



## Legislation Text

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File #: 061049, Version: 0

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061049  
ORIGINAL

### THE CHAIR

A charter ordinance relating to the investment of funds and administration of the deferred compensation plan for employees of the city, and making technical changes.

5-50-3 am

5-50-4 am

This ordinance clarifies the limits of fiduciary responsibilities with respect to participant (city employee)-directed investments in the city's "Section 457 Deferred Compensation Plan." Failure of a fiduciary to make prudent investments on behalf of a beneficiary may result in liability.

Participant-directed investment plans qualify for "safe harbor" protection when they meet the requirements of s. 404(c) of the federal Employee Retirement Income Security Act (ERISA). These include a choice of 3 or more alternative investments, each with different risk characteristics which, when combined, provide diversified risk normally appropriate to a participant's portfolio.

This ordinance amends adopts the federal requirements for "safe harbor." Upon passage, the amendments will also be reflected in changes to the "Master Plan Document for the City of Milwaukee Section 457 Deferred Compensation Plan."

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 5-50-3 and 4 of the charter is amended to read:

### **5-50. Deferred Compensation Plan.**

**3. INVESTMENT OF FUNDS.** All amounts of compensation deferred under the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property of rights shall be held in trust for the exclusive benefit of participants and beneficiaries as provided in s. 457 of the Internal Revenue Code. For purposes of this subsection, custodial accounts and contracts described in s. 457(g) of the Internal Revenue Code shall be treated as trusts. Such compensation, property, rights and income shall be invested at the discretion of the board in the manner authorized for deferred compensation funds under ~~[[s. 881.01(1)]]~~>>ss. 40.82(2) and 881.01<<, Wis. Stats. Such compensation, property, rights and income shall be held subject to the anti-alienation provisions contained in s. 66.81, Wis. Stats.

**4. ADMINISTRATION.** The common council may by ordinance establish a board to supervise the plan. The board shall serve as a fiduciary under s. 881.01~~[[ (1) ]]~~, Wis. Stats., with respect to assets of the plan>>, provided however, the board shall not be deemed to have breached its fiduciary duties for permitting participants and beneficiaries to exercise control over assets in their individual account;

participants and beneficiaries shall not be deemed to be fiduciaries by reason of exercising control over the assets in their individual account; and no person who is otherwise a fiduciary shall be liable for loss, or by reason of any breach, which results from participants or beneficiaries exercising control over assets in their individual account. Participants or beneficiaries shall be deemed to exercise control over the assets in their account if the board offers them a range of investment alternatives sufficient to provide them with a reasonable opportunity to choose from at least 3 investment alternatives, each of which is diversified, each of which has materially different risk and return characteristics, which in the aggregate enable the participant or beneficiary choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the participant or beneficiary, and each of which when combined with investments in the other alternatives tends to minimize through diversification the overall risk of a participant's or beneficiary's portfolio.<< The board may promulgate such rules as may be necessary to supervise and direct such plan and to secure approval of the Internal Revenue Service so that amounts of compensation deferred by a participant will be includable in the income of the participant or his or her beneficiary only when such amounts are paid or otherwise made available. Proper city officers are authorized to execute on behalf of the city such agreements as are formulated by the board in the implementation of the plan. Deferred compensation held in the name of the city or the custodian for the exclusive benefit of the participants and beneficiaries in accordance with the plan shall be invested at the direction of the board in accordance with the requirements of law. The comptroller shall prescribe accounting procedures for the plan. Whenever the city shall so contract with other employers, the board shall jointly administer 2 or more separate deferred compensation plans.

APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau

Date: \_\_\_\_\_

IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFORCEABLE

\_\_\_\_\_  
Office of the City Attorney

Date: \_\_\_\_\_

LRB06540-1

RLW

11/14/2006