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DATE: April 5, 2024

TO: The Milwaukee County Board of Supervisors
Mr. David Crowley, Milwaukee County Executive

FROM: Scott F. Brown, Acting Corporation Counsel

SUBJECT: April 2024 Special Meeting Guidance

INTRODUCTION

On March 4, 2024, Milwaukee County's (the "County") Chief Human Resources Officer, Margo Franklin, presented File No. 24-342 (Exhibit 1), a resolution "Requesting to Adjust Constitutional Officer Salaries of the Register of Deeds, County Treasurer and County Clerk in Accordance with Milwaukee County Ordinance Section 17.98 for the Next Eligible Terms" to the County's Personnel Committee for their consideration. When the file was taken up, Supervisor Staskunas introduced an amendment that would increase the salaries beyond what was proposed in the initial resolution (Exhibit 2). The Personnel Committee unanimously approved File No. 24-342 as amended and recommend it for adoption.

The Milwaukee County Board of Supervisors (the "County Board") convened on March 21, 2024, and File No. 24-342 was on the agenda for their consideration. The County Board voted to adopt the amended resolution¹ and the file was sent to Milwaukee County Executive David Crowley (the "County Executive") for signature. On March 28, 2024, the County Executive vetoed File No. 24-342 as amended, and issued the attached veto message (Exhibit 3).

The below questions were asked of the Office of Corporation Counsel ("OCC") and Mr. Steve Cady, Director of Research and Policy by various parties. The following is OCC's analysis of these issues in consultation with Mr. Cady.

- Time parameters set forth in state and local law relevant to the County Board prospectively taking action on File No. 24-342.

The County Board sets salary levels for- constitutional officers (e.g., County Treasurer, Register of Deeds, and County Clerk). *See* MCGO § 17.98 and Wis. Stat. § 59.22(1)(a). However, the

¹ 16 Ayes, 1 No, and 1 Excused.

salaries must be established prior to the earliest time for filing nomination papers for the office. In this case, the earliest time for filing nomination papers for County Treasurer, Register of Deeds, and the County Clerk is April 15, 2024. Therefore, the last date upon which that the County Board could set/modify salaries for constitutional officers for the next term would be April 14, 2024. The last business day that the County Board could do so is Friday, April 12, 2024.² The County Board meeting scheduled for April 15, 2024, would be too late for the adoption of any resolution setting/modifying constitutional officers' salaries.

- Procedures under state and local law for calling a Special Meeting of the County Board.

County Board meetings falling outside of the established calendar are deemed a "Special Meeting" and the process for convening such a meeting is set forth in MCGO § 1.01(c) as follows:

A special meeting shall be held only when requested by a majority of the members of the county board, such request to be in writing, addressed and delivered to the county clerk, who shall note the time of such delivery to him/her on such request. Such request shall specify the time and place of such meeting, which shall not be less than forty-eight (48) hours after the delivery of such notice to the county clerk. The request shall identify the purpose of such meeting and shall include reference to such other items as may be required by law, ordinance or board action. Upon receiving such request, the county clerk shall forthwith give notice of the time and place of such meeting by mail to each member of the county board. If the request is delivered to the county clerk less than seventy-two (72) hours before the time of such meeting, the county clerk, in addition to the mailing hereinbefore referred to, shall telephone each supervisor; if any supervisor is not contacted by telephone, the county clerk shall furnish to the sheriff of the county a copy of such notice of time and place of meeting for delivery to unnoticed members of the county board. The sheriff shall thereafter furnish to the county clerk an affidavit of delivery of such notice. The inability of the sheriff to deliver such notice to a supervisor shall not be deemed a defect to the notice requirement under this subsection. Any special meeting may be adjourned from time to time by a vote of a majority of all members of the county board.

- What are the County Board's options and/or required timelines to act relative to File No. 24-342 under state and local law?

The County Board could take up File No. 24-342 and either override or sustain the veto. Alternatively, it could take no action at all. If the County Board were to sustain the veto and take no other action relative to the current salaries of the Register of Deeds, County Treasurer, and

² This time frame includes any action needed to be taken by the County Executive. For example, if on April 12, 2024, the County adopted a resolution setting salaries for constitutional officers' next term, the County Executive would have to sign the file by April 14, 2024.

County Clerk, those salaries would remain the same for the next term. If the County Board overrides the veto, the salary increases set forth in File No. 24-342, as amended, would be effective the next term. Please note that if the County Board decided to take up File No. 24-342, they may only consider it as vetoed and **may not** adopt its original and unamended version.

- May the County Board call a special meeting to consider the proposed salary increase set forth in the original and unamended version of File No. 24-342?

There are no restrictions in state law or local ordinances that would prohibit the County Board from calling a special meeting to consider the proposed salary increases set forth in the original and unamended version of File Number 24-342. However, if the County Board wants to adopt the initially proposed increases (or any other salary proposal for these elected officials) a NEW file would have to be created under suspension of rules. *See* MCGO §§ 1.08(c) and 1.09(b)(2). File No. 24-342 cannot be amended to a different modification in salary levels. If the County Board decided to adopt a salary adjustment set forth in a new file, it would have to take place prior to April 14, 2024 (the last business day is April 12, 2024). *See* FN 2, *supra*.

- Is the County Board required by law to set certain salaries for the Register of Deeds, County Treasurer, and County Clerk?

The short answer is no. MCGO § 17.98 states “[i]t is recognized that the incumbents of these positions serve as the department head and manager of their respective functional area and thus should be compensated accordingly.” OCC review has found no authority in statute, ordinance, or caselaw that requires that the County adopt a specific salary for the positions of the Register of Deeds, County Treasurer, and County Clerk. When determining the meaning of an ordinance, one must look to the plain meaning words therein. *See State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124 (“statutory interpretation ‘begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.’”)

Presumably, the question here is what obligation(s), if any, do the words “should³ be compensated accordingly” create for the County Board. It is OCC’s opinion that MCGO § 17.98 does not establish an objective legal standard for setting compensation nor does it compel the County Board to take any particular action in regard to the same. Given that the phrase “should be compensated accordingly” is extremely subjective language, the plain language interpretation is that appropriate compensation is determined by the County Executive in consultation with the Human Resources department and with the approval of the County Board. In this case, the County Executive through his Chief Human Resources Officer made a determination, the County Board disagreed with that

³ The use of the word “should” instead of “shall” suggests that this language is advisory or suggestive rather than mandatory. Wisconsin’s courts have developed jurisprudence as to whether language in a statute is mandatory or directory as matter of law. *State v. Olson*, 2019 WI App 61, ¶ 10, 389 Wis. 2d 257, 263, 936 N.W.2d 178, 181. For example, “the word “shall” is presumed mandatory when it appears in a statute.” *Id.*

determination and further increased the salaries via amendment of the file. Subsequently, the County Executive disagreed with the County Board's determination and vetoed the file. The question of what it means for county officers to be "compensated accordingly" is answered by the political process. There is no objective legal standard to point to for this issue. If a court were asked to determine what "compensated accordingly" means in the context of MCGO § 17.98, it is highly likely that courts would defer to the result of the political process between the executive and the legislature.