in the medium of paid up annuity contracts or guaranteed investment contracts purchased from one or more insurance companies, provided that any such insurance company shall have no less than the highest rating from A.M. Best Company or a comparable company.

(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. The words "single premium paid-up annuity basis" shall have 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 such benefit increase shall continue for the lifetime of the eligible member and any beneficiary, consistent with any option elected under § 6 or § 9. The foregoing Contingency Reserve Fund has been established to insure payment of previously accrued benefit increases for any year in which the Paid-Up Benefit Fund does not meet its interest assumption.

(ii) Prior to June 30, 1993, the granting of any benefit increase under this section is contingent on the performance of the Retirement System's investment funds. On and after June 30, 1993, the granting of any benefit increase under the provisions of this section shall be subject to the minimum benefit provided for in § 17(c). 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 such benefits in the future. § 10 and § 42 to the contrary notwithstanding, any benefit increase provided under this section shall not become an obligation of the City of Baltimore. In the event of any conflict between § 10 and/or § 42 and this section, the terms of this section shall prevail.

(iii) If the performance of the Retirement 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 full benefit increases previously accrued under this section cannot be continued, then the Trustees can 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 such increases were granted. If the Paid-Up Benefit Fund and the Contingency Reserve Fund should 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) above in a subsequent year shall be used to provide an increase in benefits without regard to any prior reduction or elimination of benefit increases previously accrued.

(f) Any retired member or beneficiary who began receiving periodic retirement benefits prior to June 28, 1991, shall receive a 3% increase in periodic benefits effective July 1, 1992.

(City Code, 1976/83, art. 22, §17.)
(Ord. 83-953; Ord. 91-777; Ord. 92-086; Ord. 93-263; Ord. 96-006; Ord. 97-168; Ord. 07-422.)

§ 17.1. Post-retirement benefit increases on or after July 1, 2007, and before June 30, 2013.

(a) *Scope*.

This section applies to retirement benefit increases determined on or after July 1, 2007, and before June 30, 2013.

(b) *"Single-premium paid-up annuity" defined.*.

In this section, "single-premium paid-up annuity" means the actuarially determined value of a payment stream for the life of a retiree.

(c) *Eligibility*.

(1) As of June 30, 2007, and each succeeding June 30, a member or beneficiary that has been on the Retirement System payroll for the purpose of receiving periodic benefit payments for a period of not less than 12 consecutive months shall receive a post-retirement benefit increase beginning in January of the following year.

(2) For purposes of this section, a beneficiary of a deceased member is deemed to have been on the Retirement System payroll from the date the deceased member originally joined the payroll.

(3) A beneficiary of a former retired member is eligible to receive any percentage increase under this section that the retired member was eligible to receive.

(d) *Amount of benefit increase*.

(1) *"CPI limit" defined.*

"CPI limit" means the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100, for a fiscal year ending June 30.

(2) *Calculation.*

As of January 1, 2008, and each subsequent January 1, an eligible retiree or beneficiary shall receive an increase in periodic benefits, which shall be calculated as the sum of:

(i) a guaranteed increase of 1.5%; and

(ii) an earnings increase determined under paragraph (3) of this subsection.

(3) *Earnings Increase Account.*

(i) The Board of Trustees shall establish a bookkeeping account entitled the Earnings Increase Account for the sole purpose of determining whether an earnings increase is payable.

(ii) The establishment of the Earnings Increase Account neither requires nor allows for the segregation of any Retirement System assets.

(iii)(A) If the actuary engaged by the Board determines that there is a balance in the Earnings Increase Account as of the preceding June 30, that balance shall be allocated to provide an earnings increase to eligible retired members and beneficiaries, effective as of the following January 1.

(B) The earnings increase shall be calculated as a percentage increase that can be provided by the balance in the Earnings Increase Account sufficient to fund a single-premium paid-up annuity, using regular interest after commencement of benefits for valuation purposes on the June 30 preceding the effective date of the increase.

(C) The percentage increase calculated under subparagraph (iii)(B) of this paragraph (3) may not exceed an amount that, when added to the guaranteed increase provided under paragraph (2)(i) of this subsection, exceeds the CPI limit.

(iv) As of January 1, 2008, and each subsequent January 1, any balance in the Earnings Increase Account resulting from the CPI limit as of the preceding June 30 shall be carried forward in the Account to the next June 30 by crediting the balance with the average annual market value asset rate of return, as determined under subsection (e)(1)(i) of this section.

(e) *Earnings Increase Account transfers*.

(1) As of July 1, 2007 and each subsequent July 1, a transfer to the Earnings Increase Account will be made in the amount of the positive difference between:

(i) 100% of the dollar-weighted average investment return on the market value of assets calculated for a fiscal year ending June 30, up to the regular interest before benefits

commence, based on the portion of assets attributable to meet the obligation for participants in pay status; and

(ii) the regular interest after benefit payments commence, on the portion of assets attributable to meet the obligation for participants in pay status.

(2) (i) In this paragraph (2), "normal cost" means the amount determined annually by the actuary for the funding of benefits earned during a plan year in accordance with the funding method in effect. If an aggregate cost method is in effect, the calculation will use the entry-age normal cost funding method.

(ii) Market value of assets attributable to meet the obligation for participants in pay status shall be determined as of June 30 to be equal to the product of:

(A) the ratio of present value of benefits for participants in pay status over the present value of benefits for all participant benefits; and

(B) the sum of:

1. the market value of assets attributable to participants not in pay; and

2. the present value of future normal cost.

(f) *Administration of benefit increases.*

(1) The guaranteed benefit increase provided by subsection (d)(2)(i) of this section may not be less than any corresponding guaranteed post-retirement benefit increase provided by the Fire and Police Employees Retirement System to its members.

(2) Any benefit increase provided under this section shall be funded as a single-premium paid-up annuity.

(3) It is intended that any benefit increase continue for the lifetime of the eligible member and any beneficiary, consistent with any option elected under § 6 or § 9 of this article.

(4) The guaranteed benefit increase provided by subsection (d)(2)(i) of this section is effective as of each January 1, regardless of the investment performance of the Retirement System's investment funds.

(5) The post-retirement benefit increase provided by this section shall be payable in the same form as post-retirement benefit payments being received by the eligible person.

(6) Each eligible person shall receive an equal percentage additional increase.

(Ord. 07-422; Ord. 13-144.)

§ 17.2. Post-retirement benefit increases on or after June 30, 2013.

(a) *Scope.*

This section applies to retirement benefit increases determined on or after June 30, 2013.

(b) *In general.*

An eligible retiree or beneficiary is entitled to receive a guaranteed increase in periodic benefits equal to the greater of:

(1) 1.5%; or

(2) the amount of any corresponding guaranteed post-retirement benefit increase provided by the fire and police employees' retirement system to its members.

(c) *Eligibility.*

A retiree or beneficiary is eligible for the benefit increase provided by this section if, as of June 30, 2013, and each succeeding June 30, the retiree and the beneficiary, whether individually or in combination with the other, have been receiving periodic benefit payments for at least 12 consecutive months.

(d) *When increase begins.*

An eligible retiree or beneficiary will receive the benefit increase beginning in January of the year following the June 30 on which he or she became eligible.

(e) *Administration of benefit increases.*

(1) The benefit increase provided by this section shall be funded by this System as a single-premium paid-up annuity, representing the actuarially determined value of a payment stream for the life of a retiree.

(2) It is intended that any benefit increase continue for the lifetime of the retiree and any beneficiary, consistent with the option elected under § 6 or § 9 of this subtitle.

(3) The guaranteed benefit increase provided by this section is effective as of each January 1, regardless of the investment performance of the Retirement System's investment funds.

(4) The benefit increase provided by this section is payable in the same form as the post-retirement benefit payments being received by the eligible retiree or beneficiary.

(5) Except as required by subsection (b)(2) of this section, each eligible retiree and beneficiary shall receive an equal percentage benefit increase.

(Ord. 13-144.)

§ 17.3. Post-retirement benefit increases for Class D members.

(a) *Scope of subsection.*

This section applies to retirement benefit increases for Class D members.

(b) *In general.*

Except as otherwise provided in this section, an eligible retiree or beneficiary is entitled to receive a guaranteed increase in periodic benefits equal to the greater of:

(1) 1.5%; or

(2) the amount of any corresponding guaranteed post-retirement benefit increase provided by the Fire and Police Employees' Retirement System to its members.

(c) *Eligibility.*

A retiree or beneficiary is eligible for the benefit increase specified in subsection (b) of this section if:

(1) as of a particular June 30, the retiree and the beneficiary, whether individually or in combination with the other, have been receiving periodic benefit payments for at least 12 consecutive months; and

(2) as of the preceding June 30, the Class D funded status, as defined in City Code Article 22A, § 5-3(c)(4)(ii), is 85% or more.

(d) *Modification of rate.*

(1) If the Class D funded status as of the preceding June 30 is less than 85%, but is 70% or more, the guaranteed increase in periodic benefits under subsection (b) of this section will be reduced to 1% for all eligible retirees and beneficiaries until the June 30 following the first ensuing June 30 as of which the Class D funded status is 85% or more.

(2) If the Class D funded status as of the preceding June 30 is less than 70%, the guaranteed increase in periodic benefits under subsection (b) of this section will be reduced to 0% for all eligible retirees and beneficiaries until the June 30 following the first ensuing June 30 as of which the Class D funded status is 70% or more.

(e) *Date benefit increase begins.*

An eligible retiree or beneficiary will receive the benefit increase beginning in January of the year following the June 30 on which he or she became eligible.

(f) *Administration of benefit increases.*

(1) The benefit increase provided by this section shall be funded by this System as a single-premium paid-up annuity, representing the actuarially determined value of a payment stream for the life of the retiree.

(2) It is intended that any benefit increase continue for the lifetime of the retiree and any beneficiary, consistent with the option in effect under § 9.2(k) {"Method of payment"} of this subtitle.

(3) The guaranteed benefit increase provided by this section is effective as of each January 1, regardless of the investment performance of this System's investment funds.

(4) The benefit increase provided by this section is payable in the same form as the post-retirement benefit payments being received by the eligible retiree or beneficiary.

(5) Except as required by subsection (b)(2) of this section, each eligible retiree and beneficiary shall receive an equal percentage benefit increase.

(Ord. 14-216.)

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ELECTED OFFICIALS' RETIREMENT SYSTEM

§ 17A. Definitions.

(1) "Retirement System" shall mean the Elected Officials' Retirement System of the City of Baltimore as defined in § 18 of this subtitle.

(2) "Elected official" shall mean the Mayor, the Comptroller, the President of the City Council and the members of the City Council.

(3) "Member" shall mean any person included in the membership of the system as provided in § 19 of this subtitle.

(4) "Board of Trustees" shall mean the Board provided in § 21 of this subtitle, to administer the retirement system.

(5) "Service" shall mean service as an elected official as described in paragraph (2) of this section, and paid for by the City of Baltimore, while a member of the Elected Officials' Retirement System; and any service purchased, or repurchased or transferred, by appropriate deposit or redeposit of funds, plus interest, to cover such period, or any service credited under any other section of this subtitle and under Maryland State Law, including any past service rendered as a member of the General Assembly of Maryland.

(6) "Beneficiary" shall mean any person in receipt of a pension, an annuity, a retirement allowance, or other benefit as provided by this subtitle.

(7) (i) "Regular interest" for the accumulation of member contributions means interest at 5.25% per year compounded annually.

(ii) "Regular interest" for valuation purposes means interest at 7.25% per year, compounded annually.

(iii) "Regular interest" for the purposes of determining actuarial equivalents means interest at 4½% per year, compounded annually.

(8) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member, together with regular interest as provided in paragraph (7) of this section and pursuant to the provisions of §§ 23 and 24 of this subtitle.

(9) (i) "Current annual earnable compensation" means the current annual compensation authorized for the highest-paying elected position held by the member and includes any future increases occurring after the retirement of the elected official from that elected position, which shall, after retirement, index benefits paid under this system subject to applicable reduction for any optional retirement allowance selection.

(ii) If the position or class of any elected official is abolished and a new position or class is created, then, the current annual earnable compensation authorized for the new position or class, including any future increases, shall be used to index benefits of retired members who held

office in the abolished position or class. If a new position or class is not created, then future increases to retirement benefits shall be indexed to the future compensation percentage increases to the position of Mayor of the City of Baltimore.

(10) "Annuity" shall mean payments for life derived from the "accumulated contributions" of a member.

(11) "Pensions" shall mean payments for life derived from money provided by the City of Baltimore.

(12) All retirement allowances or other benefits that are calculated on an annual basis shall be payable for each month in a year. Payments shall be made in periodic installments, as determined from time to time by the Board of Trustees, and the monthly allowance shall be computed by dividing the annual allowance by 12. All retirement dates shall fall on the 1st day of a month.

(13) "Retirement" shall mean withdrawal from active service with a retirement allowance or pension granted or deferred under the provisions of this subtitle. However, the deferment of the receipt of the retirement allowance or pension must be at the option of the member and said member must not be on "continued membership".

(14) "Retirement allowance" shall mean the sum of the "annuity" and the "pensions".

(15) "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.

(16) "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.

(17) "Continued membership" shall mean a member who leaves City service and who continues to pay into the Retirement System pursuant to the provisions of § 19(c).

(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 with no set forward, except that in the case of disability retirements under this subtitle, the table is set forward 9 years.

(19) "Actuary" shall mean the person or persons designated as hereinafter provided.

(20) The male pronoun shall include the female pronoun or vice versa.

(21) "Actuarial reserve" shall mean the present value of a benefit due the member, based on such interest and mortality tables as are adopted by the Board of Trustees upon advice of the actuary for the Retirement System.

(22) "Normal retirement date" shall be the 1st day of the month after the date at which the elected official has acquired at least 12 years of service credit in this system and attained 50 years of age or more or 16 years of service credit in this system.

(23) "Fiscal year" shall be the 12-month period beginning on July 1 of each year and ending on June 30 of the following year, both these dates included therein, or such alternate dates as shall be mandated by law for the Mayor and City Council.

(City Code, 1976/83, art. 22, §17A.)
(Ord. 83-1105; Ord. 91-791; Ord. 92-090; Ord. 93-249; Ord. 98-290A; Ord. 05-173; Ord. 07-422; Ord. 12-044.)

§ 18. Name and date operative.

A Retirement System is hereby established and placed under the management of the Board of Trustees for the purpose of providing retirement allowances, pensions and other incidental benefits under the provisions of this subtitle for elected officials of the City of Baltimore who become members of this Retirement System. It shall be known as the "Elected Officials' Retirement System of the City of Baltimore". The Retirement System so created shall begin operation on the date of passage of this ordinance. However, the benefits and provisions therein shall be applicable only to elected officials after taking the oath in December 1983, for the new term of office, and thereafter.

(City Code, 1976/83, art. 22, §18.) (Ord. 83-1105.)

§ 19. Membership.

The membership shall consist of the following:

(a) (1) Any elected official who is not an A, B, or C member of the Employees' Retirement System of Baltimore City, upon taking the oath of office, shall automatically become a member of this system. Such official shall be eligible to receive credit for all previous service as an elected official of Baltimore City, and any service credit for membership in any Maryland State or City of Baltimore retirement system provided that he files a claim with the Board of Trustees within 6 months after becoming a member, and shall pay to this Retirement System, by a single payment or increased rate of contribution, as might be approved by the Board of Trustees, the contributions with regular interest that he would have paid had he been a Class A member of the Employees' Retirement System during that period.

(2) Any elected official who is an A or B member of the Employees' Retirement System shall have the option within 120 days of his taking his oath of office, to become a member of this Retirement System and shall be eligible to receive credit for all service credit that he has acquired in the Employees' Retirement System, and any service credit for membership in any Maryland State, or Baltimore City retirement system. In order to receive such credit for such membership, within 6 months after becoming a member, the elected official shall pay to this Retirement System by a single payment or increased rate of contribution, as might be approved by the Board of Trustees, the contributions with regular interest that he would have paid for such membership credit had he been a contributing Class A member of the Employees' Retirement System.

(3) Any elected official who is a C member of the Employees' Retirement System shall have the option, within 120 days of his taking his oath of office, to become a member of this Retirement System, and he shall be entitled to receive credit in this Retirement System, for all service credit he had acquired while a C member in the Employees' Retirement System, and any service credit for membership in any Maryland State, or Baltimore City retirement system. In order to receive such credit for membership, within 6 months after becoming a member, the elected official shall pay to this Retirement System by a single payment or increased rate of contribution, as might be

approved by the Board of Trustees, the contributions with regular interest that he would have paid for such membership credit had he been a contributing Class A member of the Employees' Retirement System.

(b) (1) An elected official 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.

(2) The prohibition set forth in paragraph (1) of this subsection does not apply to contributions made to or benefits received from:

(i) the Baltimore City Municipal Deferred Compensation Plan, or

(ii) the Social Security System established by the Act of Congress known generally as "The Social Security Act of 1935", as amended from time to time.

(3) Notwithstanding paragraph (1) of this subsection, 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 form another City system but who chose to suspend receipt of those benefits and accept reemployment in a position covered by this system.

(c) Notwithstanding anything to the contrary, any elected official who is a member of this retirement system has the right at his or her option to continue membership in the retirement system after his or her leaving office or the end of the term of office for which he or she was last elected. This right is contingent on that person's making all the payments that would have been made by him or her and also by the City, as determined by the actuary, had he or she continued to hold the elected office. These payments shall be based on the current annual earnable rate of compensation that the person would have received had he or she remained in office. However, to the extent that any elected official leaves office to begin employment in a position covered by another City system and begins to accrue service credit in that other system, pursuant to § 48 of this article, that former elected official may not choose to continue active membership in this system.

To exercise this option, the elected official is required to deposit the remainder of all the payments in advance, within 30 days after leaving office or the end of the term of office for which the elected official served, for the current fiscal year that would have been paid had he or she continued to hold office. Thereafter, payments shall be made in annual amounts, in advance within 30 days of the beginning of each fiscal year. These payments entitle the official to the same service credit that he or she was receiving as a member before leaving office. On accruing 12 years of membership credits and 50 years of age or more or 16 years of membership credits the elected official is entitled

to receive a service retirement allowance as provided for in § 22(a) of this subtitle, computed as if he or she were a member retiring from active service. Should a member so electing die before he or she becomes eligible for any benefits under this subtitle, the amount of his or her accumulated contributions with interest to the date of death shall be paid to his or her estate, or to the person that she or he nominated by written designation duly acknowledged and filed with the Board of Trustees at the time of retirement. The deceased member's beneficiary or estate is not entitled to any benefit under this subtitle other than the return of the deceased member's accumulated contributions.

(d) Any elected official may remain in service as a contributing member regardless of age. However, no contributions shall be made by the member after the member has attained age 60 and has acquired 35 years of service credit in this system.

(City Code, 1976/83, art. 22, §19.) (Ord. 83-1105; Ord. 91-791; Ord. 97-168.)

§ 20. Military service creditable.

(a) *Military personnel – 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 (8) 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 under 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 reemployed 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 rate for the accumulation of member constributions 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 reemployment of the member under paragraph (1)(iii) of this section is paid employment; and

(ii) membership in this system is a requirement of that 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; and

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

(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) *"Military service" defined.*

(i) In this subsection, "military service" means any:

(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 Pension Article §38-101(d);

(ii) "Military service" includes 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.

(9) *Rules and regulations.*

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

(b) *Military personnel – Credit for military service prior to employment.*

(1) Notwithstanding any other provision of this subtitle, on proper application to the Retirement System, credit for military service, as defined in subsection (a) of this section, shall be granted to any member who has served in the military prior to employment with the City.

(2) However, a member may not be awarded credit if the member 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. This exclusion, however, does not apply to any 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.

(3) The military service credit provided by this subsection may not exceed 3 years.
(City Code, 1976/83, art. 22, §20.)
(Ord. 83-1105; Ord. 86-768; Ord. 05-173; Ord. 12-044.)

§ 21. Board of Trustees.

(a) *In general.*

The Elected Officials' Retirement System shall be administered by the Board of Trustees of the Employees' Retirement System:

(1) in the same manner as is provided in § 5 of this article; and

(2) subject to the same limitations as are imposed by § 5(b)(5) of this article.

(b) *Claims administration.*

All claims shall be administered by the panel of hearing examiners in the same manner as provided in § 9 of this article for members of the Employees' Retirement System.
(City Code, 1976/83, art. 22, §21.)
(Ord. 83-1105; Ord. 86-768; Ord. 05-173; Ord. 11-566.)

§ 22. Benefits.

(a) *Service retirement benefits.*

(1) *Eligibility.*

Any member in service may retire provided that the member has:

(i) acquired 12 or more years of service and attained the age of 50; or

(ii) acquired 16 years of service, regardless of age.

(2) *Application.*

Prior to receiving a service retirement benefit, a member must:

(i) complete a written application filed with the Board of Trustees; and

(ii) select an effective date of retirement not less than 30 days or more than 90 days after the filing of the written application.

(3) *Amount of service retirement benefit.*

Upon retirement from service, a member is entitled to receive an annual maximum service retirement allowance equaling 2.5% the member's current annual earnable compensation multiplied by the number of years of the member's service credit. Such allowance shall consist of:

(i) an annuity equal to the actuarial equivalent of the member's accumulated contributions at the time of retirement; and

(ii) a pension, equal to the annual maximum retirement allowance less the annuity described in item (i) of this paragraph 2.

(b) *Non-line-of-duty disability retirement*.

(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 from the further performance of his or her duties as an elected official of Baltimore City;

(B) the incapacity is likely to be permanent; and

(C) the member does not qualify under subsection (c) of this § 22 for a line-of-duty disability retirement.

(2) *Application and filing deadline*.

To retire under this subsection (b), a 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 takes effect as follows:

(i) if the member applied for disability 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 disability retirement after terminating City employment, the retirement is effective 30 days after the date on which the Board received a completed application.

(4) *Amount of non-line-of-duty disability retirement benefit*.

Upon being awarded a retirement benefit under this subsection (b), a member is entitled to receive an annual maximum retirement allowance equal to the greater of:

(i) the member's annual maximum service allowance as described in subsection (a)(3) of this section; or

(ii) a retirement allowance totaling 25% of the member's current annual earnable compensation.

(c) *Line-of-duty disability*.

(1) *Eligibility requirements*.

A member shall be retired on a line-of-duty disability if a hearing examiner determines that:

(i) the member is totally and permanently incapacitated from the further performance of his or her duties as an elected official of Baltimore City; and

(ii) the member was injured:

(A) as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place; and

(B) without willful negligence on the part of the member.

(2) *Application and filing deadline*.

To retire under this subsection (c), a member must:

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

(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 takes effect as follows:

(i) if the member applied for disability 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 disability retirement after terminating City employment, the retirement is effective 30 days after the date on which the Board received a completed application.

(4) *Amount of line-of-duty disability retirement benefit*.

Upon being awarded a retirement benefit under this subsection (c), a member is entitled to receive a maximum retirement allowance consisting of:

(i) an annuity equal to the actuarial equivalent of the member's accumulated contributions at the time of retirement; plus

(ii) a pension equaling 66.667% of the member's current annual earnable compensation.

(d) *Deferred vested retirement benefit.*

(1) *Eligibility.*

Any member will receive a deferred vested retirement benefit who:

(i) has acquired at least 12 years of service but less than 16 years service, all of which does not need to be continuous;

(ii) has left office before attaining age 50; and

(iii) has elected to leave his or her accumulated contributions with the System, with regular interest, while the member is no longer in office.

(2) *Application.*

Prior to receiving a retirement benefit under this subsection (d), a member must file a written application for retirement with the Board of Trustees more than 30 days and less than 90 days from the member's effective retirement date.

(3) *Amount of deferred vested retirement benefits.*

Upon attaining age 50, a member is entitled to receive a deferred vested benefit equaling an annual maximum service retirement allowance as described in paragraph (3) of subsection (a) of this section.

(4) *Death prior to commencement of deferred vested benefit.*

(i) *Scope of section.*

This section will apply to any member who:

(A) is eligible for a deferred vested benefit under this subsection (d);

(B) dies before attaining age 50, but after leaving office; and

(C) dies before properly filing an application for benefits under this paragraph (d).

(ii) *Return of accumulated contributions.*

The accumulated contributions of any member described in item (i) above will be paid:

(A) to the member's designated beneficiary;

(B) if there is no designated beneficiary or if the designated beneficiary predeceases the member, to the member's surviving spouse;

(C) if there is no designated beneficiary and no surviving spouse, to the member's children, in equal shares;

(D) if there is no designated beneficiary, surviving spouse, or surviving child, to the member's surviving parents, in equal shares; and

(E) otherwise, to the member's estate.

(iii) *Interest*.

The amount of accumulated contributions paid will include interest to the date of the member's death.

(iv) Any beneficiary or estate receiving benefits under this paragraph (3) is not entitled to any other benefit under this section.

(e) *Method of payment*.

(1) *Maximum retirement allowance*.

(i) Any member eligible to receive a retirement allowance under subsections (a), (b), (c) or (d) of this section is entitled to receive an annual maximum benefit without actuarial modification.

(ii) On receipt of proper proof of death of a retired member receiving the maximum benefit, the Board of Trustees shall pay an amount equal to 40% of the retired member's retirement allowance as of the date of the retired member's death, to one of the following beneficiaries:

(A) if the retired member is survived by a spouse to whom the retired member was married for at least 1 year immediately before the retired member's retirement date, the benefit shall be paid to the surviving spouse, to continue for life or until remarriage; or

(B) if there is no qualifying surviving spouse or if the surviving spouse dies or remarries, then the benefit shall be paid to the retired member's minor children, in equal shares, to continue until the children are no longer minor, as defined in § 47(h) of this article.

(iii) For purposes of this paragraph (1), when a retired member's child is no longer a minor and consequently ceases to receive benefits under this paragraph (1), 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 youngest child is no longer a minor.

(2) *Elections for retirement allowance with actuarial modification*.

(i) *In general*.

Instead of the allowance provided for in paragraph (1) of this subsection, a member who is entitled to receive a retirement allowance from this system may elect to receive a lesser

retirement allowance for life from among the options set forth in subparagraphs (ii) through (v) of this paragraph (2). The lesser optional retirement allowance that the retired member will receive, when combined with the optional survivorship benefit selected by the retired member, will equal the actuarial equivalent of the retired member's maximum retirement allowance computed as of the retired member's retirement date.

(ii) *Reserve guarantee option*.

(A) On the retired member's death, the balance of the retired member's retirement allowance at the time of retirement, after deducting the total amount of periodical payments received by the retired member during his or her life, will be payable as a lump sum:

1. to the retired member's designated beneficiary; or

2. if there is no designated beneficiary or if the designated beneficiary predeceases the retired member, to the retired member's estate.

(B) A member selecting this reserve guarantee option may change his or her designated beneficiary at any time throughout retirement.

(iii) *Joint and survivor options*.

(A) On the retired member's death, the member's designated beneficiary will receive a lifetime benefit of either, as elected by the member:

1. 100% of the periodical allowance the retired member was receiving at the time of death; or

2. 50% of the periodical allowance the retired member was receiving at the time of death.

(B) Within 30 days of the retired member's retirement date, the retired member may elect to change the designated beneficiary for benefits under this subparagraph (iii).

(C) If the designated beneficiary predeceases the retired member while still within 30 days of the retirement date, the retired member may designate a new beneficiary within 30 days of the designated beneficiary's death.

(D) If the designated beneficiary predeceases the retired member while within 30 days of the retirement date and the retired member does not designate a new beneficiary within 30 days of the designated beneficiary's death or if the designated beneficiary dies on or after the 31st day following the retirement date:

1. the retired member continues to receive a lesser retirement allowance under this survivorship option;

2. no new beneficiary may be designated; and

3. on the retired member's death, no survivorship benefit is payable.

(iv) *"Pop-up" joint and survivor options.*

(A) On the retired member's death, the member's designated beneficiary will receive a lifetime benefit of either, as elected by the member:

1. 100% of the periodical allowance the retired member was receiving at the time of death; or

2. 50% of the periodical allowance the retired member was receiving at the time of death.

(B) Within 30 days of the retired member's retirement date, the retired member may elect to change the designated beneficiary for benefits under this subparagraph (iv).

(C) If the designated beneficiary predeceases the retired member while still within 30 days of the retirement date, the retired member may designate a new beneficiary within 30 days after the designated beneficiary's death.

(D) If the designated beneficiary predeceases the retired member while within 30 days of the retirement date and the retired member does not designate a new beneficiary within 30 days after the designated beneficiary's death or if the designated beneficiary dies on or after the 31st day following the retirement date:

1. the retired member receives the maximum retirement allowance, effective from the 1st day after the death of the designated beneficiary;

2. no other beneficiary may be designated; and

3. on the retired member's death, no survivorship benefit is payable, whether under this survivorship option or the maximum retirement allowance.

(v) *Specific benefit option.*

(A) On the retired member's death, the member's designated beneficiary will receive, as elected by the member before the member's retirement date:

1. a specific lump-sum amount; or

2. a specific periodical allowance, payable to the designated beneficiary for life.

(B) This pre-determined benefit must be approved, at the time of the member's retirement, by the Board of Trustees pursuant to the recommendation of the system's actuary.

(C) Within 30 days of the retired member's retirement date, the retired member may elect to change the designated beneficiary for benefits under this subparagraph (v).

(D) If the designated beneficiary predeceases the retired member while still within 30 days of the retirement date, the retired member may designate a new beneficiary within 30 days after the designated beneficiary's death.

(E) If the designated beneficiary predeceases the retired member while within 30 days of the retirement date and the retired member does not designate a new beneficiary within 30 days after the designated beneficiary's death or if the designated beneficiary dies on or after the 31st day following the retirement date:

1. the retired member continues to receive a lesser retirement allowance under this survivorship option;

2. no other beneficiary may be designated; and

3. on the retired member's death, no survivorship benefit is payable.

(3) *Change of election within 30 days.*

(i) Any retired member may elect to make the changes authorized in this paragraph (3) on or before the later of:

(A) the 30th day after the retired member's retirement date; or

(B) if the retired member's designated beneficiary predeceases the retired member while within 30 days of the retirement date, the 30th day after the designated beneficiary's death.

(ii) Within the periods specified, a retired member may elect to change:

(A) the retired member's maximum allowance under paragraph (1) of this subsection to any one of the actuarially modified retirement allowances under paragraph (2) of this subsection;

(B) the retired member's election for an actuarially modified retirement allowance under paragraph (2) of this subsection to the maximum allowance under paragraph (1) of this subsection; or

(C) the retired member's election for one actuarially modified retirement allowance under paragraph (2) of this subsection to any other of the allowances under paragraph (2) of this subsection.

(iii) Any payments made to a retired member under the original election shall be taken into account in computing the allowance to be paid under the subsequent election.

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

(1) *Scope of subsection.*

This subsection (f) applies to a member who dies while serving as an elected official for Baltimore City, but whose death does not qualify under subsection (g) as a line-of-duty death.

(2) *Lump-sum death benefit*.

(i) 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 paragraph (3) of this subsection.

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

(A) the member's accumulated contributions; plus

(B) if the member has acquired 1 or more years of service, 50% of the member's current annual compensation on the date of the member's death.

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

(A) to the member's designated beneficiary;

(B) if there is no designated beneficiary or if the designated beneficiary predeceases the member, to the member's surviving spouse;

(C) if there is no designated beneficiary and no surviving spouse, to the member's children, in equal shares;

(D) if there is no designated beneficiary, surviving spouse, or surviving child, to the member's surviving parents, in equal shares; and

(E) otherwise, to the member's estate.

(3) *100% survivorship death benefit.*

(i) 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 (iv) 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 (e)(2)(iii)(A)1 of this section had the member elected that survivorship benefit in favor of that beneficiary and retired as of the date of death.

(ii) The benefit shall be paid:

(A) 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

(B) 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.

(iii) 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.

(iv) The benefit provided by this paragraph (3) is in place of all benefits provided under paragraph (2) of this subsection.

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

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

(i) a member dies without designating a beneficiary;

(ii) that member has no heirs, as enumerated in §§ 3-102 through 3-104 of the Estates and Trusts Article of the Maryland Code; and

(iii) no estate for that member is opened within 2 years of the member's death.

(5) *Death of retired member within 30 days of retirement.*

(i) *Scope of paragraph.*

Except as specified in subparagraph (ii) below, this paragraph (5) applies to:

(A) a retired member who:

1. has been granted a retirement under subsection (a), (b), (c), or (d) of this section;

2. dies within 30 days of his or her retirement date; and

3. does not die from injuries that caused or contributed to the member being awarded a retirement pursuant to subsection (c) of this section; or

(B) a retired member who:

1. retires before reaching age 50;

2. when applying for retirement, elects to postpone receipt of his or her retirement allowance until age 50 pursuant to subsection (k) of this section; and

3. dies within 30 days after reaching age 50.

(ii) *Exception.*

This paragraph does not apply to a former member who terminates employment before reaching age 50 without immediate entitlement to retirement benefits.

(iii) *Death deemed to be during active service.*

Any retired member described in subparagraph (i) of this paragraph (5) is deemed to have died while serving as an elected official of Baltimore City and, instead of any other service or disability benefits under this system, a death benefit under this subsection (f) will be paid as if the retired member died during active service.

(iv) *Offset of payments received.*

Any pension benefits paid by this system and received by the retired member or former member before he or she died shall be offset against the death benefits payable under this paragraph.

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

(1) *Scope of subsection.*

This subsection applies only to a member:

(i) who dies while a member of this system; and

(ii) whose death has been determined by a hearing examiner to have occurred:

(A) from the natural and proximate result of the actual performance of duty; and

(B) without willful negligence on the part of the member.

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

(i) 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:

(A) the member's accumulated contributions:

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

(B) a pension of 100% of the member's current annual compensation on the date of the member's death:

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

2. if there is no surviving spouse or if the surviving spouse dies or remarries, 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.

(ii) For purposes of subparagraph (i)(B)3. of this paragraph (2), "dependent" means the level of dependency required by Internal Revenue Code § 152.

(iii) 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.

(iv) 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.

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

(i) *Scope of subsection*.

This paragraph (3) applies to any member who:

(A) has been granted a retirement under subsection (c) of this section;

(B) elects to receive maximum benefits or a lesser retirement allowance with actuarial modification; and

(C) dies from injuries that caused or contributed to the member being awarded a retirement pursuant to subsection (c) of this section.

(ii) A member described in subparagraph (i) of this paragraph (3) is considered, for purposes of paragraph (1)(i) of this subsection, to have died as a member in service. To the extent to which they are entitled, the beneficiaries of the member shall receive line-of-duty death benefits under paragraph (2) of this subsection (g).

(iii) Any accumulated contributions payable to the designated beneficiary of a member whose death is governed by this paragraph (3) shall be reduced by the amount of annuity payments that the deceased member previously received through a line-of-duty disability retirement allowance.

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

The amounts that would have been paid under paragraph (2) of this subsection (g), excluding membership contribution accounts, with interest, forever remain assets of the system if:

(i) a member dies without designating a beneficiary;

(ii) that member has no heirs, as enumerated in §§ 3-102 through 3-104 of the Estates and Trusts Article of the Maryland Code; and

(iii) no estate for that member is opened within 2 years of the member's death.

(h) *Pensions offset by compensation benefits*.

(1) *Scope of subsection*.

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

(i) on account of a disability or death, was awarded a benefit paid by the City under the State Workers' Compensation Law; and

(ii) 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 (h) 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 (h), 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.

(i) *Refund of accumulated contributions*.

Any member who ceases to serve as an elected official of Baltimore City before becoming eligible to receive any benefits under this section may receive a refund of his or her accumulated contributions with interest credited to the member's last day in office.

(j) *Forfeiture of benefits*.

(1) *In general*.

No benefits provided under this section will be paid or payable to any elected official, or his or her beneficiary, who is convicted of a job-related offense, such offense being either a misdemeanor or felony punishable by incarceration for more than 6 months or punishable by a fine in excess of $500.00.

(2) *Job-related defined*.

To be job-related, the offense must be committed by the member in the performance of his duties as an Elected Official of the City of Baltimore and committed against the City of Baltimore.

(3) *Conviction after retirement*.

This prohibition will be applicable even though a retiree of this system or his or her beneficiary is receiving benefits under this section at the time of said conviction. In such event, the retiree or his or her beneficiary shall forfeit said benefits and be entitled to only the return of the member's accumulated contributions with interest less any benefit payments made under this section.

(k) *Postponement and suspension of retirement benefits*.

(1) This subsection (k) applies to members who are no longer employed in a permanent full-time or permanent part-time position with the City and were either:

(i) 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

(ii) 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.

(2) Pursuant to § 48 of this article, members described in paragraph (1) of this subsection, on ceasing all permanent full-time and permanent part-time employment with the City, shall receive benefits calculated to include all increases in current annual earnable compensation set by this System under § 17A(9) that the member or retiree would have been eligible to receive as a retiree had retirement benefits not been Postponed or suspended.

(l) *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 in Internal Revenue Code § 415 and the regulations adopted under it.

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

(1) Distributions under this subtitle shall be made in accordance with a reasonable good faith interpretation of Internal Revenue Code § 401(a)(9), as applicable to this System. This subsection is intended to comply with a reasonable good faith interpretation of Internal Revenue Code § 401(a)(9) to the extent applicable to this System, and may not be interpreted to impose any requirements on this System or on any member or beneficiary of this System beyond those required to comply with a reasonable good faith interpretation of § 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 designated 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 designated 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 had been paid to a surviving spouse if that amount is paid to the surviving spouse when that child reaches the age of majority.

(n) *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*.

(i) 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.

(ii) This paragraph (2) applies to determine the retirement benefit of a § 401(a)(17) member.

(iii) The retirement benefit of a § 401(a)(17) member shall be the greater of (A) or (B) below:

(A) 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

(B) the member's retirement benefit, determined without regard to this paragraph (2).

(o) *Eligible rollover distribution*.

(1) *Definitions*.

(i) In this subsection, the following terms have the meanings indicated:

(ii)(A) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee.

(B) "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) 1. A portion of a distribution does not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax employee contributions that are not includible in gross income.

2. However, the portion may be transferred only to:

i. an individual retirement account or annuity described in Internal Revenue Code § 408(a) or (b);

ii. for taxable years beginning after December 31, 2001, and before January 1, 2007, to a qualified trust that is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

iii. for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Internal Revenue Code § 403(B), if the trust or contract provides for separate accounting for amounts so transferred (including interest on those amounts), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

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

(A) an individual retirement account described in Internal Revenue Code § 408(a);

(B) an individual retirement annuity described in Internal Revenue Code § 408(b);

(C) an annuity plan described in Internal Revenue Code § 403(a);

(D) a qualified trust described in Internal Revenue Code § 401(a);

(E) an annuity contract described in Internal Revenue Code § 403(b);

(F) an eligible plan described in Internal Revenue Code § 457(b), if it is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and it agrees to separately account for amounts transferred into that plan from this System; or

(G) for distributions made on or after January 1, 2008, a Roth IRA described in Internal Revenue Code § 408A, subject to the restrictions that apply to rollovers to a Roth IRA.

(iv) (A) "Distributee" means an employee or former employee.

(B) 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. Effective July 1, 2010, a "distributee" also includes the employee's or former employee's nonspouse designated beneficiary. In the case of a nonspouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Internal

Revenue Code § 408(a) or (B) ("IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA under § 402(c)(11).

(v) "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.

(p) *Vesting on System termination*.

Notwithstanding any other provision of this subtitle, on the effective date of a termination or partial termination of this System, as determined under applicable Internal Revenue Service regulations and rulings, all affected members who are not already vested in their accrued benefits become immediately vested in those benefits, to the extent the benefits are funded.

(City Code, 1976/83, art. 22, §22.)
(Ord. 83-1105; Ord. 86-768; Ord. 91-701; Ord 91-791, Ord. 93-249; Ord. 95-651; Ord. 97-168; Ord. 98-290A; Ord. 99-451; Ord. 05-173; Ord. 12-043; Ord. 13-191.)

§ 23. Management of Funds.

(a) *Trustee of funds*.

The Board of Trustees shall be the trustees of the several funds of the Elected Officials' Retirement System of Baltimore created under the provisions of this subtitle. The Board shall have the power to invest and reinvest such funds as provided for in § 7 of this Article 22.

(b) *Sudan investments*.

The provisions of § 7(a)(1) of this article, concerning the investment of funds in companies doing business in or with Sudan, apply to all funds of the Elected Officials' Retirement System.

(City Code, 1976/83, art. 22, §23.)
(Ord. 83-1105; Ord. 86-792; Ord. 90-466; Ord. 93-210; Ord. 93-265; Ord. 07-570; Ord. 12-044.)

§ 24. Method of financing.

Assets. All of the assets of this Retirement System shall be credited toward meeting the aggregate obligations of this Retirement System.

(a) *Member contributions*.

(1) Member contributions shall be accumulated from the compensation of members to provide for their annuities. The contributions by a member to the Retirement System shall equal 5% of his or her current annual earnable compensation, these contributions to continue throughout the

member's entire period of service. However, no contributions may be made by the member after the member has attained age 60 and has acquired 35 years of service credit in this system.

(2) The deductions provided for in this subsection (a) shall be made notwithstanding that the minimum compensation provided for by law for any member is reduced by the deduction. Every member is deemed to consent and agree to the deductions made and provided for in this subsection, and the receipt of his or her full salary or compensation, and payment of salary or compensation, less this deduction, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by that person during the period covered by the payment, except as to the benefits provided under this subtitle.

(3) The accumulated contributions of a member withdrawn by him or her, or paid to his or her estate or to his or her designated beneficiary in event of death shall be paid from the Retirement System.

(b) *City contributions*.

(1) (i) On the basis of regular interest and of the mortality and other tables and assumptions 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 for the System.

(ii) Through the year ending June 30. 2014, the normal cost and accrued liability shall be determined by the projected unit credit cost method. Effective with the year beginning July 1, 2014, the normal cost and accrued liability shall be determined by the entry age normal cost method.

(2) The assets of the System shall be applied against the total accrued liability, computed above for all members, retirees, and beneficiaries, to determine the amount of unfunded accrued liability. An accrued liability contribution is the amount determined by the Board of Trustees to be sufficient to meet regular interest on the unfunded accrued liability and to amortize the principal of that unfunded accrued liability over the period of time determined by the Board of Trustees.

(3) The required contribution by the City of Baltimore shall be the sum of the normal cost and accrued liability contribution determined above. However, the aggregate payment by the City of Baltimore must be sufficient, when combined with the assets of the System, to provide the pensions and other benefits payable out of the fund during the year then current.

(c) *Certification of Appropriation*.

(1) On or before January 1 of each year, the Board of Trustees shall certify to the Board of Estimates the amount of the appropriation necessary to pay to this Retirement System the amounts payable by the City of Baltimore, as enumerated in this article, for the fiscal year beginning on the ensuing July 1.

(2) The amount so certified is due to the System on July 1 of the fiscal year, and appropriations for that amount shall be included in the Ordinance of Estimates for that fiscal year.

(d) For an elected official who transfers to this System, the Board of Trustees of the Transferring system shall determine and transfer to this System all applicable funds provided by the City of Baltimore for

the transferring member's past service. The amount to be transferred shall be based on the benefit accrued in the transferring retirement system.

(City Code, 1976/83, art. 22, §24.)
(Ord. 83-1105 Ord. 92-090; Ord. 13-191.)

§ 25. Exemption from assignment and execution.

Any current or future benefit provided by this system and any money in a fund or an account created by this system is exempt from attachment, assignment, or execution as provided in § 11 of this article, subject to the exceptions delineated in that section.

(Ord. 04-882.)

§§ 26 - 28. ***{Vacant}***

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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" means interest compounded annually for the reserves and items listed at the following rates:

(i) the Annuity Savings Reserve:	3.0%.
(ii) for valuation purposes:	7.5%
(iii) for determining actuarial equivalents:	5.0%.

(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) (a) "Average final compensation" means the member's average annual earnable compensation for the 36 consecutive months of service as an employee during which his or her earnable compensation was highest or, if he or she had less than 36 consecutive months of service, then the average annual earnable compensation during his or her total years of service.

(b) "Earnable compensation" means the annual salary authorized for the member. It does not include overtime pay, differential pay, out-of-title pay, environmental pay, hazardous duty pay, pay for conversion of leave or other fringe benefits, or any like additional payments.

(c) For members who retired on or after July 1, 1986, and before July 1, 1988, "average final compensation" means the average annual compensation, pay, or salary earnable by a member for the 2 consecutive years of service as an employee during which his or her earnable compensation was highest, if the member had at least 2 years of service in that grade, or if he or she had less than 2 years of service, then the average annual compensation, pay, or salary earnable by him or her during his or her actual year(s) of service.

(d) For members who:

(i) retired on or after July 1, 1988, and on or before June 30, 2010, or

(ii) retire on or after July 1, 2010, and who, as of June 30, 2010, meet the applicable age and service requirements for a normal service retirement under § 34(a-1)(1) or have acquired 15 or more years of service,

"average final compensation" means the average annual earnable compensation for the 18 consecutive months of service as an employee during which his or her earnable compensation was highest.

(e) In no event may the retirement benefits of a member retired under § 30(11)(d)(ii) as a result of the application of the definition of "average final compensation", effective July 1, 2010, be less than the benefit the member would have been entitled to prior to July 1, 2010.

(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) *{Repealed by Ord. 15-381.}*

(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 annuity factors derived from:

(i) regular interest established under § 30(9) of this article; and

(ii) mortality assumptions adopted by the Board of Trustees as part of the Retirement System's periodic experience study conducted under § 33(o) of this article.

(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.

(20) "Contributing member of this System" means a member who makes required member contributions while an employee.

(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; Ord. 10-306; Ord. 10-357; Ord. 14-268; Ord. 15-381; Ord. 15-436.)

§ 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*.

(1) Notwithstanding any other provision of this subtitle, upon proper application to the System, credit for military service, as defined in § 32(e) of this subtitle, for purposes of eligibility for a normal service retirement under § 34(a-1), DROP under § 36B, or DROP 2 under § 36C, and for benefit purposes shall be granted to any member of this system who has served in the military prior to employment with the City, if that member has acquired at least 10 years of service and attained the age of 50, or has acquired 20 years of service.

(2) A member may not be awarded credit under this subsection if he or she 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 or her. 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 32 or Title 10, Chapter 1223, §§ 12731 through 12741 of the U.S. Code.

(3) The military service credit provided under this subsection may not exceed 3 years.

(4) The City shall make all necessary contributions for the funding of military service credit.

(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; Ord. 10-357.)

§ 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 11 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 Deputy Police Commissioner 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 the Assistant Chief of Safety and Member Services or another official who holds equivalent rank and whose responsibilities are primarily administrative, as distinct from operational, and must be a member of this System. This representative has the authority to act in the Chief's place.

(4) The Director of Finance, ex officio. The Director of Finance may designate a representative to attend any meeting of the Board of Trustees in his or her place. This representative must be either the Deputy Director of Finance or the Budget Director. This representative has the authority to act in the Director of Finance's place.

(5) (i) 3 residents and registered voters of the City of Baltimore, to be appointed by the Mayor with the consent of the City Council, as provided in City Charter Article IV, § 6, each to serve for a term of 4 years concurrent with the Mayor's term of office. 1 of these 3 Trustees shall be appointed by the Mayor from a list of 3 recommended candidates submitted by the President of the City Council.

(ii) These Trustees shall possess commercial banking, investment banking, accounting, actuarial, auditing, investment management, investment consulting, or financial legal expertise.

(iii) As of his or her appointment and during his or her entire term of office, a Trustee appointed under this paragraph (5) may not be an employee or official of the City.

(6) 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 the rules and regulations adopted by the Board of Trustees to govern the election, to serve for a term of 4 years, staggered as provided for the Trustees first elected. For the purposes of this paragraph (6), members of the system who are not employed by the Fire Department or the Police Department are 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 Thurgood Marshall Airport shall participate in the Police Department elections. Fire personnel employed at the Baltimore / Washington International Thurgood Marshall 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.

(7) 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, these elections to be held concurrently with the election for the employees representative of each respective department, under the rules and regulations adopted by the Board of Trustees to govern the election, to serve for a term of 4 years. For the purposes of this paragraph (7), retirees of the system who are not employed by the Fire Department or the Police Department are 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 Thurgood Marshall Airport shall participate in the Police Department elections. Fire personnel retired from employment at the Baltimore / Washington International Thurgood Marshall 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.

(8) Notwithstanding City Charter Article IV, §8, which ordinarily requires minority party representation, the election or appointment of Trustees under this subsection shall be made without regard to political affiliation, including those Trustees holding their positions ex officio.

(9) (i) The Board of Trustees is an "agency" and a "board" within the meaning of and subject to the standards and requirements of the Baltimore City Public Ethics Law (City Code Article 8). Each Trustee is a "public servant" and an "official" within the meaning of and subject to the standards and requirements of the Baltimore City Public Ethics Law. And each employee of the Board is a "public servant" and an "employee" within the meaning of and subject to the standards and requirements of the Baltimore City Public Ethics Law.

(ii) In addition to the standards and requirements contained in the Baltimore City Public Ethics Law, Trustees and Board employees may not engage in any of the following activities or hold any of the following interests, as these activities or interests are defined in the Baltimore City Public Ethics Law.

1. 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"):

A. the Board of Trustees of the Employees' Retirement System of the City of Baltimore;

B. the Board of Trustees of the Fire and Police Employees' Retirement System of the City of Baltimore;

C. the Board of Trustees of the Elected Officials' Retirement System of the City of Baltimore;

D. the Board of Trustees of the Retirement Savings Plan of the City of Baltimore; and

E. the Committee of the City of Baltimore Deferred Compensation Plan.

2. No Trustee or Board employee may be employed by or have a financial interest in any person or entity doing business or seeking to do business with any City Benefit Plan.

3. A. Notwithstanding City Code Article 8 {"Ethics"}, § 6-28(3) {"Gifts: Qualified exemptions; travel, etc., expenses"} or § 6-30 {"Honoraria"}, no Trustee or Board employee may accept any gift or any payment, free admission, or expense reimbursement for attendance at a conference, seminar, or similar meeting, or for related food, travel, lodging, or entertainment, if the gift or the payment, free admission, or reimbursement is, directly or indirectly, from:

   i. any person or entity engaged in an activity or providing a product or service that the Trustee knows or has reason to know has been marketed to a City Benefit Plan or is of a type that the Trustee reasonably would expect to be marketed to a City Benefit Plan; or

   ii. any trade, professional, or other association that has members engaged in an activity or providing a product or service that the Trustee knows or has reason to know has been marketed to a City Benefit Plan or is of a type that the Trustee reasonably would expect to be marketed to a City Benefit Plan.

   B. Subparagraph 3.A does not preclude application of the qualified exemptions contained in City Code Article 8, § 6-28(1) {"food or beverages .. consumed ... in ... presence of ... donor"}, § 6-28(2) {"gift ... [of] insignificant value"}, § 6-28(5) {"gift ... [exempted by] Ethics Board"}, or § 6-28(6) {"gift from a spouse, parent, child, or sibling"}, subject to the qualifications of § 6-29 {"Exemption limitations"}.

4. No funds of this System or of any system, plan, or trust administered by the Board of Trustees may be used to pay for the attendance of a Trustee or Board employee at any conference, seminar, or similar meeting, or for related food, travel, lodging, or entertainment, unless that attendance has first been approved by the Board of Estimates in accordance with the Administrative Manual of Baltimore City, AM-240-3 {"Board of Estimates Approval"}.

5. No Trustee or Board employee may engage in any activity that requires registration as a lobbyist with the City Ethics Board.

(iii) The City Ethics Board shall administer and enforce this paragraph (9) in accordance with the administrative and enforcement provisions of the Baltimore City Public Ethics Law.

(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 is entitled to 1 vote on the Board. 6 members of the Board 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 all data necessary for actuarial valuation of the various funds of the Retirement System, for certifying the experience of the Retirement System, and for establishing assumptions and actuarial factors, for the Retirement System.

(j) *Records of proceedings*.

The Board of Trustees shall keep a record of all its proceedings, and that record shall be open to public inspection.

(j-1) *Comprehensive annual financial report.*

(1) The Board of Trustees shall publish a comprehensive annual financial report that:

(i) comprises financial statements and other supplementary investment and actuarial information of the Retirement System for the fiscal year ending on the preceding June 30; and

(ii) has been prepared in accordance with generally accepted accounting principles for disclosure of pension information established by the Governmental Accounting Standards Board.

(2) The Board of Trustees shall submit this report to:

(i) the Mayor;

(ii) the Board of Estimates;

(iii) the Finance Director;

(iv) the Police Commissioner; and

(v) the Chief of the Fire Department.

(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 forthe 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) *{Repealed by Ord. 15-381.}*

(o) *Experience study; Adoption of actuarial assumptions and tables*.

(1) At least once in each 3-year period, the actuary shall conduct an experience study of the mortality, service, and compensation experience of the members and beneficiaries of the Retirement System to determine the proper valuation of the Retirement System's liability.

(2) Taking into account the result of the experience study, the Board of Trustees shall adopt and certify for the Retirement System:

(i) the actuarial mortality, service, compensation, and other assumptions needed to determine the annual contribution by the City to the Retirement System; and

(ii) the annuity factors needed to determine actuarial equivalents for calculating benefits.

(3) Tables listing the annuity factors certified under this subsection shall be made available to the membership through the Retirement System's website.

(p) *Annual valuation*.

(1) Based on the assumptions adopted by the Board of Trustees and on the rate of regular interest established under § 30(9) of this article, the actuary shall conduct an annual valuation of the assets and liabilities of the Retirement System, using generally accepted costing methodology.

(2) Taking into account the valuation conducted by the actuary, the Board of Trustees shall adopt a valuation of the assets and liabilities of the Retirement System and, on that basis, shall certify to the Director of Finance, on or before the date mandated by § 36(f) of this article, the amount of the annual contribution from the City of Baltimore to adequately fund the Retirement System.

(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) *{Repealed by Ord. 15-381.}*
(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; Ord. 10-306; Ord. 10-357; Ord. 11-566; 14-216; Ord. 14-268; Ord. 15-381.)

§ 34. Benefits.

(a-1) *Normal service retirement benefits*.

(1) *Age and service requirements for retirements on or before June 30, 2010.*

A member may retire with a normal service retirement on or before June 30, 2010, 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) *Age and service requirements for retirements on or after July 1, 2010.*

A member may retire with a normal service retirement on or after July 1, 2010, if he or she satisfies item (i), (ii), or (iii) that follows:

(i) as of June 30, 2010, he or she has met the applicable age or service requirements set forth in paragraph (1) of this subsection.

(ii) as of June 30, 2010, he or she has acquired 15 or more years of service and, on the last day of his or her City employment, he or she has met the applicable age or service requirements set forth in paragraph (1) of this subsection.

(iii) on the last day of his or her City employment, he or she has either:

(A) acquired 25 or more years of service, at least 15 years of which were as a contributing member of this System; or

(B) 1. attained age 55; and

2. acquired 15 or more years of service as a contributing member of this System.

(a-2) *Early service retirement benefits – age and service requirements.*

(1) On or after July 1, 2010, a member of this System on OR AFTER June 30, 2010, who does not satisfy the conditions of either paragraph (2)(i) or paragraph (2)(ii) of subsection (a-1) of this section may retire with an early service retirement when he or she first meets the applicable age or service requirements for a normal service retirement under subsection (a-1)(1) of this section.

(2) The benefit commencement date of an early service retirement is any date elected by the member in accordance with subsection (a-3) of this section and that is:

(A) on or after the date the member first meets the applicable age or service requirements for a normal service retirement under subsection (a-1)(1) of this section; and

(B) before the date as of which the member would have first met the age and service requirements for a normal service retirement under subsection (a-1)(2)(iii) of this section had he or she continued employment with the City.

(a-3) *Application.*

To retire under subsection (a-1) or (a-2) of this section, 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-1) *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)(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)(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-1)(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-1)(3)(B).

(4) For any member who retires on or after June 29, 1993, with a normal service retirement under subsection (a-1) of this section, the normal 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-1)(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-1)(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.

(b-2) *Allowance on early service retirement.*

For any member who retires on or after July 1, 2010, with an early service retirement under subsection (a-2) of this section, the early service retirement allowance shall consist of:

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

(ii) a pension which, together with the annuity, shall be equal to:

(A) the sum of 2.5% of his or her average final compensation for each year of the first 20 years of service and 2.0% of his or her average final compensation for each subsequent year of service, reduced by

(B) the applicable percentage shown below for each month or fraction of a month by which his or her benefit commencement date precedes the date as of which he or she would have first met the requirements for a normal service retirement under subsection (a-1)(2)(iii) of this section had he or she continued employment with the City:

1. 6.5/12% per month for the first 60 months or fraction of a month immediately preceding the member's normal service retirement date;

2. 4.5/12% per month for the next 60 months or fraction of a month;

3. 1/4% per month for the next 60 months or fraction of a month; and

4. 1/6% per month for any additional next months or fraction of a month.

(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:

(1) the member has acquired at least 5 years of service, as determined by the Board of Trustees; and

(2) 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) A member to whom a hearing officer awards a 100% line-of-duty disability benefit shall receive on retirement:

(i) a lump-sum refund of the member's accumulated contributions; plus

(ii) a pension equal to 100% of the member's current 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 in employment status (including a member who dies while performing "qualified military service", as defined in Internal Revenue Code § 414(u)), 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 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 (l), 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 (l) 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 (l), 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 (l).

(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).

(s-1) *Minimum benefits for beneficiaries effective July 1, 2010.*

(1) If a spousal beneficiary of a sworn member who, before August 1, 1996, retired or died while in service with 20 or more years of service is receiving periodic retirement benefits from this System as of June 30, 2010, in an annual amount that is less than $16,000, that beneficiary shall receive an increase in his or her periodic retirement benefits so that the annual amount of those benefits equals $16,000. This increase shall be payable with the first full payroll period beginning after July 1, 2010.

(2) If a spousal beneficiary of a sworn member who, before August 1, 1996, retired or died while in service with 20 or more years of service, commences receiving benefits from this System on or after July 1, 2010, the annual amount of that beneficiary's periodic retirement benefits shall be not less than $16,000.

(3) If a spousal beneficiary's retirement benefits under this System are subject to a domestic relations order, the annual amount of that beneficiary's benefits prior to assignment under that order shall be used in determining whether the beneficiary is eligible for the minimum benefit under this subsection.

(s-2) *Minimum benefits, effective January 1, 2012, for beneficiaries of members who retired on account of line-of-duty disability.*

(1) If a spousal beneficiary of a sworn member who, before August 1, 1996, retired on account of a line-of-duty disability with less than 20 years of service is receiving periodic retirement benefits from this System as of December 31, 2011, in an annual amount that is less than $16,000, that beneficiary shall receive an increase in his or her periodic retirement benefits so that the annual amount of those benefits equals $16,000. This increase shall be payable with the first full payroll period beginning after January 1, 2012.

(2) If a spousal beneficiary of a sworn member who, before August 1, 1996, retired on account of a line-of-duty disability with less than 20 years of service commences receiving benefits from this System on or after January 1, 2012, the annual amount of that beneficiary's periodic retirement benefits shall be not less than $16,000.

(3) If a spousal beneficiary's retirement benefits under this System are subject to a domestic relations order, the annual amount of that beneficiary's benefits prior to assignment under that order shall be used in determining whether the beneficiary is eligible for the minimum benefit under this subsection.

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

(1) 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.

(2) The $160,000 dollar limitation under Internal Revenue Code § 415(b)(1)(A) shall be automatically adjusted under § 415(d), effective January 1 of each year and as published in the Internal Revenue Bulletin. Automatic Adjustments under § 415(d) that become effective after a member has terminated employment with the City shall apply with respect to that member's benefit.

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

(1) Distributions under this subtitle shall be made in accordance with a reasonable good faith interpretation of Internal Revenue Code § 401(a)(9), as applicable to this System. This subsection is intended to comply with a reasonable good faith interpretation of Internal Revenue Code § 401(a)(9) to the extent applicable to this System, and may not be interpreted to impose any requirements on this System or on any member or beneficiary of this System beyond those required to comply with a reasonable good faith interpretation of § 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 designated 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 designated 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 had been paid to a surviving spouse if that amount 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.

(iii) 1. A portion of a distribution does not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax employee contributions that are not includible in gross income.

2. However, the portion may be transferred only to:

i. an individual retirement account or annuity described in Internal Revenue Code § 408(a) or (b);

ii. for taxable years beginning after December 31, 2001, and before January 1, 2007, to a qualified trust that is part of a defined contribution plan that agrees to separately account for amounts so transferred, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

iii. for taxable years beginning after December 31, 2006, to a qualified trust or to an annuity contract described in Internal Revenue Code § 403(B), if the trust or contract provides for separate accounting for amounts so transferred (including interest on those amounts), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(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;

(vi) an annuity contract described in Internal Revenue Code § 403(b); or

(vii) for distributions made on or after January 1, 2008, a Roth IRA described in Internal Revenue Code § 408A, subject to the restrictions that apply to rollovers to a Roth IRA.

(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.

(iii) Effective July 1, 2010, a "distributee" also includes the employee's or former employee's nonspouse designated beneficiary. In the case of a nonspouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity described in Internal Revenue Code § 408(a) or (B) ("IRA") that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA under § 402(c)(11).

(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.

(x) *Vesting on System termination.*

On the effective date of a termination or partial termination of this System, as determined under applicable Internal Revenue Service regulations and rulings, and notwithstanding any other provision of this subtitle, all affected members who are not already vested in their accrued benefit must be immediately vested in that benefit, to the extent the benefit is funded.

(y) *Retroactive payment of full-time student benefits.*

The Board of Trustees shall establish rules and regulations governing deferral of payments to minor children over 18 years of age until their full-time student status has been verified.

(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; Ord. 10-257; Ord. 10-306; Ord. 10-357; Ord. 11-444; Ord. 11-520; Ord. 12-043; Ord. 14-268.)

§ 34.1. Benefit payments.

(a) *Monthly payments.*

Unless otherwise provided, all retirement allowances or other benefits paid by this System shall be paid monthly.

(b) *Retirement allowances.*

Unless otherwise provided, retirements for all members and beneficiaries of this System take effect on the 1st day of a calendar month and shall be paid on the 15th day of that calendar month.

(c) *Death and survivorship benefits.*

(1) Death and survivorship benefits for beneficiaries payable under this subtitle take effect on the 1st day of the calendar month following the month in which the member dies and shall be paid on the 15th day of that calendar month.

(2) For the calendar month in which the death of a retired member or beneficiary occurs, this System shall owe and pay the entire monthly allowance due to a retired member or beneficiary.

(Ord. 15-381.)

§ 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 has 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 these investment policy guidelines by filing a copy of them with the Department of Legislative Reference.

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; Ord. 11-520.)

§ 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 form 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 contributed 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.

(5) Effective with the 1st full payroll period commencing after the applicable effective date shown below, each member shall contribute the percentage of his or her regular compensation that corresponds to the effective date, this contribution to continue throughout the member's remaining period of service:

Effective date	*Percentage of regular compensation*
July 1, 2010	7%
July 1, 2011	8%
July 1, 2012	9%
July 1, 2013	10%

(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) ⅓ 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) ⅔ 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 ⅓ - ⅔ 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; Ord. 10-306.)

§ 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 payable for fiscal years ending on or before June 30, 2009.*

As of the end of each fiscal year ending on or before June 30, 2009, 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:

Date benefit payments began	*Percent increase*
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.

(h) *Amount of benefit increase payable for fiscal years beginning on or after July 1, 2009.*

(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. 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.

(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%.

(i) *Transfer of assets and liabilities.*

(1) The assets of the Paid-Up Benefit Fund and the Contingency Reserve Fund shall be transferred to the general asset account.

(2) The post-retirement benefit liabilities of the Paid-Up Benefit Fund shall be transferred to the pension reserve.

(3) Following these transfers, the Paid-Up Benefit Fund and the Contingency Reserve Fund shall be discontinued.

(j) *Guarantee of post-retirement increases.*

Effective June 30, 2010, all post-retirement benefit increases payable under this § 36A become the obligation of the City of Baltimore and are guaranteed under the provisions of § 37 of this subtitle.

(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; Ord. 10-306; Ord. 11-520.)

§ 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 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)(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; Ord. 11-520.)

§ 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) (i) Except as provided in subparagraph (ii) of this paragraph, "interest" means the regular interest rate for the Annuity Savings Reserve as defined in § 30(9) of this subtitle.

(ii) For a member of this System who, as of June 30, 2010, has acquired 15 or more years of service, interest means 5½% per annum compounded daily.

(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-a) Notwithstanding § 30(6) of this subtitle, the service credit requirements for DROP 2 eligibility on or before June 30, 2010, are as follows:

(A) To be eligible, a member of this System as of July 1, 2003, must acquire 20 or more years of service.

(B) To be eligible, an employee who becomes a member of this System after July 1, 2003 and on or before December 31, 2009, must acquire 20 or more years of service, 10 or more of which must be years of service as a contributing member of this System.

(C) To be eligible, an employee who becomes a member of this System on or after January 1, 2010, must acquire 20 or more years of service as a contributing member of this System.

(1-b) Notwithstanding § 30(6) of this subtitle, the service credit requirements for DROP 2 eligibility on or after July 1, 2010, are as follows:

(A) To be eligible, a member of this System who as of June 30, 2010, has acquired 15 or more years of service must acquire 20 or more years of service.

(B) To be eligible, a member of this System who as of June 30, 2010, has not acquired 15 or more years of service must acquire 25 or more years of service as a contributing member of this System.

(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, 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; Ord. 10-306; Ord. 10-357; Ord. 11-520.)

§ 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.)

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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.)

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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.)

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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:

(1) the Employees' Retirement System of the City of Baltimore;

(2) the Fire and Police Employees' Retirement System of the City of Baltimore;

(3) the Elected Officials' Retirement System of the City of Baltimore; and

(4) the Retirement Savings Plan of the City of Baltimore.

(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:

(1) the Employees' Retirement System of the City of Baltimore;

(2) the Fire and Police Employees' Retirement System of the City of Baltimore;

(3) the Elected Officials' Retirement System of the City of Baltimore; or

(4) the Retirement Savings Plan of the City of Baltimore.

(c) *New system*.

"New system" means the system:

(1) in which an employee becomes a member through a transfer of employment with the City, through reemployment with the City, or by assuming an elected office; or

(2) in which an elected official becomes a member through employment or reemployment with the City.

(d) *Previous system*.

"Previous system" means the system:

(1) in which an employee was previously a member before his or her transfer of employment, employment with the City, or reemployment with the City; or

(2) in which an elected official was previously a member before assuming an elected office.

(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.

(j) *Elected office*.

"Elected office" means the office held by an elected official.

(k) *Elected official*.

"Elected official" means any of the following:

(1) the Mayor;

(2) the City Comptroller;

(3) the City Council President; or

(4) a member of the City Council.

(City Code, 1976/83, art. 22, §47.)
(Ord. 97-168; Ord. 98-290A; Ord. 14-216.)

§ 48. Contemporaneous benefits from 2 or more City systems.

(a) *In general.*

If a City employee or elected official is eligible to retire from 1 or more systems or is currently receiving benefits from 1 or more systems:

(1) the employee or official must join the appropriate new system on beginning employment or assuming an elected office in a position covered by that new system;

(2) the employee or official retains service credit in the previous system or systems; and

(3) the receipt of benefits from the previous system or systems is postponed or suspended until the member terminates employment or exits elected office.

(b) *Receipt of benefits.*

On terminating employment or exiting elected office, a former employee or elected official may receive simultaneous retirement benefits from all previous systems and the new system.

(c) *Post-retirement increases.*

On terminating employment or exiting elected office, a member's retirement benefits that had been postponed or suspended from a previous system shall be calculated to include all post-retirement increases that the member would have been eligible to receive had the benefits not been postponed or suspended from that previous system.

(d) *Election of distribution of death benefits.*

(1) Any member whose receipt of retirement benefits from a previous system has been postponed by joining a new system may file, in accordance with the procedures of the previous system's Board of Trustees, a tentative election to distribute death benefits.

(2) The member may:

(i) tentatively elect the payment mode of his or her retirement benefit under § 6(a)(5), 9(m), 9.2(k), 22(e), or 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 or exiting elected office.

(3) The member may change this election, by making a new election in accordance with the procedures of the previous system's Board of Trustees, at any time before the member files a permanent application for retirement.

(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 may file this tentative election on attaining age 55.

(e) *Death benefits*.

(1) *Postponement or suspension of benefits in previous system*.

The following death benefits shall be paid on behalf of any member who had benefits postponed or suspended from a previous system and who dies while in service in his or her new system:

(i) a death benefit from the member's new system, under § 6(h), 6(i), 9(o-1), 9(o-2), 9.2(m), 9.2(n), 22(f), 22(g), 34(h), or 34(i) of this article or § 9-4 of Article 22A; and

(ii) a death benefit from the member's previous system, as follows:

1. in the case of a suspended benefit, in accordance with the election of retirement benefits made at the time of applying for retirement benefits from the previous system;

2. in the case of a postponed benefit of a member who made a tentative election under subsection (d) of this section, in accordance with that election; and

3. in the case of a postponed benefit of a member who did not make a tentative election under subsection (d) of this section, as if the member had elected the maximum retirement allowance form of payment under § 6(a)(14), 9(m)(1), 9.2(k)(1), 22(e)(1), or 34(k)(3) - (6) of this article.

(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.

(City Code, 1976/83, art. 22, §48.)
(Ord. 97-168; Ord. 14-216.)

§ 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.)