



Milwaukee County
Department of Human Resources
INTER-OFFICE COMMUNICATION

Date: November 12, 2021

To: Marcelia Nicholson, Chairwoman, Milwaukee County Board of Supervisors

From: Erika Bronikowski, Retirement Plan Services Director *EJB km*

Subject: From the Retirement Plan Services Director, Department of Human Resources, clarifying the Milwaukee County Code of General Ordinances regarding correction of overpayment and underpayment errors and requesting authorization to amend Chapters 201.24(3.1) and (8.24) of the Milwaukee County Code of General Ordinances to reflect these changes.

File Type: Ordinance Change

REQUEST

We are requesting that the County Board adopt the Ordinance changes necessary to align the correction procedures for over- and under-payments from the Employees' Retirement System of Milwaukee County to the direction provided by the IRS.

In short, the changes include the following:

- Requiring compound interest on corrections and establishing the interest rates for over- and under-payments
- Clarifying the repayment period for members that have been overpaid
- Revised accounting procedures for funds collected by the ERS to be sent to Milwaukee County

RPS has worked with the Pension Board, Corporation Counsel, and external Counsel to the Pension Board and has consulted with the Comptroller's Office on these outlined pension changes to the Milwaukee County Code of General Ordinances.

POLICY

Wisconsin State Statutes:	NA
Milwaukee County Code of General Ordinances:	201.24
Specific Adopted Budget:	NA
Specific Adopted Budget Amendment:	NA
Specific Adopted Capital Project:	NA

Description of Proposed Ordinance Amendments

Section 1 of the Resolution – Contributions to the pension system

Background.

The amendments regarding contributions to the pension system are in Ordinance Section 201.24 (3.1)(1). They provide the following:

- Updates to title changes and timing of reporting
- Revised accounting procedures for funds collected by the ERS to be sent to Milwaukee County
- Clarification regarding the repayment funds collected by RPS

Proposed Amendments.

Ordinance section 201.24(3.1)(1). The proposed amendments to Ordinance section 201.24(3.1)(1) revise section (b) to include title changes and timing clarifications. They also clarify that the County will contribute any amounts owed under IRS requirements that cannot be recovered from the recipient of the overpayment.

Additionally, the proposed amendments to Ordinance section 201.24(3.1)(1) revise section (c) to provide a procedure for the County to contribute overpayment amounts to ERS. They state that that RPS will collect and hold the principal repayments in an account separate from other ERS accounts and pay these amounts to the County on a monthly basis.

Finally, the proposed amendments to Ordinance section 201.24(3.1)(1) revise section (d) to clarify that the amounts paid to ERS by individuals who elect or are placed into Option 2 are ERS Plan assets and will be paid to the ERS trust. The County does not contribute any portion of an overpayment for individuals who elect or are placed into Option 2.

Effective Date. January 1, 2021, which will provide for documented procedures in the event any errors are identified in 2021 now that the VCP has been resolved.

Section 2 of the Resolution – Repayment Period, Applicable Interest, and De Minimis Amounts

Background.

The amendments regarding repayment period, interest, and de minimis amounts are in Ordinance Section 201.24 (8.24). They provide the following:

- Revisions to de minimis thresholds
- Clarification of interest to be applied to over- and under-payments
- Clarification of the repayment period for overpayments

Proposed Amendments.

Ordinance section 201.24(8.24). The proposed amendments to Ordinance section 201.24(8.24) revise section (2) to eliminate the statute of limitations for underpayments in accordance with IRS direction and establish the de minimis underpayment amount of \$75.

Additionally, the proposed amendments to Ordinance section 201.24(8.24) revise section (3)(c) to clarify that the amounts collected from an overpaid member who elected option 1 are to be collected post-tax.

The proposed amendments to Ordinance section 201.24(8.24) also revise section (3)(c) to clarify that interest continues to accrue on overpayments under option 2 until they are repaid in full.

The proposed amendments to Ordinance section 201.24(8.24) revise section (3)(f) to provide a 60-month period for repayment.

The proposed amendments to Ordinance section 201.24(8.24) revise section (3)(h) clarify the timing of lump sum repayment and allows RPS to agree to repayment plans for individuals who are not continuing to receive ongoing benefits.

The proposed amendments to Ordinance section 201.24(8.24)(4) specify that compound interest will be applied to both over- and under-payments and provides the interest rates.

The proposed amendments to Ordinance section 201.24(8.24)(5) align the de minimis thresholds in the ERS to the IRS' EPCRS.

Finally, proposed amendments to Ordinance section 201.24(8.24)(6) clarifies that the six year statute of limitations in Ordinance only applies to overpayments.

Effective Date. January 1, 2021, which will provide for documented procedures in the event any errors are identified in 2021 now that the VCP has been resolved.

Tax Qualified Status and Pension Systems

The Employees' Retirement System of the County of Milwaukee ("ERS") is a tax-qualified retirement plan under the Internal Revenue Code ("Code"). In order to maintain its tax-qualified status, ERS must comply with Code requirements applicable to government plans, including being administered in accordance with the plan document and EPCRS. For ERS, the Plan document consists of the Ordinances passed by the County Board (Ordinance section 201.24) and Rules enacted by the Pension Board (Appendix B of Ordinance section 201.24).

It is critically important for a plan like ERS to maintain its tax-qualified status, which entitles ERS and its members to favorable tax treatment. If the Internal Revenue Service ("IRS") "disqualifies" a plan for failing to comply with the Code, the plan loses

this favorable tax treatment. Among other consequences of disqualification, employees realize taxable income and trust earnings are taxed. Additionally, Milwaukee County as Plan Sponsor may bear further administrative costs and face potential penalties and sanctions from the IRS.

The IRS requires tax-qualified plans to correct errors in order to maintain tax-qualified status.

Any future errors discovered are subject to the correction procedures in Milwaukee County Ordinance and must comply with EPCRS.

BACKGROUND

In March of 2019, the Milwaukee County Board of Supervisors adopted a resolution (see [file 18-802](#)) that amended certain pension-related Ordinances to provide correction procedures for resolving over- and under-payments from the pension system. At the time, the Voluntary Correction Program (explanation below) was pending with the Internal Revenue Service and Retirement Plan Services requested direction for resolving outstanding over- and under-payments so the amounts did not continue to accrue while pending with the IRS. The previous VCP took nine years to resolve and RPS had no indication of the timing for resolving the VCP at that time. Anticipating that it could take another nine years for the IRS to respond to the second VCP, RPS did not want over- and under-paid benefits to continue growing in size for an extended period of time.

The correction procedures approved in file 18-808 provided an interest forgiveness policy as well as guidelines for RPS to proceed with addressing over- and under-payments.

The VCP was filed on December 20, 2017 with the IRS. VCPs are used to address pension calculation/administration inconsistencies and to correct language in pension Plan Documents with the authorization of the IRS. VCP submissions include a description of each type of error, the total affected population, and the proposed correction methodology. In February of 2020, the IRS approved the VCP but did not fully approve the correction procedures that were created in March of 2019. This resolution and accompanying ordinance changes align the correction procedures to the IRS's requests.

Related File No's:	18-802
Associated File No's (Including Transfer Packets):	18-691 , 19-461 , 19-516 , 19-880 , 20-248
Previous Action Date(s):	10/18/2018, 8/30/2018, 4/22/2019, 5/17/2019, 11/12/2019, 2/21/2020

FISCAL EFFECT

Please see the attached actuarial review and fiscal note.

VIRTUAL MEETING INVITES

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PREPARED BY:

Erika Bronikowski, Retirement Plan Services Director

APPROVED BY:

Margo Franklin, Chief Human Resources Officer

ATTACHMENTS:

- Resolution/Ordinance Change
- Fiscal Note
- Actuary's Review of Proposed Ordinance Amendments to the Milwaukee County Employees' Retirement System
- Bullet Point Summary Re Ordinance amendments re Corrections - Sept 10 2021

cc: County Executive David Crowley
Mary Jo Meyers, Chief of Staff
Supervisor Eddie Cullen, Chair, Personnel Committee
Supervisor Jason Haas, Chair, Finance Committee
Personnel Committee
Finance Committee
Pension Board
Scott Manske, Comptroller
Margaret Daun, Corporation Counsel
Margo Franklin, Interim Chief Human Resources Officer
Aaron Hertzberg, Department of Administrative Services
Steve Cady, Research and Policy Director, Office of the Comptroller
Janelle Jensen, Committee Clerk