PERSONNEL, PERFORMANCE, AND AUDIT REVIEW COMMITTEE
FEBRUARY 21, 2012
4:00 P.M.

Councilwoman Scott, Chairman, called the meeting of the Personnel, Performance and Audit Committee to order with Councilpersons Ladd, Robinson, Rico, Benson, Berz, Gilbert, Murphy and McGary present. City Attorney Michael McMahan and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Dan Johnson, Daisy Madison, Larry Zehnder, Donna Kelley, Jean Smith, Jenny Lowery, Madeline Green, Danny Thornton, Tony Sammons, Ulystein Oates, Ron Swafford, Capt. Roddy, Valerie Malueg, Johnny Feagans, Beverly Johnson and Dickie Hutsell.

On motion of Councilman Murphy, seconded by Councilman Rico, the minutes of the previous meeting were approved as published.

Chairman Scott stated that the speakers on the first issue concerning the Fire and Police Pension Board would be Mr. Ray Ryan and Frank Hamilton. Mr. Hamilton stated that he was the Administrator of the Fire and Police Pension Fund; that the Council had an appointee to the Fire and Police Pension Board, and their appointee to the Board is Ray Ryan. He stated that Mr. Ryan was a great asset to the Board with a wealth of knowledge. He turned the meeting over to Mr. Ryan.

Mr. Ryan presented an update on the Fund Assets and Performance as of January 31, 2012. He thanked the council for having him. (This Report is made a part of this minute material). The market value was approximately $204,275,987. The total return in 2011 was 0.8%. Relative performance was disappointing and primarily the result of two managers with poor results. These managers are being evaluated. The fund is better positioned today to absorb a large stock market decline. Exceptionally low interest rates will persist for much longer. Cash Flow remains the biggest challenge.

Councilman Benson stated that in terms of a bad year, one sentence worried him “Providing for the cash flow needs of the Fund remains the biggest challenge”. Mr. Ryan explained that the interest rate is effectively zero. Councilman Benson asked about the principle? Mr. Ryan noted that they actually avoided encroachment; that the biggest concern, in his opinion, had nothing to do with volatility of the stock market but was zero interest. Councilman Benson responded that it does not have to be a zero rate and asked about investment in municipal bonds? Mr. Ryan explained that municipal bonds were not appropriate for this Pension Plan; that looking at the minus rate of returns, there is only two ways to increase yield—extended maturity or credit standard—that it all has to be balanced. Councilman Benson asked if he was playing with aggressive funds? Mr. Ryan asked “why would you say this?” Councilman Benson responded because you have not diversified. Mr. Ryan responded that if there was to be any criticism it would be because of active management rather than passive management—that this was just a bad year.

Councilman Murphy asked about one of the managers, noting that we all have a bad day; that the index is 5.0%. He asked about the other manager.

Mr. Ryan stated that manager had been in the fund for three years, with not good results; that he had been given notice that there needs to be significant changes. The other manager is Bill Gross, who Mr. Ryan said was well-known and given his track record, they were likely to stay with him.

Chairman Scott asked him to share the total funding percent. Mr. Ryan stated that a rough estimate from the actuary was approximately at the 70% level. She thanked him and noted that he was willing to talk to each councilperson on a one to one basis, as he had done with her. Mr. Ryan agreed that that was true.

Chairman Scott next called on Donna Kelley, who stated that most of their things were basically items that had been "tweaked"; that the first item is an Ordinance that amends by deleting sections in their entirety and inserting a new Division 19 entitled "Injury on Duty Program". This is being removed from the operating budget and is an extended arrangement with Marathon to employ an individual and to expand this program. She stated that we were learning more each day—that a large population do not receive medical care; that a PILOT Program provides success with subjects like nutrition; that we would like to expand and provide services as an amendment to the Marathon contract. She went on to say that last year we had an Ordinance with significant changes to our Injury On Duty Program, and these were some clean-up activities; that Madeline Green and Valerie Malueg had been working on these changes. She called on Ms. Green.

Ms. Green explained that one of the biggest changes was settlements for injured employees; that this is clarification of settlements; that they could go ahead and make a settlement if it were under $10,000; with this amendment, they would have to get anything over $10,000 approved by the Council.

Councilwoman Berz asked what it was before? Ms. Green noted that each councilperson had been given a copy, actually, with the changes highlighted in yellow.

Ms. Kelley added that this parallels other requirements to come before the Council if they are over $10,000.

Councilwoman Berz noted that we had spent a lot of hours working on the Injury On Duty Program, with an understanding that anything less than $10,000 could be approved. She asked if we were changing the intent and was told by Ms. Kelley that it is a procedural change.

Councilwoman Robinson asked what would happen if an employee is injured on his job and no settlement agreement can be reached? Ms. Malueg explained that this authorizes settlement between the City and the employee that does not go over $10,000. Ms. Green stated that she thought Councilwoman Robinson was talking about when the employee did not want to settle for the agreed amount. Ms. Malueg stated that a situation such as this had not come up, and she deferred to Attorney McMahan. He responded that an employee can sue the city; that the next step would be to provide for an administrative hearing type process; that there had been no need for this yet. Ms. Malueg added that an appeal could be made to an ALJ for denial—that there is an appeal process in place; however this had not come up yet. Councilwoman Robinson confirmed that this was for less than $10,000 settlements. Attorney McMahan stated that if it were larger than $10,000, it would have to be recommended to the Council as a whole. She still wanted to know what would happen if the two parties failed to reach an equitable solution? Ms. Kelley responded that we were following the Tennessee Workmen Compensation schedule.

Councilman Benson felt like the language should say something like the employee and City shall jointly reach an agreement—that if not, an impasse would go on. Councilwoman Robinson, too, felt that we needed to be certain we are articulating enough so that the employee does not feel it is either take it or leave it. Ms. Kelley agreed that this was a worthwhile edit, stating that she approved this,

Chairman Scott asked when this came up for a vote and was told next week. She asked if this would give time to edit this?

Councilwoman Berz referred to page 2, stating that when we first worked on this, the outcome result was total participation. She asked if this were total participation of everyone? She stated that she had a concern about (2) on page 2 that stated that the City retains discretion as to the method used to calculate any lump sum settlement. Also (3) says the IOD benefits payable under this Injury On Duty Program shall be offset by any City-sponsored disability benefits received by employees. She stated that we did discuss some of this. Ms. Malueg stated that a lot of this is clarification. Councilwoman Berz indicated that she was not sure what (2) meant—that this is “sorta-kinda” language and intent.

Ms. Kelley noted that the Police Dept. is in limbo now—receiving no compensation; that other benefits payable and require offset; that some employees have no other source of income, and they believed that this was something to support them and something they needed.

Councilwoman Berz pointed out that we say “calculate a lump sum settlement” and then hedge the comment by saying “however, the schedule of compensation shall not be binding, and the City retains discretion as to the method used to calculate any lump sum settlement.” She asked if we were in the position to give them a lot more money—and wanted to know what the intent was?

Ms. Malueg responded that they discussed this, and they were not absolutely "wedded" to workmen compensation for lump sum settlements; that we might use another method.

Councilwoman Berz stated that she would prefer the word "may" not be binding rather than "shall" not be binding; that people could get less than they are due—that this language is a little loose.

Councilwoman Robinson stated that her question dealt with terms being set forth on page 2—"the Program Director will request that the Medical Provider determine the degree of permanent or partial impairment". She felt that a Panel should choose. Ms. Malueg stated that the panel would be at the end of the treatment period. Councilwoman Robinson asked if they would be given a panel? Attorney McMahan explained that a Panel was not given with Injury On Duty.

Councilman Murphy posed a question to Ms. Malueg, due to the offset, could this change the character of the benefit? He asked if we could do this in this rubic—talking about offsetting benefits. He noted that Social Security Disability has an offset and questioned if we could take an offset in this direction; that if it is not binding to these calculations, it could be that employee benefits are not according to the State table after receiving full retirement; that he did think it was better with flexibility and not having to follow the schedule blindly and doing nothing for employees. Ms. Malueg stated that she appreciated these comments by Councilman Murphy.

The next topic dealt with ethics. Chairman Scott noted that she thought one of the Council had asked for a response concerning the policy on ethics. She thought it was Councilwoman Berz, but it was Councilwoman Ladd. Ms. Kelley stated that there was an Executive Order before the actual Ordinance concerning the work force (she thought this was in 2007); that they picked up this Executive Order for new employees and it was incorporated into their orientation. She stated that they did not go annually with documents; that they had plans to deploy this with the Drug Free Work Place. She stated that this was also included in the in-service training and that Jean Smith had the exact data; that 2,000 employees were touched annually—that the goal is on a bi-annual basis. She stated that the question has been asked if they tracked this; that they did not have this capability, but they would be able to track. She stated to that end, this was also included in their budget request with examinations to go ahead and find an educator position to deal with employee relations; that they expected this to be one on one training and in-service training; that this would deploy a large supply of internet or electronic training. She mentioned major legislative changes such as ADA and the Health Care Bill—that there is a lot of information to be shared with employees; that we spend $10 to $15 per employee, and this cost could be from $20,000 to $80,000. She mentioned a de-centralized budget.

Councilman Benson stated that he was glad to hear what Ms. Kelley planned to do—that this position should be called an "educator"; that we don't have professional growth coordination, and this could prevent problems; that he would hope this person would work with administrators and teach them how to evaluate for professional growth. Ms. Kelley stated that the Plan needs nurturing.

Councilwoman Berz stated that we had alluded to replication; that Public Works has an HR person. She asked why we have HR people in various departments and also Ms. Kelley?

Ms. Kelley responded this is basic operation; that the City has a decentralized HR function that make decisions that align with their organization.

Councilwoman Berz stated that she thought this was replication and asked why we had this? She stated that it was not cost efficient and effective—having an HR function as opposed to a Personnel Dept.—that this should all be across the board and we should not have little fiefdoms; that there are meetings at the City Yards that are HR meetings.

Ms. Kelley responded that she thought it was a combination—that Police in-service training is very specific and needed dedicated trainers—that it is a mixed answer.

Councilwoman Ladd stated that she would like to have time to absorb this and think it through.

The meeting adjourned at 4:40 P.M.