

1 Supervisor Peggy West, Chairperson,
2 From the Committee on Finance and Audit, reporting on:

3
4 File No. 16-411

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6 (ITEM) From the Director, Retirement Plan Services Division, Department of
7 Human Resources, requesting authorization to amend Sections 201.24(11.1), (12.4)
8 and (12.8) of the Milwaukee County Code of General Ordinances, relative to the
9 Employees Retirement System, by recommending adoption of the following:

10
11 **A RESOLUTION/ORDINANCE**
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13 WHEREAS, the Employees' Retirement System of the County of Milwaukee
14 (ERS) is a tax-qualified governmental retirement plan that must comply with the
15 applicable provisions of the Internal Revenue Code of 1986 (the Code); and

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17 WHEREAS, the Pension Board of the ERS (the Pension Board) acts as the
18 fiduciary for, and oversees administration of, the ERS, in an effort to ensure that the
19 ERS maintains its tax-qualified status; and

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21 WHEREAS, the Code requires tax-qualified retirement plans to be in writing and
22 to be operated in accordance with the terms of their written plan documents; and

23
24 WHEREAS, after conducting a compliance audit of the ERS's operations, the
25 Pension Board discovered several operational errors with respect to the "buy back" of
26 service credits by reemployed members pursuant to Section 201.24(11.1) of the
27 Milwaukee County Code of General Ordinances (Ordinances) and the "buy in" of
28 service credits by optional employees pursuant to ERS Rule 207; and

29
30 WHEREAS, ERS has been working with the Internal Revenue Service (IRS) to
31 negotiate a Voluntary Correction Program (VCP) compliance statement to formally
32 correct these and other violations; and

33
34 WHEREAS, through the adoption of amendments to the ERS Ordinances on
35 February 17, 2015, the Milwaukee County Board of Supervisors (County Board)
36 intended to correct the majority of the errors related to the buy ins and buy backs; and

37
38 WHEREAS, the IRS recently determined that additional amendments are
39 necessary before finalizing the VCP compliance statement and fully correcting these
40 errors; and

41
42 WHEREAS, the IRS also requested some changes to the Ordinances to allow
43 the IRS to issue ERS a favorable determination letter, which is the IRS's determination
44 that the language of the plan document meets the current qualification requirements of
45 the Code; and
46

47 WHEREAS, the proposed amendments have been referred to the pension fund
48 actuary, who has submitted a report on actuarial cost; and
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50 WHEREAS, the Committee on Finance and Audit, at its meeting of July 21, 2016,
51 recommended adoption of the Director's request (vote 7-0); and
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53 WHEREAS, the Pension Study Commission reviewed the actuary's report on
54 July 27, 2016, and recommended adoption to the County Board (vote 3-0); now,
55 therefore,
56

57 BE IT RESOLVED, the Employees' Retirement System (ERS) Ordinances are
58 hereby amended to bring them into compliance with ERS's operation and administration
59 and further amended to comply with the Internal Revenue Service's (IRS) requested
60 amendments to allow the IRS to issue a determination letter to ERS; and
61

62 BE IT FURTHER RESOLVED, that to ensure the above-noted revisions are
63 properly codified, the Milwaukee County Board of Supervisors does hereby adopt the
64 following:
65

66 AN ORDINANCE

67
68 The County Board of Supervisors of the County of Milwaukee does ordain as follows:
69

70 **Section 1.** Section 201.24(11.1) is hereby amended to read as follows effective as of
71 the dates stated within:
72

73 11.1. Reemployment of former members.

74
75 (1) Effective from January 1, 1986 through June 30, 2007, should any member who
76 terminated and withdrew his membership account return to active service, his
77 service credits which he had at the time of such separation shall be restored to
78 him, provided he renders two (2) years of service subsequent to his restoration to
79 membership and provided further that within a thirty year period he redeposits
80 the amount of any accumulated contributions withdrawn from his membership
81 account at the time of his separation from the service, with interest thereon to
82 date of redeposit. If he does not elect to restore his prior service credit by
83 redepositing his accumulated contribution during said period of employment, the
84 prior service credits shall be canceled and service credited only from the date his
85 most recent reemployment period commenced.
86

87 Effective from January 1, 1990 through June 30, 2007, notwithstanding anything
88 to the contrary in the Ordinances or Rules, a member who terminated County
89 employment to become employed by United Regional Medical Services, Inc. in
90 conjunction with the joint venture between the County and Froedtert Memorial
91 Lutheran Hospital or who terminated County employment to become employed
92 by Froedtert Memorial Lutheran Hospital in conjunction with the sale of Doyne

- 93 Hospital or who retired from County employment pursuant to Ordinance section
94 201.24(4.25) or Ordinance section 201.24(4.26) may make payments to
95 purchase permissive service credit or to repurchase previously forfeited service
96 credit for up to two years following termination of County employment as long as
97 that member had an otherwise completed purchase or repurchase of service
98 credit as of July 1, 2007.
99
- 100 (2) Effective from July 1, 2007 through December 31, 2014, for any redeposit that a
101 member completes on or after July 1, 2007, the member must complete the
102 redeposit within the two year period after returning to active service rather than a
103 thirty year period. Prior service credit will not be restored until the entire amount
104 previously withdrawn is redeposited. If he does not elect to restore his prior
105 service credit by redepositing his accumulated contribution during said period of
106 employment, the prior service credits shall be canceled and service credited only
107 from the date his most recent reemployment period commenced.
108
- 109 (3) Any person who was an employee of the county on June 4, 1937, but did not
110 elect to become a member until a later date, may receive credit for his service as
111 a county employe prior to his membership by depositing in his membership
112 account before January 1, 1970, the contributions which he would have made as
113 a member during the period from June 3, 1937 to the date he became a member
114 together with interest to date of deposit. Effective January 1, 1982, any
115 payments to repurchase previously forfeited service credit are subject to all other
116 requirements contained within the Ordinances and Rules.
117
- 118 (4) Should any member who is eligible to receive a deferred vested pension under
119 section 4.5 return to active service, he shall again become an active member of
120 the retirement system and shall resume contributions. Upon his subsequent
121 retirement, he shall be credited with all the service giving rise to his deferred
122 vested pension benefit as well as his service as a member subsequent to his
123 reemployment for purposes of redetermining the amount of his pension.
124
- 125 (5) Any member who terminated and withdrew his accumulated contributions
126 because of membership in the sheriffs' annuity and benefit fund of the county
127 shall have restored to him all service credits which he had at the time of such
128 termination, provided that within one (1) year from July 9, 1969, he redeposits the
129 amount of any accumulated contributions withdrawn at the time of his termination
130 with interest thereon to the date of redeposit.
131
- 132 (6) Notwithstanding the foregoing, members may not redeposit under this section
133 11.1 accumulated contributions previously refunded to the member under section
134 3.11.
135
- 136 (7) Effective January 1, 1982, any payments to purchase permissive service credit
137 are subject to all other requirements contained within the Ordinances and Rules.
138

139 **Section 2.** Effective January 1, 2015, Section 201.24(11.1) is amended to read as
140 follows in its entirety:

141
142 **11.1. Reemployment of former members.**

143
144 ~~(1) Effective from January 1, 1986 through June 30, 2007, should any member who~~
145 ~~terminated and withdrew his membership account return to active service, his~~
146 ~~service credits which he had at the time of such separation shall be restored to~~
147 ~~him, provided he renders two (2) years of service subsequent to his restoration to~~
148 ~~membership and provided further that within a thirty year period he redeposits~~
149 ~~the amount of any accumulated contributions withdrawn from his membership~~
150 ~~account at the time of his separation from the service, with interest thereon to~~
151 ~~date of redeposit. If he does not elect to restore his prior service credit by~~
152 ~~redepositing his accumulated contribution during said period of employment, the~~
153 ~~prior service credits shall be canceled and service credited only from the date his~~
154 ~~most recent reemployment period commenced.~~

155
156 ~~Effective from January 1, 1990 through June 30, 2007, notwithstanding anything~~
157 ~~to the contrary in the Ordinances or Rules, a member who terminated County~~
158 ~~employment to become employed by United Regional Medical Services, Inc. in~~
159 ~~conjunction with the joint venture between the County and Froedtert Memorial~~
160 ~~Lutheran Hospital or who terminated County employment to become employed~~
161 ~~by Froedtert Memorial Lutheran Hospital in conjunction with the sale of Doyne~~
162 ~~Hospital or who retired from County employment pursuant to Ordinance section~~
163 ~~201.24(4.25) or Ordinance section 201.24(4.26) may make payments to~~
164 ~~purchase permissive service credit or to repurchase previously forfeited service~~
165 ~~credit for up to two years following termination of County employment as long as~~
166 ~~that member had an otherwise completed purchase or repurchase of service~~
167 ~~credit as of July 1, 2007.~~

168
169 ~~(2) Effective from July 1, 2007 through December 31, 2014, for any redeposit that a~~
170 ~~member completes on or after July 1, 2007, the member must complete the~~
171 ~~redeposit within the two year period after returning to active service rather than a~~
172 ~~thirty year period. Prior service credit will not be restored until the entire amount~~
173 ~~previously withdrawn is redeposited. If he does not elect to restore his prior~~
174 ~~service credit by redepositing his accumulated contribution during said period of~~
175 ~~employment, the prior service credits shall be canceled and service credited only~~
176 ~~from the date his most recent reemployment period commenced.~~

177
178 ~~(3) Any person who was an employee of the county on June 4, 1937, but did not~~
179 ~~elect to become a member until a later date, may receive credit for his service as~~
180 ~~a county employe prior to his membership by depositing in his membership~~
181 ~~account before January 1, 1970, the contributions which he would have made as~~
182 ~~a member during the period from June 3, 1937 to the date he became a member~~
183 ~~together with interest to date of deposit. Effective January 1, 1982, any~~

184 ~~payments to repurchase previously forfeited service credit are subject to all other~~
185 ~~requirements contained within the Ordinances and Rules.~~

186

187 ~~(4) Should any member who is eligible to receive a deferred vested pension under~~
188 ~~section 4.5 return to active service, he shall again become an active member of~~
189 ~~the retirement system and shall resume contributions. Upon his subsequent~~
190 ~~retirement, he shall be credited with all the service giving rise to his deferred~~
191 ~~vested pension benefit as well as his service as a member subsequent to his~~
192 ~~reemployment for purposes of redetermining the amount of his pension.~~

193

194 ~~(5) Any member who terminated and withdrew his accumulated contributions~~
195 ~~because of membership in the sheriffs' annuity and benefit fund of the county~~
196 ~~shall have restored to him all service credits which he had at the time of such~~
197 ~~termination, provided that within one (1) year from July 9, 1969, he redeposits the~~
198 ~~amount of any accumulated contributions withdrawn at the time of his termination~~
199 ~~with interest thereon to the date of redeposit.~~

200

201 ~~(6) Notwithstanding the foregoing, members may not redeposit under this section~~
202 ~~11.1 accumulated contributions previously refunded to the member under section~~
203 ~~3.11.~~

204

205 ~~(7) Effective January 1, 1982, any payments to purchase permissive service credit~~
206 ~~are subject to all other requirements contained within the Ordinances and Rules.~~

207

208 **Section 3.** Effective January 1, 1998, section 201.24(12.4) is amended to read as
209 follows:

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211 **12.4. Maximum permissible amount of annual additions.**

212

213 This section 12.4 shall limit contributions and allocations to a member's savings account
214 and membership account.

215

216 (1) The annual addition to a member's savings account and membership account
217 that is subject to testing pursuant to Internal Revenue Code section 415(c) for
218 any limitation year shall not exceed the Code section 415(c) limit ("415(c) Limit"),
219 which is hereby incorporated by reference. ~~the lesser of:~~

220

221 (a) ~~The defined contribution dollar limitation provided in Internal Revenue~~
222 ~~Code section 415(c)(1)(A), or such successor provision of the Internal~~
223 ~~Revenue Code, as adjusted for cost of living adjustments pursuant to~~
224 ~~Internal Revenue Code section 415(d); or~~

225

226 (b) ~~One hundred (100) percent of the compensation paid or made available to~~
227 ~~the member for such year.~~

228

229 ~~If a member's payment to purchase prior or permissive service credit would otherwise~~
230 ~~exceed the 415(c) limit for a calendar year, then it shall be corrected to the extent~~
231 ~~provided by the terms of the voluntary correction program compliance statement which~~
232 ~~shall be designed to correct failures to comply in operation with the 415(c) limit and~~
233 ~~agreed to by the county for violations beginning in 1982.~~

234

235 (2) Effective for limitation years beginning in 1987, the "annual addition" shall mean
236 the sum allocated to a member's account for any year of contributions pursuant to the
237 system and allocated to this benefit pursuant to all other defined contribution plans
238 maintained by the county for the limitation year, including employe contributions.
239 Contributions allocated to any individual accounts which are part of a pension or annuity
240 plan under Internal Revenue Code Sections 415(1) and 419(A)(d)(2) shall be treated as
241 annual additions to a defined contribution plan. However, repayment contributions,
242 including interest thereon, made to the system with respect to amounts previously
243 refunded upon a forfeiture of service credit under the system shall not be included in an
244 annual addition. ~~However, subsection 12.4(1)(b) above shall not apply to any accounts~~
245 ~~treated as an annual addition under the preceding sentence.~~

246

247 The annual addition shall not include the allocation to a member's account of income.

248

249 (3) Other than as discussed in subsection (1) above, for limitation years beginning
250 before July 1, 2007, if the annual additions for a particular member would cause the
251 limitations of Internal Revenue Code Section 415 for the limitation year to be exceeded
252 as a result of the allocation of forfeitures, a reasonable error in estimating a member's
253 annual compensation or a reasonable error in determining the amount of elective
254 deferrals under Internal Revenue Code Section 402(g)(3), the pension board shall
255 reallocate the excess of a member's annual addition over the limits stated above in
256 accordance with the following subsections:

257

258 (a) The excess amount may be used to reduce the county contributions for
259 the next (or succeeding, if necessary) limitation year for the member who
260 incurred the excess amounts provided the member is covered by the
261 system at the end of such limitation year. If the member is no longer
262 covered by the system as of the end of the limitation year, the excess
263 amounts shall be held unallocated in a suspense account and reallocated
264 in the next limitation year to all remaining members in the system as a
265 reduction of such members' county contributions.

266

267 (b) The excess amount may be held unallocated in a suspense account for
268 the limitation year and used to reduce the county contributions for the next
269 (or succeeding, if necessary) limitation year to all members in the system.

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271 (c) Excess amounts attributable to employe contributions shall be refunded to
272 the member.

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Section 4. Effective January 1, 2008, section 201.24(12.8) is amended to read as follows:

12.8. Compensation.

Compensation, for the purposes of this section, means "participant's compensation," as defined in Internal Revenue Code section 415(c)(3) and Treasury regulation section 1.415(c)-2(a), hereby incorporated by reference, and, except as otherwise provided below, paid prior to the member's severance from employment ~~and the regulations thereunder,~~ including elective contributions made by the county on behalf of the member that are not includable in income under Internal Revenue Code sections 125, 132(f)(4), 401(h)(2), 402(e)(3), 402(h) or 403(b). Compensation for a limitation year includes compensation paid by the later of 2-1/2 months after a member's severance from employment with the county or the end of the limitation year that includes the date of the member's severance from employment with the county if the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and the payment would have been made to the member prior to a severance from employment if the member had continued in employment with the county. Payments not described in the prior sentence shall not be considered compensation if paid after severance from employment, even if paid within the time period referenced above.

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