


**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: June 30, 2016

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

FROM: Marian Ninneman, Director, Retirement Plan Services 

SUBJECT: **Request for amendments to ERS Pension Ordinances; sections 201.24(11.1), (12.4) and (12.8).**

Retirement Plan Services requests that you refer the attached resolution and proposed ordinance amendments to the Committee on Personnel and to the Pension Study Commission.

ERS is a qualified plan under the Internal Revenue Code ("Code"). Among other things, the Code requires that the pension plan be operated consistently with its provisions. In 2007, ERS and the Pension Board determined that certain purchases of service credit had been administered in various ways contrary to the plan's provisions resulting in operational errors under the Code because of a failure to follow the plan's terms. As relevant to the attached requested ordinance amendments, the operational errors that occurred related to purchases of service credit. ERS filed a Voluntary Correction Program ("VCP") submission with the Internal Revenue Service ("IRS") to disclose and correct such errors. The County Board previously determined that the majority of these errors should be corrected to avoid litigation and adopted Ordinance amendments to correct these errors. *See* File No. 15-31.

At its meeting on June 15, 2016, the Pension Board approved the execution of a final compliance statement with the IRS that outlines the corrections to be made to close the VCP. ERS has also filed for a determination letter from the IRS. A favorable determination letter is the IRS's confirmation that the language of the plan document meets the current qualification requirements of the Code. As part of the VCP compliance statement and in order to receive a favorable determination letter, the IRS has requested the adoption of certain Ordinance amendments.

Attached to this memo is a resolution, a summary of the proposed amendments, an actuarial report from Buck Consultants and a fiscal note.

Encl.

cc: County Executive Chris Abele
Comptroller Scott Manske
Kelly Bablitch
Raisa Koltun
Janelle Jensen
Steve Cady

Milwaukee County Board of Supervisors

Potential Amendments to Ordinance Sections 201.24(11.1), (12.4) and (12.8) Bullet Point Summary

June 28, 2016

PROPOSED ORDINANCE AMENDMENTS

- Background. ERS is a qualified plan under the Internal Revenue Code ("Code") and must comply with Code requirements applicable to government plans, including being administered in accordance with the Ordinances and Rules.

ERS reported a number of errors to the Internal Revenue Service ("IRS") in 2007 (to avoid tax-disqualification of ERS) through the IRS's Voluntary Correction Program ("VCP"). The Milwaukee County Board of Supervisors previously passed a number of Ordinance amendments to correct errors identified in connection with the VCP filing. The prior Ordinance amendments corrected the majority of errors arising out of purchases of service credit, both buy ins and buy backs. The enclosed additional Ordinance amendments are required by the IRS to fully correct some members' errors that were intended to be corrected by the previous Ordinance amendments. The IRS recently decided to request these additional Ordinance amendments before finalizing the VCP Compliance Statement.

- Proposed Ordinance Amendments.
 - **Sections 1 and 2 of the Resolution, Ordinance section 201.24(11.1) - Correction of Effective Dates.**
 - Currently, Ordinance section 201.24(11.1) provides that if members who are eligible to receive deferred vested pensions return to active service, they will become active members and resume contributions. These members will be credited with all service subsequent to their reemployment as well as service giving rise to the deferred vested pension benefit for determining the amount of the pension.
 - Previously, Ordinance section 201.24(11.1) addressed employees who terminated employment with the County and withdrew their contributions and who later returned to ERS-covered employment and wished to buy back that prior ERS service. There were a number of errors related to this Ordinance when ERS members were erroneously permitted to restore prior ERS service credit by paying the required amounts after the deadline in the Ordinances. The prior version of Ordinance section 201.24(11.1), as amended, required members who wished to buy back service prior to July 1, 2007 to complete two years of service after re-enrolling in ERS and to re-deposit the amount of any contributions they previously withdrew, with interest, within a thirty-year period after reemployment. The prior version of Ordinance section 201.24(11.1) contained additional rules regarding buy backs, but the buy back

feature was eliminated when Ordinance section 201.24(11.1) was amended to remove all but the provision that is currently in effect.

- The proposed amendments to Ordinance section 201.24(11.1) would revise the effective dates in subsection (1) so that the effective dates would more closely match the years in which the errors occurred. Paragraphs 1 and 2 of Ordinance section 201.24(11.1(1)) would be revised to be effective beginning on January 1, 1986 and January 1, 1990, respectively. Previously, both paragraphs were effective beginning on January 1, 1982. Originally, the amendments were prepared with a January 1, 1982 effective date to reflect the earliest date of all violations. The IRS recently determined that it would prefer to tailor each amendment to the dates of the errors corrected by the amendment. The proposed amendment does not otherwise change the language of the Ordinance or its prior amendments.
 - The previous amendments to Ordinance section 201.24(11.1) were adopted to first amend Ordinance section 201.24(11.1) and then to remove the entire Ordinance except for one paragraph.
 - The proposed amendments are drafted in the same way. Accordingly, the proposed amendments are drafted to adopt the new effective dates with the language from the initial amendment and then remove the entire Ordinance except for one paragraph.
 - These proposed amendments are in response to the IRS's request and are meant to make each amendment effective in the year in which the errors corrected by the amendment occurred.
- **Section 3 of the Resolution, Ordinance section 201.24(12.4) - Correction of Code Section 415 Limit Issues.**
- Ordinance section 201.24(12.4) sets forth the limits on contributions and allocations to members' savings and membership accounts. These limits are governed by Code section 415. For example, Code section 415(c) limits the annual addition that an individual can make to a defined contribution plan (or, in the case of ERS, to the member's membership account or savings account, including purchases of service credit). Currently, Ordinance section 201.24(12.4(1)) provides that the annual addition in a member's savings and membership account will not exceed the Code section 415(c) limit, which is the lesser of the limit in section 415(c)(1)(A) or one hundred percent of compensation.
 - The IRS requested that Ordinance section 201.24(12.4) be amended so that subsection (1) would merely reference the Code section 415(c) limits instead of explaining those limits in the Ordinance. Accordingly, the proposed amendments remove the description of the Code section 415 limits and incorporate the 415 limits by reference instead.

- Subsection (2) of Ordinance section 201.24(12.4) currently defines "annual addition" as the amount allocated to a member's account for any year of contributions, including employee contributions. The changes to subsection (2) in the proposed amendment reflect the Code's exclusion of repayment contributions from the Code section 415(c) limits. Code section 415(k)(3) effectively excludes buy backs from consideration as part of the 415(c) limits. Accordingly, the amendment to subsection (2) fully corrects some of the buy back errors related to Code section 415.
 - Subsection (2) of Ordinance section 201.24(12.4) would be effective in 1987 as interpreted by the Pension Board and as set forth in the text of subsection (2).
 - The amendments to subsection (2) would fully correct the buy back errors for 16 members. These 16 members' errors were intended to be corrected by the prior Ordinance amendments, but the IRS recently determined that additional amendments were necessary to fully correct these members' errors.
- Subsection (3) of Ordinance section 201.24(12.4) currently provides that if excess contributions are made to ERS, they will be reallocated as defined in subsection (3). The proposed changes to subsection (3) would apply to years prior to January 1, 2007 and would reflect the language in the Code. The Code provides that the amount by which an annual addition exceeds the limits in Code section 415 may be reallocated only for limitation years before July 1, 2007 and only if the annual additions would cause the limitations of Code section 415 to be exceeded as a result of the allocation of forfeitures, a reasonable error in estimating a member's annual compensation or a reasonable error in determining the amount of elective deferrals. The proposed amendment adds the required language to comply with the Code.
- The proposed amendments to Ordinance section 201.24(12.4) (other than the amendment to subsection (2)) would be effective January 1, 1998.
- **Section 4 of the Resolution, Ordinance section 201.24(12.8) - Correction of the Definition of Compensation.**
 - Ordinance section 201.24(12.8) defines compensation for purposes of Code section 415 testing. Ordinance section 201.24(12.8) currently provides that compensation means "participant's compensation" as defined in Code section 415(c)(3) and the regulations and that was paid prior to severance from employment. The IRS requested that Ordinance section 201.24(12.8) be revised to incorporate the definition of compensation in a specific part of the Treasury Regulations.
 - Accordingly, the proposed amendments in Ordinance section 201.24(12.8) would incorporate by reference the definition of "participant's compensation"

in the Treasury regulation section 1.415(c)-2(a). This is a technical change to reflect certain Code requirements and should not have an effect on the administration of ERS.

- The proposed amendments to Section 201.24(12.8) would also incorporate a provision in the Code that provides that "compensation" includes compensation paid by the later of 2-1/2 months after a member leaves employment or the end of the limitation year that includes the date of the member's severance from employment if the payment meets certain requirements. The IRS requested that this change be made.
- The proposed amendments to Ordinance section 201.24(12.8) would be effective January 1, 2008.