

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

NICK SUNYAK, <i>et al.</i> ,	:	Case Nos.: 1:11-cv-445 and
	:	1:12-cv-329
vs.	:	
	:	Judge Michael R. Barrett
CITY OF CINCINNATI, <i>et al.</i> ,	:	
(City of Cincinnati Pension Litigation)	:	JOINT MOTION FOR PRELIMINARY APPROVAL OF PROPOSED AMENDMENTS TO COLLABORATIVE SETTLEMENT AGREEMENT, SETTLEMENT ORDER, AND CONSENT DECREE

Plaintiffs Nick Sunyak, Jeffrey Harmon, Kim Kappel, Finley Jones, and Richard Ganulin, on behalf of themselves and the Current Employees Class they represent¹; Plaintiffs Thomas A Gamel, Sr., Mark K. Jones, Ely Ryder, Constance M. Roesch, Carol Walker, and Steven Dietrich, on behalf of themselves and the Retirees Class they represent; the American Federation of State and Municipal Employees Ohio Council No. 8 (“AFSCME”); the City of Cincinnati (“City”), the Cincinnati Retirement System (“CRS”), Mayor Aftab Pureval (“Mayor”), and City Manager Sheryl Long (“City Manager”) (all persons above listed comprising the “Parties” to the Collaborative Settlement Agreement) jointly move the Court for the entry of an order preliminarily approving proposed amendments to the Collaborative Settlement Agreement by and among the Parties (“CSA”), the Court’s *Opinion and Order* (Doc. No. 100) (“Settlement Order”) entered on

¹ The Current Employee Class’s legal representatives have made diligent efforts to contact Current Employee Class representatives Jill Allegeyer and Waleia Jackson, but Ms. Allegeyer and Ms. Jackson have not responded to that outreach. For that reason, they are not included among the class representatives joining in this motion. If the Current Employee Class legal representatives remain unable to establish contact with Ms. Allegeyer and Ms. Jackson, they intend to seek their removal as class representatives through a separate motion.

October 5, 2015, and the *Consent Decree* (Doc. No. 105) (“Consent Decree”) entered on November 20, 2015, and as grounds therefor respectfully state as follows²:

1. The Parties have agreed to jointly move the Court for preliminary approval of proposed amendments to the CSA, Settlement Order, and Consent Decree.
2. The proposed amendments include increases in the City’s employer contribution to the City Retirement System (the “System”); a one-time lump sum contribution from the City; a matching, amortized contribution from the City’s restricted funds, which include the Greater Cincinnati Water Works and the Metropolitan Sewer District; scheduled increases in employees’ contributions; and an extension of the full-funding date (the date the System’s assets equal or exceed 100% of projected liabilities) originally established in the CSA.
3. The agreed and proposed amendments to the CSA for City contributions are as follows:
 - a. The City will increase the employer contribution to the System from the current CSA-mandated contribution rate of 16.25% of Covered Payroll to a maximum of 21.5% of Covered Payroll as follows:
 - i. Beginning July 1, 2026, the City will increase its annual contribution to the System to no less than 19.25% of Covered Payroll.
 - ii. Annually thereafter, upon the commencement of the City’s fiscal year, the City’s contribution to the System will be increased in three increments of 0.75% of Covered Payroll (up to a maximum contribution of 21.5% of Covered Payroll), provided the below contingencies are satisfied:
 - A. By the third quarter of the City’s fiscal year, the System shall cause the System’s actuary to produce a report that projects the Funded Ratio for the CRS Pension Trust Fund as of the year 2049.

² Except as otherwise expressly provided herein, the words and terms used in this joint motion shall have the same definitions and meanings as in the Collaborative Settlement Agreement.

- B. If the annual actuarial report shows that the Funded Ratio for the CRS Pension Trust Fund as of the year 2049 is not expected to meet or exceed 100%, the City contribution will increase by 0.75% of Covered Payroll beginning as of the first day of the following fiscal year.
 - C. If the annual actuarial report shows that the Funded Ratio for the CRS Pension Trust Fund as of the year 2049 is expected to meet or exceed 100%, the City contribution will not increase for the following fiscal year.
 - D. The annual liability and asset testing process described above shall continue from year to year until the earlier of the City contribution reaching 21.5% of Covered Payroll or the expiration of the CSA in 2045.
- b. The City shall make a one-time contribution to the System, in addition to the scheduled employer contributions, in the amount of fifty million dollars (\$50,000,000).
 - c. The City shall cause its restricted funds, which include the Greater Cincinnati Water Works and the Metropolitan Sewer District, to make a contribution to the System, in addition to the scheduled employer contributions, in an amount of up to fifty million dollars (\$50,000,000). The restricted-fund contribution shall be made in annual installments beginning with an initial payment of one and one-half million dollars (\$1,500,000) on July 1, 2026. The annual installments shall thereafter increase at the rate of five percent (5%) annually until a total of \$50,000,000 has been paid to the System, except as provided below:
 - i. In the third quarter of the City's preceding fiscal year (e.g., January to March), the CRS shall cause its actuary to issue a report indicating the projected Funded Ratio of the CRS Pension Trust Fund as of the year 2049.
 - A. If the report indicates that the projected Funded Ratio will meet or exceed 100 percent in 2049, the City shall not be required to pay the annual restricted fund contribution in its upcoming fiscal year.
 - B. If the report indicates that the projected Funded Ratio will fall below 100 percent in 2049, the City's shall pay the annual restricted fund contribution required by Section 3(c) in its upcoming fiscal year.
 - d. In the event the CRS Pension Trust Fund achieves an actual (not estimated) 100-percent Funded Ratio prior to the termination of the Consent Decree as reflected in the annual actuarial valuation prepared by the actuary for the System, the City's

required minimum annual contribution to the CRS Pension Trust Fund shall be no less than the net normal cost (annual accrual of pension benefits plus System administrative expenses less expected employee contributions) as reflected in the actuarial report.

4. The agreed and proposed amendments to the CSA for Current Employees Class members' contributions are as follows:
 - a. Pension contributions made by Current Employees Class members shall be increased from nine percent (9%) of pensionable wages to ten percent (10%) of pensionable wages in four annual increments of one quarter of one percent (0.25%) of pensionable wages as follows:
 - i. Beginning July 1, 2026, the Current Employees Class members' pension contribution shall increase by one quarter of one percent (0.25%) of pensionable wages.
 - ii. For the three years thereafter, on July 1, 2027, July 1, 2028, and July 1, 2029, respectively, the Current Employees Class members' pension contribution shall increase by one quarter of one percent (0.25%) of pensionable wages.
5. The agreed and proposed amendments to the CSA for the Retirees Class members are as follows:
 - a. The full funding date shall be extended from 2045 to 2049.
 - b. There shall be no change to how the annual COLA is calculated, applied, or paid.
6. The Parties jointly agree and represent to the Court that the proposed amendments to the CSA and the Consent Decree are in the best interests of the Current Employees Class members, the Retirees Class members, AFSCME, and the City, and will further the salutary goals of the CSA.
7. The Parties have agreed upon the form of a class notice, to be approved by the Court, and upon such approval, such notice shall be sent to all Current Employee Class members and Retirees Class members primarily by electronic means and regular US mail service. The agreed-upon form is attached hereto as Exhibit 1.

8. The Parties agree that using electronic means to distribute the class notice is the preferred and most efficient manner of informing the Current Employees Class members and the Retirees Class members of the terms of the proposed amendment of the CSA. For those Current Employee Class members or Retirees Class members without known access to electronic mail or for whom the City does not have a valid email address, the notice shall be sent by regular United States mail. The notice shall also be posted on the City's website, including the System's landing page.
9. The Parties agree that the notice approved by the Court should be distributed by the System, as the System has the most complete contact information for the Current Employees Class members and the Retirees Class members. Prior to issuing the notice, the System shall ensure that all mailing addresses have been updated utilizing services offered by the US Postal Service or by a third-party notice provider.

WHEREFORE, the Parties respectfully request this Court afford the following relief:

- a. Grant the motion preliminarily approving the proposed amendments to the CSA, the Settlement Order (Doc. No. 100), and the Consent Decree (Doc. No. 105) as outlined in this motion;
- b. Approve the class notice and direct its distribution by the System as described above;
- c. Schedule a fairness hearing to consider whether to grant final approval of the proposed amendments to the CSA, Settlement Order, and Consent Decree as fair, reasonable, and adequate;
- d. Grant such other relief as may be necessary to effectuate the amendment of the CSA, Settlement Order, and Consent Decree.

RESPECTFULLY SUBMITTED BY:

On behalf of the City Defendants:

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Trial Counsel for City Defendants

On behalf of Retirees Class and individual Retiree Plaintiffs:

/s/ Peter J. O'Shea

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Class Counsel for Plaintiff Retirees Class

On behalf of the Current Employees Class and individual Current Employee Plaintiffs:

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**Notice of Proposed Amendments to Class Action Settlement Agreement
and Consent Decree Concerning the Cincinnati Retirement System in
Sunyak v. City of Cincinnati and *Harmon v. City of Cincinnati***

**IMPORTANT- A FEDERAL COURT AUTHORIZED THIS NOTICE
YOUR RIGHTS WILL BE AFFECTED WHETHER YOU ACT OR DO NOT ACT
PLEASE READ THIS NOTICE CAREFULLY**

I. NOTICE OF YOUR RIGHTS

This Notice provides a summary of proposed amendments (the “Amendments”) to a class action settlement agreement and consent decree that resolved two consolidated cases pending before the Honorable Judge Michael R. Barrett in the United States District Court for the Southern District of Ohio: (1) *Sunyak v. City of Cincinnati*, Case No. 1:11-cv-445; and (2) *Harmon v. City of Cincinnati*, Case No. 1:12-cv-329. You are covered by the Amendments because the City of Cincinnati’s records or the Cincinnati Retirement System’s records indicate that you are a member of the Current Employees Class or the Retirees Class.

The Current Employees Class includes current and former City of Cincinnati employees (and the dependent and/or surviving beneficiaries of those persons who are entitled to their benefits) who participated in the Cincinnati Retirement System (“CRS”) with at least five years of creditable service and who were actively employed or otherwise qualified for benefits on July 1, 2011, and who are members of Group C, D, E or F as defined by Cincinnati Municipal Code § 203-1-M1 (b), (c), (d), and (e). The Current Employees Class further includes City of Cincinnati employees who had at least five years of creditable service on July 1, 2011, and who retired after that date, as well as veterans who purchased service credit sufficient to satisfy the requirement to have five years of creditable service as of July 1, 2011.

The Retirees Class includes retired City of Cincinnati, University of Cincinnati, University Hospital f/k/a General Hospital and Hamilton County employees (and the dependent and/or surviving beneficiaries of those former employees who are entitled to their benefits) who participated in the CRS and: (a) currently receive retirement or pension benefits, including healthcare benefits; and (b) retired on or before July 1, 2011.

This Notice generally describes the proposed Amendments to the settlement agreement and consent decree, as well as your rights as a member of either the Current Employees Class or the Retirees Class. Additional information about the proposed Amendments to the Settlement Agreement and Consent Decree can be found at www.cincinnati-oh.gov/retirement. The Court will conduct a fairness hearing commencing on May 18, 2026, at 3:00 p.m. at the United States District Court for the Southern District of Ohio, 100 East 5th Street, Courtroom 109, Cincinnati, Ohio 45202. You do not need to attend. However, if you want to attend, you can do so in person.

II. BACKGROUND

Plaintiffs are (or were) employees of the City of Cincinnati (“City”) and retirees participating in the CRS who filed federal class action lawsuits claiming that the City and others improperly changed vested retirement benefits by adopting and enforcing City Ordinance No. 84-2011 (the “Ordinance”) effective July 1, 2011, and/or that the City threatened to make additional improper changes to retirement benefits, including the suspension or reduction of retiree health benefits and the annual Cost of Living Adjustment (“COLA”). Following extensive litigation and negotiations, Plaintiffs, the Current Employees Class, the Retirees Class, and Defendants the City and the CRS (collectively the “Parties”) entered into a settlement agreement that the Court approved as adequate, fair, and reasonable (the “Settlement Agreement”) in 2015. The Settlement Agreement was incorporated into a 30-year consent decree (the “Consent Decree”) on November 20, 2015. No changes to the CRS benefit provisions can be made during that 30-year time period without prior approval of the Court. The Parties are now proposing that the Court approve certain changes described below to the Settlement Agreement and Consent Decree. More than ten years following their implementation, the Parties collectively recognize that these proposed amendments are necessary to place the system on a trajectory toward full actuarial funding.

III. SUMMARY OF THE PROPOSED AMENDMENTS

The following is a summary of the basic terms of the proposed Amendments to the Settlement Agreement and Consent Decree. Additional information about the proposed Amendments can be obtained from www.cincinnati-oh.gov/retirement.

Additional City Contributions to the CRS Pension Trust Fund: If the proposed Amendments to the Settlement Agreement and Consent Decree are approved:

1. The City shall make an additional one-time contribution of \$50 million to the CRS Pension Trust Fund no later than July 31, 2026.
2. The City shall cause its restricted funds, as listed in the City’s approved biennial budget, to make an annual contribution to the CRS Pension Trust Fund for the duration of the Consent Decree. The initial annual restricted-fund payment shall be \$1.5 million and paid no later than July 31, 2026. Subsequent annual payments shall be increased by five percent on an annually compounding basis and shall be paid no later than July 31 of each year. These annual payments will total up to an additional \$50 million in contributions to the CRS over time. Further provision is made that the City may later forgo these payments if reporting by the system’s actuary indicates the system is on pace for full funding.
3. The City will also increase its minimum annual contribution to the system from the currently mandated sixteen and one-quarter percent (16.25%) of Covered Payroll for employees to nineteen and one-quarter percent (19.25%) of Covered Payroll, with the potential for the minimum contribution to increase to twenty-one and a half percent (21.5%) if reporting by the system’s actuary indicates that the system is not on pace for full funding.

Current Employees Class Contributions to the CRS Pension Trust Fund: Under the current Settlement Agreement and Consent Decree, pension contributions made by Current Employees Class members shall not exceed nine percent of pensionable wages during the term of the Consent Decree. If the proposed Amendments to the Settlement Agreement and Consent Decree are approved, pension contributions made by Current Employees Class members who remain employed by the City shall be increased from nine percent of pensionable wages to ten percent of pensionable wages in four annual

increments of 0.25 percent of pensionable wages with the first increase being effective as of the pay period that includes July 1, 2026, and the three subsequent increases being effective as of the pay periods that include (i) July 1, 2027, (ii) July 1, 2028, and (iii) July 1, 2029, respectively. Pension contributions made by Current Employees Class members will not exceed ten percent of pensionable wages during the term of the Consent Decree.

IV. YOUR LEGAL RIGHTS REGARDING THE PROPOSED AMENDMENTS

This Notice explains your rights regarding the proposed Amendments to the Settlement Agreement and Consent Decree and provides you with information intended to help you understand the terms of proposed Amendments and how they will affect you. **You may not exclude yourself from or opt out of this Settlement. If the Court grants final approval to the proposed Amendments, you will be covered by them.** The following table provides a summary of the actions you can take:

YOUR LEGAL RIGHTS AND OPTIONS	
<p><u>Option 1</u> DO NOTHING</p>	<p>You will continue to be subject to the Settlement Agreement and Consent Decree and covered by the amended terms if the Amendments are approved by the Court. You waive your right to object to the Amendments or to take any appeal of any orders of judgment including but not limited to any order amending the Settlement Agreement or Consent Decree.</p>
<p><u>Option 2</u> OBJECT</p>	<p>If you wish to object to the fairness, reasonableness, or adequacy of the proposed Amendments to the Settlement Agreement and Consent Decree, you must send your written statement to the Court, Class Counsel, and Defendants’ Counsel postmarked no later than April 20, 2026, as described below in Section V.</p>
<p><u>Option 3</u> ATTEND FAIRNESS HEARING</p>	<p>The last step in the amendment approval process is the fairness hearing, at which time the Court will hear all evidence and arguments necessary to conclusively evaluate whether to grant final approval of the Amendments to the Settlement Agreement and Consent Decree as fair, reasonable, and adequate. Attendance at the fairness hearing alone does not allow you to object to the Amendments. Only the written statement described above permits you to object.</p>

Please note that this Notice does not contain all the terms and conditions of the proposed Amendments to the Settlement Agreement and Consent Decree. Copies of the actual amendment documents are available

at www.cincinnati-oh.gov/retirement.

V. FREQUENTLY ASKED QUESTIONS AND ANSWERS

What is this lawsuit about?

This lawsuit was originally filed in 2011 on behalf of current and former employees (and the dependent and/or surviving beneficiaries of those persons who are entitled to their benefits) alleging that the City improperly impaired or revoked their vested retirement benefits by adopting and enforcing a city ordinance which became effective July 1, 2011 (the “Ordinance”). The Ordinance also substantially modified the future retirement benefits and eligibility rules for current employees as well as health benefits available to retirees by increasing deductibles, costs for prescriptions, and out-of-pocket caps for healthcare. A global settlement was granted final approval by the Court in 2015. The settlement provides for a court-supervised process to amend the 2015 agreement. The Parties are now proposing that the Court approve certain changes to the Settlement Agreement and Consent Decree in order to strengthen the CRS. Both the Plaintiffs and the City support these changes because they collectively recognize that the economic framework established under the Settlement Agreement and Consent Decree has not achieved its paramount goal of putting the system on track for full actuarial funding by 2045.

Will the proposed Amendments change my benefits?

No. The proposed Amendments are necessary to place the system on a trajectory toward full actuarial funding by 2045. The Settlement Agreement and Consent Decree will continue to protect pension and healthcare benefits on the same terms that have been in place since their adoption in 2015.

What is a class action?

In a class action, one or more people called class representatives sue on behalf of people who have similar claims. Together they are called the “Class.” Individuals in the Class are called “Class Members.” In a class action, one court resolves the issues for all Class Members.

Why is this lawsuit a class action?

In 2015, the Court decided that this lawsuit can proceed as a class action for purposes of settlement because it meets the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal court. When the Parties proposed to settle this class action over ten years ago, the Court had to determine whether the settlement was fair, adequate, and reasonable for all members of the Classes. Because the parties are now seeking to amend the settlement, the Court must once again determine whether these amendments are fair, adequate and reasonable.

Has the Court decided who is right? Why is there a Settlement?

No, the Court has not decided whether Plaintiffs or Defendants are correct. There has been no trial or final ruling on the proposed Amendments, and the Amendments do not represent an admission of any wrongdoing on the part of the City or any Defendant. Instead, the Parties determined it was in their best interests and the public interest to participate in a collaborative mediation process in which current issues relating to the CRS plan were addressed in an open, comprehensive, and exhaustive manner.

Why did I get this Notice? Am I a part of this class action Settlement Agreement and Consent Decree?

You are receiving this Notice because the City's and the CRS' records show that you are a member of either the Current Employees Class or the Retirees Class. As a Class Member, you are covered by the Settlement Agreement and the proposed Amendments discussed above.

What are the terms of the proposed Amendments to the Settlement Agreement and Consent Decree?

The terms of the proposed Amendments have been summarized above in Section III of this Notice. More information about the proposed Amendments is available at www.cincinnati-oh.gov/retirement.

When will the amendments to the Settlement Agreement and Consent Decree go into effect for me?

There will be a fairness hearing commencing on May 18, 2026 at 3:00 p.m. The Court will then decide whether to approve the proposed Amendments to the Settlement Agreement and Consent Decree. Class Counsel does not know how long it will take for the Court to make this decision.

Do I have an attorney in this case?

Yes. The Court previously approved attorneys Jeffrey S. Goldenberg and Robert D. Klausner to represent the Current Employees Class and Peter J. O'Shea to represent the Retirees Class. Through these Amendments, the Court is also being asked to add attorney Robb S. Stokar to represent the Current Employees. These attorneys are called Class Counsel. Class Counsel for the Current Employees Class are experienced in handling class actions against large entities, including municipalities. Class Counsel for the Retirees Class is experienced in handling this class action and representing the interests of the Retirees Class.

You may, but do not need to, hire your own attorney because Class Counsel are working on your behalf. If you want your own attorney, you will have to pay for that attorney. For example, you can ask him or her to appear in Court for you if you want a lawyer to argue on your behalf at the fairness hearing.

How can I object to the proposed Amendments?

You and/or an attorney you hire at your own expense may object to the proposed Amendments to the Settlement Agreement and Consent Decree if you do not like any part of them, but you must follow these procedures for the Court to consider your objection:

- (a) The objection must be in writing. A letter is sufficient. It must contain your name, your current address, specific reasons why you object to the proposed Amendments to the Settlement Agreement and Consent Decree (including any legal authorities), and a description of the evidence (documents or testimony) that you propose to introduce in support of the objection. You and/or your attorney you hire at your own expense must sign the objection.
- (b) Your written objection must be filed with the Court **and** postmarked and mailed to the below addresses for Class Counsel and Defendants' Counsel no later than April 20, 2026.
- (c) If you have hired an attorney, that attorney must file a notice of appearance with the Court **and** postmark and mail such notice to the below addresses for Class Counsel and Defendants' Counsel no later than April 20, 2026.

The Court's address is: United States District Court for the Southern District of Ohio, 100 East 5th Street, Cincinnati, Ohio 45202.

Counsel's addresses are:

Current Employees Class Counsel: Jeffrey S. Goldenberg, Goldenberg Schneider, LPA, 4445 Lake Forest Drive, Suite 490, Cincinnati, Ohio 45242

Retirees Class Counsel: Peter O'Shea, Katz Teller Brant & Hild, 255 East Fifth Street, Suite 2400, Cincinnati, Ohio 45202

Counsel for the City and CRS: Marion E. Haynes III, Deputy Solicitor, City of Cincinnati Law Department, 801 Plum Street, Room 214, Cincinnati, Ohio 45202

Counsel for the AFSCME: Kimm A. Massengill-Bernardin, General Counsel, Ohio Council 8, AFSCME, AFL-CIO, 6800 North High Street, Worthington, Ohio 43085-2512

If you do not follow the above procedures, including filing the objection by the date provided, you waive your right to object to the proposed Amendments to the Settlement Agreement and Consent Decree or take an appeal from any Court order, including any Order approving them.

Do I have to come to the fairness hearing?

No, but you are welcome to attend in person. The last step in the approval process is the fairness hearing, at which time the Court will hear all evidence and arguments necessary to conclusively evaluate the proposed Amendments to the Settlement Agreement and Consent Decree to determine whether they are fair, adequate, and reasonable and whether final approval is warranted. The fairness hearing will occur on May 18, 2026, at 3:00 p.m. at the United States District Court for the Southern District of Ohio, 100 East 5th Street, Cincinnati, Ohio 45202, Court Room 109.

You and/or an attorney you hire at your own expense may, but do not have to, appear at the fairness hearing to talk to the Court about your objections. Class Members or their attorneys intending to make an appearance at the fairness hearing, pursuant to their written objection, must do the following **no later than April 20, 2026:**

- (a) File a notice of intention to appear with the Court;
- (b) Deliver to Class Counsel and Defendants' Counsel at the addresses above a copy of such notice of intention; and
- (c) Identify any documents they will seek to introduce or witnesses they intend to call at the fairness hearing.

How do I get more information?

Go to www.cincinnati-oh.gov/retirement to get more information about the proposed Amendments to the Settlement Agreement and Consent Decree. You may also contact Current Employees Class Counsel or Retirees Class Counsel at the addresses listed above. Do not contact the Court.