

**INTEROFFICE COMMUNICATION  
COUNTY OF MILWAUKEE**

**DATE:** November 14, 2016

**TO:** Theo Lipscomb Sr., Chairman,  
Milwaukee County Board of Supervisors

**FROM:** James M. Carroll, Assistant Corporation Counsel

**SUBJECT:** A resolution/ordinance amending Section 201.24(4.1) of the Milwaukee County Code of General Ordinances as it pertains to the “Rule of 75.”

Milwaukee County is involved in ongoing litigation with AFSCME District Council 48 (“DC 48”) regarding the application of the “Rule of 75” retirement provision to its former members. On June 1, 2016, a Milwaukee County circuit court judge ruled in favor of DC 48, which successfully argued that when Milwaukee County implemented ordinance amendments in 2011 intended to preserve the “status quo” pre-Wisconsin Act 10, those DC 48 employees who became Employees’ Retirement System (“ERS”) members between January 1, 1994 and December 31, 2005 gained the Rule of 75 benefit that they would not have received under their collective bargaining agreement (“CBA”). Milwaukee County disagrees with that decision and therefore appealed it (an appeal that was approved by the County Board of Supervisors on July 28, 2016), arguing (among other things) that it was never the intent of the status quo ordinances to provide the DC 48 members in question, or any other County employees, with a benefit superior/additional to that provided by their CBA. The matter is currently before the Wisconsin Court of Appeals, but a final decision is not expected for months. In the interim, the trial court has stayed the effect of its ruling.

In the interest of further clarifying the intent of the 2011 ordinance amendments and avoiding potential future litigation, the Office of Corporation Counsel proposes amendment of the ordinance language regarding the Rule of 75. As you can see from the proposed resolution, the substantive changes to the ordinance language are twofold. First, the language is altered to reflect that the pertinent “status quo” date should be June 29, 2011—which corresponds to Wisconsin Act 10’s effective date—rather than September 29, 2011. Second, the ordinance language is altered to encompass employees “covered by the terms of a collective bargaining agreement” rather than “in a collective bargaining unit.” This second change addresses a key point of contention in the ongoing DC 48 litigation.

The Office of Corporation Counsel appreciates the County Board’s consideration of this request.

cc: Kelly Bablitch  
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