



## Legislation Text

File #: 111058, Version: 2

111058  
SUBSTITUTE 2  
031148  
091068  
THE CHAIR

A substitute charter ordinance providing for non-spousal beneficiary rollovers under the Pension Protection Act of 2006 and the Worker, Retiree and Employer Recovery Act of 2008.

36-10-2 rc

36-10-3 rc

This charter repeals and recreates provisions relating to pension rollover distributions. The changes are required under the Pension Protection Act of 2006 and the Workers Retirement and the Worker, Retiree, and Employer Recovery Act of 2008.

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

Part 1: Section 36-10-2 and 3 of the city charter is repealed and recreated to read:

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

2. a. Notwithstanding sub. 1, and for purposes of compliance with section 401(a)(31) of the Internal Revenue Code, this section applies notwithstanding any contrary provision or retirement law that would otherwise limit an election by a distributee, as defined in par. b, to make a rollover. A distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

b. For purposes of this subsection:

b-1. "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

b-2. "Distributee" means a member. It also includes the member's surviving spouse. Effective January 1, 2010, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may only make a direct rollover to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

b-3. "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

b-3-a. An individual retirement account described in section 408(a) of the Internal Revenue Code.

b-3-b. An individual retirement annuity described in section 408(b) of the Internal Revenue Code.

b-3-c. An annuity plan described in section 403(a) of the Internal Revenue Code.

b-3-d. A qualified trust described in section 401(a) of the Internal Revenue Code.

b-3-e. Effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code.

b-3-f. Effective January 1, 2002, a plan eligible under section 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 section 408A of the Internal Revenue Code.

b-4. "Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives, or joint life expectancies, of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; the portion of any distribution that is not includible in gross income; and any other distribution which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of section 415 of the Internal Revenue Code or any distribution that is reasonably expected to total less than \$200 during the year. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse. Also effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only:

b-4-a. To an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code or to a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

b-4-b. On or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code or to an annuity contract described in section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

b-4-c. On or after January 1, 2008, to a Roth IRA described in section 408A of the Internal Revenue Code.

3. If on or after March 28, 2005, the retirement system provides for mandatory distribution of eligible rollover distributions with a present value greater than \$1,000, and if a member does not elect to have such distribution paid directly to an eligible retirement plan specified by the member in a direct rollover or to receive the distribution directly, the system will pay the distribution in a direct rollover to an individual retirement plan designated by the board of trustees in accordance with section 401(a)(31)(B) of the Internal Revenue Code and IRS Notice 2005-5.

Part 2. 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. 66.01(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: \_\_\_\_\_

Office of the City Attorney

LRB136121-3

Mary E. Turk

EHT/et

12/14/11