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THE CHAIR

A substitute charter ordinance relating to the employees' retirement system's compliance with Internal Revenue Code provisions.

36-02.5 cr
36-05-1-j rc
36-05-12 cr
36-09-8 cr
36-10-2-b-3 rc

This charter ordinance adopts provisions required for the employees' retirement system to conform to the requirements of s. 415 of the Internal Revenue Code for a qualified defined benefit plan, including:

1. Provisions to be in compliance for group trust participation.
2. Provisions to be in compliance with the HEART Act.
3. A revised definition of "eligible retirement plan".

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

Part 1. Section 36-02.5 of the charter is created to read:

36-02.5. Tax Code Compliance. The following are effective January 1, 2002:

1. The retirement system is established as a qualified defined benefit plan, pursuant to ss. 401(a) and 414(d) of the Internal Revenue Code and other applicable provisions of the Internal Revenue Code, as well as applicable U.S. treasury regulations and other guidance.
2. The assets of the retirement system shall never inure to the benefit of the city or any city agency, and shall be held for the exclusive purposes of providing benefits to members and their beneficiaries and defraying reasonable expenses of administering the plan.
3. A member shall be 100% vested in his or her retirement benefit upon attaining eligibility for a retirement benefit.
4. A member shall be 100% vested at all times in a benefit determined under this chapter attributable to the member's accumulated contributions paid by the member under this chapter.
5. In the event of a full or partial termination of, or a complete discontinuance of employer contributions to, the retirement system, the accrued benefits of the affected members under this chapter shall be 100% vested and nonforfeitable to the extent funded and required by federal law.
6. In conformity with s. 401(a)(8) of the Internal Revenue Code, any forfeitures of benefits by members or former members shall not be used to pay benefit increases. The forfeitures shall be used to reduce employer contributions.

Part 2. Section 36-05-1-j of the charter is repealed and recreated to read:

36-05. Benefits.

1. SERVICE RETIREMENT ALLOWANCE.

j. Internal Revenue Code. In this paragraph, for purposes of testing under s. 415 of the Internal Revenue Code, the limitation year shall be the calendar year.

j-1. Requirements. Notwithstanding any other provisions of the retirement system to the contrary, the member contributions paid to and retirement benefits paid from the plan shall be limited to such extent as may be necessary to conform to the requirements of s. 415 of the Internal Revenue Code for a qualified pension plan.

j-2. Participation in Other Qualified Plans: Aggregation of Limits.

j-2-a. The s. 415(b) of the Internal Revenue Code limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in s. 414(j) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.

j-2-b. The s. 415(c) of the Internal Revenue Code limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in s. 414(i) of the Internal Revenue Code maintained by the member's employer in this plan shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

j-3. Basic 415(b) Limitation.

j-3-a. Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in s. 415(b) of the Internal Revenue Code, subject to the applicable adjustments in that

section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in s. 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in s. 415(b) of the Internal Revenue Code and subject to any additional limits that may be specified in the retirement system. In no event shall a member's annual benefit payable under the plan in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to s. 415(d) of the Internal Revenue Code and the regulations thereunder.

j-3-b. For purposes of s. 415(b) of the Internal Revenue Code, "annual benefit" means a benefit payable annually in the form of a straight life annuity, with no ancillary benefits, without regard to the benefit attributable to after-tax employee contributions, except pursuant to s. 415(n) of the Internal Revenue Code, and to rollover contributions as defined in s. 415(b)(2)(A) of the Internal Revenue Code. The "benefit attributable" shall be determined in accordance with U.S. treasury regulations.

j-3-c. The annual pension benefit payable to a member who has a freeze date specified in this paragraph shall not be less than the member's old law benefit. A member's old law benefit shall be the benefit the member was entitled to as of December 31, 1994 (the "freeze date") determined without regard to any changes in the terms and conditions of the retirement system after December 8, 1994.

j-4. Adjustments to Basic 415(b) Limitation for Form of Benefit.

j-4-a. If the benefit under the plan is other than the form specified in par. j-3, then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in U.S. treasury regulations.

j-4-b. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then subpar. a is applied by either reducing the s. 415(b) of the Internal Revenue Code limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount, determined using the assumptions specified in U.S. treasury regulation s. 1.415(b)-1(c)(2)(ii), that takes into account the additional benefits under the form of benefit as follows:

j-4-b-1. For a benefit paid in a form to which s. 417(e)(3) of the Internal Revenue Code does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of:

j-4-b-1-a. The annual amount of the straight life annuity, if any, payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

j-4-b-1-b. The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption, or the applicable statutory interest assumption; and

j-4-b-1-b-1. For years prior to January 1, 2009, the applicable mortality tables described in U.S. treasury regulation s. 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); and

j-4-b-1-b-2. For years after December 31, 2008, the applicable mortality tables described in s. 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing s. 417(e)(3)(B) of the Internal Revenue Code)

; or

j-4-b-2. For a benefit paid in a form to which s. 417(e)(3) of the Internal Revenue Code applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of:

j-4-b-2-a. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience; or

j-4-b-2-b. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption, or the applicable statutory interest assumption; and

j-4-b-2-b-1. For years prior to January 1, 2009, the applicable mortality tables for the distribution under U.S. treasury regulation s. 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); and

j-4-b-2-b-2. For years after December 31, 2008, the applicable mortality tables described in s. 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing s. 417(e)(3)(B) of the Internal Revenue Code); or

j-4-b-2-c. The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit computed under U.S. treasury regulation s. 1.417(e)-1(d)(3); and

j-4-b-2-c-1. For years prior to January 1, 2009, the applicable mortality tables for the distribution under U.S. treasury regulation s. 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and

j-4-b-2-c-2. For years after December 31, 2008, the applicable mortality tables described in s. 417(e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing s. 417(e)(3)(B) of the Internal Revenue Code), divided by 1.05.

j-4-c. The actuary may adjust the 415(b) of the Internal Revenue Code limit at the annuity starting date in accordance with subpar. b-1 and 2.

j-5. Benefits For Which No Adjustment of the 415(b) Limit is Required.

For purposes of this section, the following benefits shall not be taken into account in adjusting these limits:

j-5-a. Any ancillary benefit which is not directly related to retirement income benefits.

j-5-b. That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity.

j-5-c. Any other benefit not required under s. 415(b)(2) of the Internal Revenue Code and U.S. treasury regulations thereunder to be taken into account for purposes of the limitation of s. 415(b)(1) of the Internal Revenue Code.

j-6. Other Adjustments in 415(b) Limitation.

j-6-a. If the member's retirement benefits become payable before age 62, the limit prescribed by this paragraph shall be reduced in accordance with U.S. treasury regulations pursuant to the provisions of s. 415(b) of the Internal Revenue Code, so that such limit, as so reduced, equals an annual straight life benefit, when such retirement income benefit begins, which is equivalent to a \$160,000, as adjusted, annual benefit beginning at age 62.

j-6-b. If the member's benefit is based on at least 15 years of service as a full-time employee of any police or fire department or on 15 years of military service, the adjustments provided for in subpar. a shall not apply.

j-6-c. The reductions provided for in subpar. a shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

j-7. Less than 10 Years of Participation or Service Adjustment for 415(b) Limitations.

The maximum retirement benefits payable to any member who has completed less than 10 years of participation shall be the amount determined under subd. 3, as adjusted under subd. 4 or subd. 6, multiplied by a fraction, the numerator of which is the number of the member's years of participation

and the denominator of which is 10. The limit under subd. 8 concerning the \$10,000 limit shall be similarly reduced for any member who has accrued less than 10 years of service, except the fraction shall be determined with respect to years of service instead of years of participation. The reduction provided by this subdivision cannot reduce the maximum benefit below 10% of the limit determined without regard to this subdivision. The reduction provided for in this subdivision shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

j-8. \$10,000 Limit.

Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the s. 415 of the Internal Revenue Code limit if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed \$10,000 for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated.

j-9. Effect of COLA without a Lump Sum Component on 415(b) Testing.

Effective on and after January 1, 2009, for purposes of applying the limits under s. 415(b) of the Internal Revenue Code (the "Limit") to a member with no lump sum benefit, all of the following shall apply:

j-9-a. A member's applicable Limit shall be applied to the member's annual benefit in the member's first limitation year without regard to any cost-of-living adjustments under pars. h and i.

j-9-b. To the extent that the member's annual benefit equals or exceeds the Limit, the member shall no longer be eligible for cost-of-living increases until such time as the benefit plus the accumulated increases are less than the Limit. Thereafter, in any subsequent limitation year, a member's annual benefit, including any cost-of-living increases under pars. h and i, shall be tested under the then-applicable benefit Limit, including any adjustment to the s. 415(b)(1)(A) of the Internal Revenue Code dollar limit under s. 415(d) of the Internal Revenue Code, and the regulations thereunder.

j-10. Effect of COLA with a Lump Sum Component on 415(b) Testing.

On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit shall be applied taking into consideration cost-of-living increases as required by s. 415(b) of the Internal Revenue Code and applicable U.S. treasury regulations.

j-11. Repayments of Cashouts.

Any repayment of contributions, including interest, to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the retirement system, a retirement system sponsored by the state of Wisconsin or by a unit of local government in the state of Wisconsin shall not be taken into account for purposes of s. 415 of the Internal Revenue Code, in accordance with applicable U.S. treasury regulations.

j-12. Reduction of Benefits Priority.

Reduction of benefits or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrators of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be

established by the plan and the plan administrators for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plans and the plan administrators of all other plans covering such member.

j-13. Section 415(c) Limitations on Contributions and Other Additions.

j-13-a. For purposes of this subdivision, effective January 1, 2002, unless otherwise provided, after-tax member contributions or other annual additions with respect to a member may not exceed the lesser of either:

j-13-a-1. \$40,000, as adjusted pursuant to s. 415(d) of the Internal Revenue Code; or

j-13-a-2. 100% of the member's compensation.

j-13-b. Annual additions are defined to mean the sum, for any year, of employer and member contributions to a defined contribution plan, post-tax member contributions to a defined benefit plan, except for purposes of service purchases, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and without regard to employee contributions to a simplified employee pension which are excludable from gross income under s. 408(k)(6) of the Internal Revenue Code and to picked-up employee contributions that are paid to a defined benefit plan. The compensation limit referred to in subpar. a-2 shall not apply to any contribution for medical benefits, within the meaning of s. 419A(f)(2) of the Internal Revenue Code, after separation from service which is treated as an annual addition.

j-13-c. For purposes of applying s. 415(c) of the Internal Revenue Code and for no other purpose, the definition of "compensation", where applicable, shall be compensation actually paid or made available during a limitation year, except as noted below and as permitted by U.S. treasury regulation s. 1.415(c)-2, or successor regulation. However, member contributions picked up under s. 414(h) of the Internal Revenue Code shall not be treated as compensation.

j-13-d. "Compensation" shall be defined as wages within the meaning of s. 3401(a) of the Internal Revenue Code and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under ss. 6041(d), 6051(a)(3) and 6052 of the Internal Revenue Code, and shall be determined without regard to any rules under s. 3401(a) of the Internal Revenue Code that limit the remuneration included in wages based on the nature or location of the employment or the services performed, such as the exception for agricultural labor in s. 3401(a)(2) of the Internal Revenue Code. However, the following adjustments shall also apply:

j-13-d-1. For limitation years beginning on and after January 1, 2002, "compensation" shall also include amounts that would otherwise be included in compensation but for an election under ss. 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Internal Revenue Code. "Compensation" shall also include any elective amounts that are not includible in the gross income of the member by reason of s. 132(f)(4) of the Internal Revenue Code.

j-13-d-2. For limitation years beginning on and after January 1, 2009, "compensation" for the limitation year shall also include compensation paid by the later of 2½ months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if any of the following are true:

j-13-d-2-a. 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, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

j-13-d-2-b. The payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

j-13-d-2-c. Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if

the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

j-13-d-3. Any payments not described in subpar. d-2 are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service, within the meaning of s. 414(u)(1) of the Internal Revenue Code, to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

j-13-d-4. An employee who is in qualified military service, within the meaning of s. 414(u)(1) of the Internal Revenue Code, shall be treated as receiving compensation from the employer during such period of qualified military service equal to whichever of the following is applicable:

j-13-d-4-a. The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or

j-13-d-4-b. If the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the 12 month period immediately preceding the qualified military service, or, if shorter, the period of employment immediately preceding the qualified military service.

j-13-d-5. Back pay, within the meaning of U.S. treasury regulation s. 1.415(c)-2(g)(8), shall be treated as "compensation" for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

j-13-e. If the annual additions for any member for a plan year exceed the limitation under s. 415(c) of the Internal Revenue Code, the excess annual addition shall be corrected as permitted under the Employee Plans Compliance Resolution System or similar Internal Revenue Service correction program.

j-13-f. For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this subdivision shall not exceed the annual limit under s. 401(a)(17) of the Internal Revenue Code.

Part 3. Section 36-05-12 of the charter is created to read:

12. HEART ACT AND CODE SECTIONS 401(a)(37) AND 414(u).

a. Effective December 12, 1994, notwithstanding any other provision of the retirement system law, contributions, benefits and service credit with respect to qualified military service are governed by s. 414(u) of the Internal Revenue Code and the Uniformed Services Employment and Reemployment Rights Act of 1994.

b. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in ch. 43 of title 38, United States Code, to the extent required by s. 401(a)(37) of the Internal Revenue Code, survivors of a member in a state or local retirement or pension system, are entitled to any additional benefits that the system would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service shall be counted for vesting purposes. This shall not include eligibility for a benefit under sub. 5.

c. Beginning January 1, 2009, to the extent required by s. 414(u)(12) of the Internal Revenue Code, an individual receiving differential wage payments, as defined under s. 3401(h)(2) of the Internal Revenue Code, from an employer shall be treated as employed by that employer, and the differential

wage payments shall be treated as compensation for purposes of applying the limits on annual additions under s. 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly-situated individuals in a reasonably equivalent manner.

Part 4. Section 36-09-8 of the charter is created to read:

36-09. Management of Funds.

8. COMPLIANCE FOR GROUP TRUST PARTICIPATION.

- a. The board may, unless restricted by law, transfer all or any portion of the assets of the retirement system to a collective or common group trust, as permitted under Revenue Ruling 81-100, Revenue Ruling 2011-1, and Revenue Ruling 2014-24, or subsequent guidance, that is operated or maintained exclusively for the commingling and collective investment of monies, provided that the funds in the group trust consist exclusively of trust assets held under plans qualified under s. 401(a) of the Internal Revenue Code, individual retirement accounts that are exempt under s. 408(e) of the Internal Revenue Code, eligible governmental plans that meet the requirements of s. 457(b) of the Internal Revenue Code, and governmental plans under s. 401(a)(24) of the Internal Revenue Code. For this purpose, a trust includes a custodial account or separate tax-favored account maintained by an insurance company that is treated as a trust under s. 401(f) or s. 457(g)(3) of the Internal Revenue Code.
- b. Any collective or common group trust to which assets of the retirement system are transferred pursuant to par. a shall be adopted by the board as part of the retirement system by executing appropriate participation, adoption agreements, or trust agreements with the group trust's trustee.
- c. The separate account maintained by the group trust for the retirement system pursuant to par. a shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the members and beneficiaries of the retirement system.
- d. For purposes of valuation, the value of the separate account maintained by the group trust for the retirement system shall be the fair market value of the portion of the group trust held for the retirement system, determined in accordance with generally recognized valuation procedures.

Part 5. Section 36-10-2-b-3 of the charter is repealed and recreated to read:

36-10. Exemption from Taxation, Execution and Assignment.

2.

- b-3. "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:
 - b-3-a. Effective January 1, 2002, an individual retirement account described in s. 408(a) of the Internal Revenue Code.
 - b-3-b. Effective January 1, 2002, an individual retirement annuity described in s. 408(b) of the Internal Revenue Code.
 - b-3-c. Effective January 1, 2002, an annuity plan described in s. 403(a) of the Internal Revenue Code.
 - b-3-d. A qualified trust described in s. 401(a) of the Internal Revenue Code.
 - b-3-e. Effective January 1, 2002, an annuity contract described in s. 403(b) of the Internal Revenue Code.
 - b-3-f. Effective January 1, 2002, a plan eligible under s. 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system.

b-3-g. Effective January 1, 2008, a Roth IRA described in s. 408A of the Internal Revenue Code.

Part 6. This is a charter ordinance and shall take effect 60 days after its passage and publication, unless within such 60 days a referendum petition is filed as provided in s. 66.0101(5), Wis. Stats., in which event this ordinance shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon.

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: _____

Employees' Retirement System

..Drafter

ERS:MET

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5/15/2015

LRB 158359-3

Jeff Osterman