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From Corporation Counsel, requesting authorization to amend Section 201.24(4.1) of the Milwaukee County code of General Ordinances, as it pertains to the “Rule of 75,” by recommending adoption of the following:

**AN AMENDED RESOLUTION/ORDINANCE**

WHEREAS, due to the passage of 2011 Wisconsin Act 10 (Act 10), effective June 29, 2011, any employee not represented by a collective bargaining agent who became a member of the Milwaukee County (the County) Employees’ Retirement System (ERS) prior to January 1, 2006, was eligible for a normal retirement when the employee’s age and years of pension service equal 75, known as the “Rule of 75”; and

WHEREAS, due to the passage of Act 10, effective June 29, 2011, any employee represented for collective bargaining by the Association of Milwaukee County Attorneys was eligible for the “Rule of 75” only if the employee’s membership in ERS began prior to January 1, 2006; and

WHEREAS, due to the passage of Act 10, effective June 29, 2011, any employee represented for collective bargaining by the American Federation of State, County, and Municipal Employees, the District No. 10 of the International Association of Machinists and Aerospace Workers, or the Technicians, Engineers, and Architects of Milwaukee County, was eligible for the “Rule of 75” only if the employee’s membership in ERS began prior to January 1, 1994; and

WHEREAS, due to the passage of Act 10, effective June 29, 2011, any employee represented for collective bargaining by the Milwaukee Building and Construction Trades Council, was eligible for the “Rule of 75” only if the employee’s membership in ERS began prior to February 21, 2006; and

WHEREAS, on December 31, 2012—the expiration date of the relevant collective bargaining agreement that pre-dated the passage of 2011 Wisconsin Act 10—any employee represented for collective bargaining by the Federation of Nurses and Health Professionals was eligible for the “Rule of 75” only if the employee’s membership in ERS began prior to January 1, 2013; and

WHEREAS, because pension benefit entitlement is generally determined by the date of membership in ERS, differences between the Milwaukee County Code of General Ordinances (the Code) and collective bargaining agreements could have permitted some employees to qualify for an enhanced pension benefit under the “Rule of 75” for which they would not otherwise qualify, should those employees change from a position represented by a collective bargaining agreement to a position not so represented; and

46 WHEREAS, the receipt of the “Rule of 75” would have been a pension benefit  
47 gain for such employees, as described above; and  
48

49 WHEREAS, because of the past, current and future costs to the County and its  
50 pension fund related to the “Rule of 75,” the Milwaukee County Board of Supervisors  
51 (County Board) adopted ordinance amendments on September 29, 2011, [ORD 11-17]  
52 for the expressed purpose of limiting the “Rule of 75” benefit to those employees  
53 already eligible to receive it as of the adoption of Act 10, while preserving the “Rule of  
54 75” benefit of employees then eligible for it; and  
55

56 WHEREAS, the American Federation of State, County, and Municipal Employees  
57 (AFSCME) filed suit against the County in Circuit Court, Case No. 11-CV-16826,  
58 alleging that because of the timing and manner in which the County amended Section  
59 201.24(4.1) of the Code on September 29, 2011, the ordinance amendment was  
60 ineffective to accomplish its stated purpose, and therefore all employees represented by  
61 AFSCME for collective bargaining with a membership date in the retirement system  
62 prior to January 1, 2006, are eligible for the “Rule of 75” benefit; and  
63

64 WHEREAS, on June 1, 2016, that suit was decided in favor of AFSCME in Circuit  
65 Court; and  
66

67 WHEREAS, at its July 28, 2016, meeting, the County Board approved an appeal  
68 of the Circuit Court’s decision, which is now pending before the Wisconsin Court of  
69 Appeals; and  
70

71 WHEREAS, in order to ensure that the County’s stated intention is properly  
72 enacted and to attempt to avoid further litigation, additional ordinance amendments are  
73 appropriate to clarify and codify the County’s intent; and  
74

75 WHEREAS, the Pension Board, at its November 16, 2016 meeting, was afforded  
76 an opportunity to comment on the proposed change as required by Section  
77 201.24(8.17) of the Code; and  
78

79 WHEREAS, the Committee on Personnel, at its meeting of December 2, 2016,  
80 recommended adoption of this resolution/ordinance as amended (vote 5-0); and  
81

82 WHEREAS, the Pension Study Commission, at its meeting of December 13,  
83 2016, reviewed the actuary’s report, and recommended adoption to the County Board  
84 (vote \*-\*); now, therefore,  
85

86 BE IT RESOLVED, the Milwaukee County Board of Supervisors hereby  
87 amends Section 201.24(4.1) of the Milwaukee County Code of General Ordinances by  
88 adopting the following:  
89

90 **AN ORDINANCE**

91 The County Board of Supervisors of the County of Milwaukee does ordain as  
92 follows:  
93

94 **SECTION 1.** Section 201.24(4.1) is amended as follows:  
95

96 **Section 4.1. Normal retirement.**  
97

98  
99 (1) (a) A member shall be eligible for a normal pension if his employment is  
100 terminated on or after he has attained age fifty-five (55) and has completed thirty  
101 (30) years of service, or if his employment is terminated on or after he has  
102 attained normal retirement age as defined in section 2.18. ~~Sworn law~~  
103 ~~enforcement officers~~ Deputy sheriffs shall be eligible to retire at age fifty-seven  
104 (57) regardless of their number of years of service or at age fifty-five (55) with at  
105 least fifteen (15) years of creditable pension service.  
106

107 (b) Notwithstanding the provisions of subparagraph (a), a member of the  
108 International Association of Machinists and Aerospace Workers whose initial  
109 membership date is before January 1, 2012 shall not be eligible for a normal  
110 pension until the member has attained normal retirement age as defined in  
111 section 2.18 and has completed five (5) years of service.  
112

113 (c) Notwithstanding the provisions of subparagraph (a), a member of the  
114 Federation of Nurses and Health Professionals whose initial membership date is  
115 before January 1, 2012 shall not be eligible for a normal pension until the  
116 member has attained normal retirement age as defined in section 2.18 and has  
117 completed five (5) years of service.  
118

119 (2) Rule of 75.  
120

121 (a) A member who, on ~~June~~ September 29, 2011, is employed and is not  
122 represented by in a collective bargaining unit ~~not covered by the terms of a~~  
123 ~~collective bargaining agreement~~, and whose initial membership in the  
124 retirement system under section 201.24 began prior to January 1, 2006, and  
125 who retires on and after September 1, 1993, shall be eligible for a normal  
126 pension when the age of the member when added to his years of service  
127 equals seventy-five (75), but this provision shall not apply to any member  
128 eligible under section 4.5 nor to any nonrepresented deputy sheriff who was  
129 hired as a deputy sheriff after December 31, 1993 and whose appointment to a  
130 nonrepresented position was first effective after June 30, 2009, nor to a  
131 member who was formerly a represented correction officer who was hired as a  
132 correction officer after December 31, 1993 and who was appointed to a  
133 nonrepresented position effective after May 1, 2011.  
134

135 (b) A member who, on ~~June~~September 29, 2011, is employed and is ~~covered~~  
136 ~~by the terms of~~ in a collective bargaining ~~agreement with~~ unit represented by  
137 the American Federation of State, County and Municipal Employes District  
138 Council 48, or with the Technicians, Engineers and Architects of Milwaukee  
139 County, or with the International Association of Machinists and Aerospace  
140 Workers, and whose initial membership date is prior to January 1, 1994, shall  
141 be eligible for a normal pension when the age of the member when added to  
142 his years of service equals seventy-five (75), but this provision shall not apply  
143 to any member eligible under section 4.5.

144  
145 (c) A member who, on December 31, 2012, is employed and is ~~covered by the~~  
146 ~~terms of~~ in a collective bargaining ~~agreement with~~ unit represented by the  
147 Federation of Nurses and Health Professionals, shall be eligible for a normal  
148 pension when the age of the member when added to his years of service  
149 equals seventy-five (75), but this provision shall not apply to any member  
150 eligible under section 4.5.

151  
152 (d) A member who, on ~~June~~September 29, 2011, is employed and is ~~covered~~  
153 ~~by the terms of~~ in a collective bargaining ~~agreement with~~ unit represented by  
154 the Association of Milwaukee County Attorneys, and whose initial membership  
155 date is prior to January 1, 2006, shall be eligible for a normal pension when the  
156 age of the member when added to his years of service equals seventy-five  
157 (75), but this provision shall not apply to any member eligible under section  
158 4.5.

159  
160 (e) A member who, on ~~June~~September 29, 2011, is employed and is ~~covered~~  
161 ~~by the terms of~~ in a collective bargaining ~~agreement with~~ unit represented by  
162 the Milwaukee Building and Construction Trades Council, and whose initial  
163 membership date is prior to February 21, 2006, shall be eligible for a normal  
164 pension when the age of the member when added to his years of service  
165 equals seventy-five (75), but this provision shall not apply to any member  
166 eligible under section 4.5.

167  
168 **SECTION 2.** The provisions of this Ordinance shall become effective upon passage and  
169 publication.

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