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A resolution/ordinance by Supervisor Lipscomb, Sr., clarifying the Milwaukee County Code of General Ordinances regarding the necessary qualifications and exclusions for appointment of Pension Board members to conform the same with past practice, prior guidance, and other Milwaukee County ordinances and Wisconsin State Statutes

AN AMENDED RESOLUTION/ORDINANCE

WHEREAS, the Milwaukee County Code of General Ordinances (MCGO) enumerate the composition and necessary qualifications of Pension Board trustees in Chapter 201.24(8.2); and

WHEREAS, the MCGO, including Chapter 201.24(8.2), have been the subject of numerous changes over the last 20 years; and

WHEREAS, on several occasions where administrative errors were found, where the past practices of the Employee Retirement System (ERS) deviated from the ordinances, or where the ordinances lacked clarity or specificity leading to varying interpretations, it has regularly been recommended by the Office of Corporation Counsel (OCC) and outside counsel that one way to cure the inconsistency is to adopt a conforming ordinance; and

WHEREAS, examples of such ordinance revisions include File No's 14-244, and 18-802, where it was OCC and outside counsel that recommended or drafted these changes to cure other instances where administrative practice deviated from the ordinance, or where a lack of clarity in the ordinances left room for interpretation or subjective decision making; and

WHEREAS, in September of 2015, the Milwaukee County Board of Supervisors (County Board) Chairman made two appointments to the Pension Board to fulfill the authority established in Chapter 201.24(8.2), MCGO; and

WHEREAS, prior to one of these appointments, the Chairman sought clarification from OCC on the definition of the word "family member" as it is used in Chapter 201.24(8.2)(2), MCGO, because a potential appointee disclosed that his mother was a member of the ERS; and

WHEREAS, OCC provided an explanation that "family member" was not defined in the ordinances, and that it was reasonable to apply the definition of "immediate family" provided in the Ethics Code at Chapter 9.02(9), MCGO; and

43 WHEREAS, Chapter 9.02(9), MCGO, defines “immediate family” as “an
44 individual’s:
45 a) Spouse; and
46 b) Child, parent or sibling or in-law or step-relative of the same degree who
47 receives, directly or indirectly, more than one-half (1/2) of his/her support from
48 the individual or from whom the individual receives, directly or indirectly, more
49 than one-half (1/2) of his/her support.”

50
51 ; and

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53 WHEREAS, Chapter 19, Subchapter 3, Wisconsin State Statutes (State
54 Statutes), related to the Code of Ethics for Public Officials and Employees, defines
55 “immediate family” as:

- 56
57 a) An individual’s spouse; and
58 b) An individual’s relative by marriage, lineal descent, or adoption who receives,
59 directly or indirectly, more than one-half of his or her support from the
60 individual or from whom the individual receives, directly or indirectly, more
61 than one-half of his or her support.

62
63 ; and

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65 WHEREAS, the State of Wisconsin Investment Board (SWIB) Chapter 1.02(6)
66 uses the term “family” and defines it similarly, and does not apply the term to ancestors
67 unless one of the parties meets other threshold requirements, essentially that of a
68 dependent; and

69
70 WHEREAS, in 2015, OCC, provided their analysis of Chapter 9.02(9), MCGO, in
71 their interpretation and stated that “in the context of potential Pension Board
72 appointments, we believe that such appointees may not be members or beneficiaries of
73 ERS, their spouses may not be member or beneficiaries of ERS, and any of the
74 relatives listed in 9.01(9) who are financially dependent on the appointee (or vice versa)
75 may not be members or beneficiaries of ERS”; and

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77 WHEREAS, based on this guidance from OCC, the Chairman proceeded to
78 make two appointments to the Pension Board to fulfill the authority established in
79 Chapter 201.24(8.2)(4), MCGO; and

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81 WHEREAS, these appointments were confirmed by the County Board on
82 September 24, 2015, and reappointed in 2018, and reconfirmed on September 20,
83 2018; and

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85 WHEREAS, the OCC, under current tenure, first came to know of the issue that
86 this same Pension Board Trustee has a mother who is a member of the ERS on
87 December 20, 2019; and

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WHEREAS, on February 3, 2020, OCC first notified the Chairman about a concern related to Chapter 201.24(8.2), MCGO; and

WHEREAS, on February 4, 2020, the Chairman provided the prior OCC guidance that he relied upon when making the appointment and reappointment; and

WHEREAS, on February 14, 2020, OCC advised that they have concluded that prior guidance was incorrect, that they believe a broader definition of family should be used, and that the Trustee should resign or be immediately removed; and

WHEREAS, the current OCC opinion does not include any consideration of financial dependence in its analysis, while SWIB and State Statutes do, as well as the 2015 opinion of OCC; and

WHEREAS, the Chairman requested the use of outside counsel to help resolve the discrepancy between the two OCC opinions and answer additional related questions; and

WHEREAS, an outside opinion was provided that largely mirrored the current OCC view of the ordinances, but also stated, “there is nothing in the MCGO or UPIA [Uniform Prudent Investor Act] that would prohibit the County from amending the MCGO as necessary to incorporate the more restrictive definition of family member”; and

WHEREAS, the Chairman sought answers to additional related questions, issues, including the potential for ordinance amendments, and the need to define the term “family member” because the broad interpretation is undefined as to the extent of its application to parents, grandparents, siblings, cousins, and other family members; and

WHEREAS, on February 21, 2020, the Chairman notified OCC of the intent to clarify Chapter 201.24(8.2), MCGO, to conform with the definition of “immediate family” as provided in Chapter 9.02(9), MCGO; and

WHEREAS, it is clear that OCC lawyers and others can interpret the current ordinances in various ways, and the lack of clarity should be rectified; and

WHEREAS, it is inappropriate to sit in judgement of appointees in a manner that directly conflicts with prior OCC guidance, particularly when such action would impugn the integrity and service of said appointee; and

WHEREAS, is it inappropriate that an appointee, particularly one who has served exceptionally and honorably, would be pressured to resign or for an appointing authority to be told to remove an appointee when each relied upon prior OCC guidance and other more suitable remedies are possible; and

134 WHEREAS, the Committee on F&A, at its meeting of March 18, 2020, provided
135 no recommendation regarding File No. 20-248 due to a tie vote (3-3) on a motion to
136 recommend adoption as amended; and
137

138 BE IT RESOLVED, Milwaukee County is committed to transparency and clarity in
139 the Milwaukee County Code of General Ordinances (MCGO) and, when possible, seeks
140 to rectify any ambiguous language; and
141

142 BE IT FURTHER RESOLVED, a definition of immediate family as it relates to the
143 Pension Board shall be provided to avoid future misconception; and
144

145 BE IT FURTHER RESOLVED, the Milwaukee County Board of Supervisors
146 hereby amends Chapter 201.24(8.1) and Chapter 201.24(8.2)(2), MCGO, by adoption
147 of the following:
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149 AN ORDINANCE

150
151 The Milwaukee County Board of Supervisors does ordain as follows:
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153 **Section 1. ~~Effective September 1, 2015,~~ Chapter 201.24(8.1) and (8.2)(2) of the**
154 **Milwaukee County Code of General Ordinances is hereby amended as follows:**
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156 **8.1. - Pension board.**

157 The general administration and responsibility for the proper operation of the
158 retirement system and for making effective the provisions of this ordinance are hereby
159 vested in a pension board which shall be organized immediately after the first four (4)
160 members provided by in this section have qualified and taken the oath of office.
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162 Prior to confirmation, and during incumbency, an appointee must either possess
163 "financial literacy" as the United States Securities and Exchange Commission defines
164 as "the ability to read and understand fundamental financial statements, including a
165 company's balance sheet, income statement, and cash flow statement," or must meet
166 one of the following qualifications: (1) a minimum of five (5) years of recent work
167 experience in the financial industry, or, a minimum of five (5) years of recent work
168 experience in the finance division of an organization; or (2) an advanced degree
169 applicable to the financial industry or be licensed as a certified public accountant,
170 certified managerial accountant, certified financial planner, or certified financial advisor.

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In addition, neither an appointee, nor any family member, as defined in Section 8.2, of the appointee, shall be a participant in, or beneficiary of the employes retirement system. An appointee shall not have relationships or ties to any provider of services to the employes retirement system or pension board. Examples of a provider of service shall include but not be limited to, investment consultants, investment managers, actuaries, or attorneys.

8.2. – Membership.

- (1) Members shall not serve more than two (2) consecutive, full, three-year terms; however, a member’s service for a partial term of less than three full years in order for that member to complete the balance of a three-year term of a prior member is not included in this limitation. Members may not continue to service after the completion of any term, unless reappointed and confirmed or re-elected. A member having served two (2) terms may be eligible for re-election or reappointment after not having been a member for at least three (3) years from the last date of service on the board. If reappointed or re-elected, the members must adhere to the same term limitation of two (2) consecutive three-year terms. A member may not continue to serve if at any time the member does not possess the qualifications that would be applicable to the member at the time of the member’s appointment, election, reappointment or re-election. The board shall determine any question arising under this section 8.2 concerning a member’s qualification or eligibility to continue to serve as a member.
- (2) None of the appointed members of the pension board nor any family members of the appointed members of the pension board shall be participants in, or beneficiaries of, the Milwaukee County Employee Retirement System. None of the appointed members of the pension board shall have relationships or ties to any provider of services to the Milwaukee County Retirement System, Milwaukee County Pension Board, or the Milwaukee County Pension Study Commission. **“Family member” means an individual’s:**
 - (a) **Spouse;**
 - (b) **Child, parent or sibling or in-law or step-relative of the same degree who receives, directly or indirectly, more than one-half (1/2) of his/her support from the individual or from whom the individual receives, directly or indirectly, more than one-half (1/2) of his/her support.**
- (3) No member shall be eligible to serve, or to continue serving, on the pension board who has been found or determined by any Wisconsin governmental unit or agency to have violated any provision of an applicable ethics or lobbying code or who has been convicted of any crime of misconduct in office or any crime involving dishonesty or theft.

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- (4) The membership of the board shall consist of the following:
- (a) Three (3) members to be appointed by the county executive (subject to confirmation by two-thirds (2/3) or more of the members-elect of the county board), for a term of three (3) years.
 - (b) Two (2) members appointed by the county board chairperson (subject to the confirmation of the county board and to county executive approval or veto, with proceedings on veto), for a term of three (3) years.
 - (c) Three (3) elected employe members who are not members of the Milwaukee Deputy Sheriffs Association. The employe board members shall be members of the system and shall be elected by members of the system, other than members of the Milwaukee Deputy Sheriffs Association. Effective for employe elections occurring after April 1, 2012, employes who work for the Employees Retirement System, Department of Human Resources or Corporation Counsel are not eligible for election to, or service on, the pension board. The board may adopt rules and regulations governing such election including a division of county employes into groups for the purpose of electing one (1) employe member of the board from among the employes of each group. However, no such group may include members of the Milwaukee Deputy Sheriffs Association.
 - (d) One (1) retiree member who shall be a member of the system and who shall be elected by retired members.
 - (e) One (1) employe member of the Milwaukee Deputy Sheriffs Association for a term of three (3) years who must be an active county employe upon appointment and throughout his or her term(s). This member shall be appointed by the executive board of the Milwaukee Deputy Sheriffs Association utilizing a method for selection that the executive board deems appropriate. Once appointed, this member may not be removed by the executive board of the Milwaukee Deputy Sheriff Association.
 - (f) Appointing authorities shall ensure that the employee members of the pension board are released from their work assignments to attend meetings of the pension board and any other meeting related to pension board business for which public notice is required which occurs during their regularly scheduled work shift.

Section 2. The provisions of this Ordinance shall become effective upon passage and publication.

srb
03/18/2020S:\Committees\2020\Mar\F&A\Resolutions\20-248 appointment of pension board members SJC
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