

**OFFICE OF THE CITY COUNCIL**

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**CITY COUNCIL COMMITTEE OF THE WHOLE MINUTES – 2nd AMENDED**

**2014-386 - POLICE AND FIRE PENSION FUND AMENDMENTS**

 **October 22, 2014**

**3:30 p.m.**

**Location:** City Council Chamber, City Hall – St. James Building; 117 West Duval Street,

**In attendance:** Council Members Clay Yarborough (President), Greg Anderson, Bill Bishop, Lori Boyer, Reggie Brown, Doyle Carter, John Crescimbeni, Bill Gulliford, Ray Holt, Warren Jones, Stephen Joost, Denise Lee, Jim Love, Robin Lumb, Don Redman, Matt Schellenberg

**Excused:** Council Members Johnny Gaffney, Richard Clark, Kimberly Daniels

Also: Kirk Sherman and Kyle Billy – Council Auditor’s Office; Dana Farris, – Legislative Services Division; Steve Cassada– Council Staff Services; Mayor Alvin Brown and Chris Hand – Office of the Mayor; Jim Lind – Lewis, Longman and Walker (pension counsel), Robert Dezube – Milliman (City’s actuary), Jeff Williams – Segal Consulting; Bill Scheu – Chair, Pension Reform Task Force; David Drane – Pew Charitable Trusts

**Meeting Convened**: 3:33 p.m.

Council President Yarborough convened the meeting and Council Member Redman delivered the invocation and led the Pledge of Allegiance.

President Yarborough gave opening remarks about the Committee of the Whole and explained that the bill would need to be discharged from the Rules and Finance Committees to be taken up by the Committee of the Whole. As a Committee of the Whole the group could vote on a recommendation to be taken up by the Council at a future meeting, but could not take a final, binding vote on the issue today.

Mayor Alvin Brown addressed the Council and urged them to take action on the most significant financial issue facing the City, one which will impact on budgetary decisions and the ability of the City to provide public services for decades to come. He introduced members of the Pension Reform Task Force and the Pew Charitable Trusts, an advisor to the City on pension issues, in the audience.

Mayor’s Chief of Staff Chris Hand made a presentation on the scope of the pension funding problem and the recent history of pension reform efforts going back 8 years. He explained that the Police and Fire Pension Fund’s unfunded actuarial liability is currently $1.65 billion; the fund is 43% funded (available assets to pay accrued liabilities) and the employer contribution in the current fiscal year is $153, double what it was 3 years ago. He pointed out a number of negative impacts to the City by failing to make substantial changes in the current plan, including the potential of a bond rating downgrade costing the City more to borrow in the future; an unsustainable growth in the employer contribution squeezing out other expenditure needs; potential inability to hire and keep good police and fire employees because of uncertainty about future benefits; and others. He noted that 600 police and fire employees are currently enrolled in the DROP plan and will be leaving City employment in the next 5 years at most; there will be a huge cost for recruitment and training of replacement employees.

Mr. Hand reviewed the major facets of the proposed pension amendments covered in 2014-386 and estimated the cost savings of the plan, as proposed, of $1.5 to $1.6 billion over the next 35 years. He briefly reviewed the work of the Pension Reform Task Force and noted that a report from the Pew Charitable Trusts, a national expert in pension reform, found that the agreement proposed in 2014-386 achieves 87% of the savings recommended by the Task Force in its report. 2014-386 proposes changes in three areas: governance, benefits, and funding . He explained what pension benefits can and cannot be changed for retirees, current employees eligible to retire, and current employees not yet eligible to retire.

Bill Scheu, Chair of the Pension Reform Task Force, said that pension reform is a quality of life issue because of its impact on City finances and its ability to provide basic and desirable public services. He said that the two major differences between the Task Force recommendation and the 2014-386 proposal are 1) the funding source (the Task Force recommended a property tax increase or a sales tax), and 2) the amount of reduction of the Cost of Living Adjustment. He echoed Mr. Hand’s recommendation that the Council not “let the perfect be the enemy of the very good.”

David Drane of the Pew Charitable Trusts said that the Task Force produced an achievable set of recommendations that would put the PFPF back on sound footing through four key elements: 1) a funding plan; 2) a revised benefits plan for new workers; 3) targeted benefit changes for current workers; and 4) governance changes for the PFPF board. 2014-386 reflects most of those recommendations except for 1) the designation of a funding source to pay down the unfunded liability (although it does establish a framework for finding such a source) and 2) several recommended benefit changes for current employees.

During the discussion of whether to discharge 2014-386 from the Rules and Finance committees, Council Members posed several questions to Deputy General Counsel Peggy Sidman about parliamentary procedure, the relation of the Committee of the Whole to the other committees and to the full Council, the ability of council members to discuss and have questions answered and to propose amendments, and the procedure for re-referral to other committees either before or after proposing amendments.

**Motion**: to discharge the bill from the Rules and Finance committees for debate in the Committee of the Whole – **fails 12-3** (2/3 majority of the full Council required).

Chris Hand responded to several questions from Council Member Gulliford regarding proposed funding sources to pay down the unfunded liability at a rate of $40 million per year. Council Member Anderson posed questions to David Drane of the Pew Charitable Trusts regarding the potential value of the proposed change in the annual COLA from 3% to 1.5% per year and to Jim Lind, a pension expert at the Lewis, Longman and Walker law firm, about the recent district court decision regarding an interpretation of the 30-year agreement between the City and the PFPF as a collective bargaining agreement because it is used to set benefit levels.

In response to a question from Council Member Schellenberg, John Keane, Executive Director/ Administrator of the Police and Fire Pension Fund, stated that the PFPF board would be unlikely to approve any agreement that does not include an ironclad provision for the City to make its annual $40 million contribution for 10 years. Mr. Schellenberg posed questions to City Treasurer Joey Greive about trends in the federal cost of living statistics over the last 20 years and about whether any investment advisor will guarantee investment rates of return, which they will not because of the uncertainties of the investment markets.

In response to a question from Council Member Boyer, Deputy General Counsel Derrel Chatmon indicated that the City’s written question to the Florida Public Employee Relations Council for a ruling on the status of 30-year agreement has been withdrawn.

In response to a question from Council Member Jones about what would happen if the City did not appropriate the $40 million as required, Chris Hand stated that the bill requires the Mayor to place the $40 million in the proposed budget each year and contains penalties in the form of a withholding by the PFPF of its proposed contribution of discretionary “chapter funds”. If the City does not make its required contribution then the PFPF could withhold a proportional amount and the City would then be obligated to contribute $40 million plus the amount the PFPF withheld the next year. He also noted that the agreement provides for a shortening of the 30-year agreement by 6 years from 2030 to 2024 except for the changes in fund governance which extend to 2030.

In response to a question from Council Member Love, General Counsel Jason Gabriel stated that if the Council adopted amendments to the plan agreed upon by the City and the PFPF, those amendments would need to be approved by the PFPF board. He suggested that a cleaner course of action would be for the Council to vote down the plan as proposed in 2014-386 and direct the administration to reopen negotiations over a different package of plan amendments. In response to another question Mr. Gabriel indicated that litigation over plan disputes could take years to resolve.

In response to a question from Council Member Lee, John Keane stated that the full reform package has not been presented to the PFPF board; they have approved concepts but have not signed off on all the details contained in 2014-386. Ms. Lee pointed out that the PFPF board adopted a resolution supporting passage of 2014-386. Mr. Keane responded that the PFPF’s endorsement is contingent upon the City’s agreement to make the promised $40 million payments each year for 10 years.

In response to a question from Council Member Joost, Derrel Chatmon stated that the police and fire unions and the PFPF board contend that the 30-year agreement between the City and the PFPF is still in force and they are not required to bargain over pension matters. Litigation over the status of the 30-year agreement is ongoing and a hearing is scheduled in 2016. When a ruling is made either party could appeal, which could take considerable time to resolve. In response to a question about the impact of this week’s court ruling in a case involving the applicability of the Government in the Sunshine law to the City’s negotiations with the PFPF board, Mr. Chatmon stated that the ruling did not impact the legal status of the agreement appended 2014-386, which was negotiated entirely in the sunshine as required. In response to a question from Council Member Crescimbeni, Mr. Chatmon said that the City has previously declared a negotiating impasse with both the International Association of Fire Fighter and the Fraternal Order of Police unions, who agreed to waivers of their collective bargaining rights to allow the City to deal directly with the PFPF if the City would drop the impasses, which was done.

In response to a question from Council Member Brown about the consequences of the City failing at some point in the future to make its annual $40 million appropriation toward paying down the accrued unfunded liability as required, John Keane explained that the agreement provides for three consequences: 1) public notice of the failure to appropriate; 2) the PFPF may reduce its contribution of “chapter funds” toward the liability pay-down; and 3) the City would then be liable to pay an additional amount the following year.

In response to a question from Council Member Gulliford, Paul McElroy, CEO of JEA, stated that the utility would be receiving a report at its November meeting on the actuarial study commissioned to evaluate the Mayor’s proposal that JEA employee’s pension be separated from the General Employees’ Pension Plan and that operational savings from the separation of the plans be used to provide the City with $40 million annually for 10 years to pay down the PFPF pension liability. He noted that any funding transferred from the JEA to the City is ultimately provided by JEA’s customers and indicated that the three neighboring counties where JEA operates have expressed concerns about JEA funds being used for City of Jacksonville pension purposes. He characterized the Mayor’s projection of $400 million in savings to JEA from its own pension plan as very speculative and noted that JEA is already responsible for paying $460 million of the unfunded accrued liability in the General Employees’ Pension Plan.

George Gabel, the attorney who represented *Florida Times-Union* editor Frank Denton in the lawsuit alleging a City violation of the Government in the Sunshine law said that the court ruled that the PFPF board was in fact the designated bargaining agent for the police and fire unions under the terms of the 30-year agreement and was therefore bound to negotiate with the City in the sunshine. Mr. Gabel also contended that t~~T~~he judge also found that the 30 year agreement constitutes a collective bargaining agreement that exceeds 3 years in violation of state law.

Council Member Schellenberg stated that even though City employees have not gotten pay raises in several years, almost all JSO officers have received step increases that amount to pay raises that aren’t available to other employees. He said that a 3% cost of living allowance (COLA) will double the value of a retiree’s pension payments in 24 years.

In response to a question from Council Member Lee, Council Auditor Kirk Sherman said that the source of the $61 million the PFPF has agreed to contribute toward the unfunded liability pay-down in years one and two derives from two sources – state “chapter funds” ($28 million) and PFPF stabilization reserves ($33 million). In response to a question about whether the City could request return of the $33 million in stabilization reserves which could be interpreted as the City overpaying the pension fund, General Counsel Jason Gabriel said that a response would require some legal research.

Council Member Boyer read several passages from the summary final judgment in the Government in the Sunshine lawsuit indicating that the negotiation of modified pension benefits between the City and the PFPF board is collective bargaining and that the result cannot be effective for more than three years. Ms. Boyer asked Chris Hand to clarify an apparent conflict in two of the slides from his presentation at the beginning of the meeting and questioned his interpretation of one of the calculations depicted on a graph.

In response to a question from Council Member Anderson, Mr. Hand indicated that the pension proposal anticipates that the PFPF will reach an 80% funding status by 2030. Mr. Anderson quoted a passage from a Fitch Ratings report on Jacksonville noting the City’s need to enact sustained pension changes that are fiscally responsible.

Council Member Gulliford requested Derrel Chatmon to research the proposed City waiver of its rights to declare a bargaining impasse. Council Member Brown asked Chris Hand what options existed for providing the needed $40 million per year beyond an increased JEA contribution, increased property taxes or imposition of a new sales tax. Mr. Hand indicated that the plan as proposed provides a 2 year window during which a newly created committee will explore all options and recommend an appropriate funding source. Council Member Redman said that constituents he’s talked to indicate a preference for a sales tax rather than a property tax increase or a JEA payment that would increase utility rates. Council Member Gulliford described two additional options that would involve the City imposing available sales taxes for fire service or infrastructure provision and then reprogramming the revenues currently used for those purposes to the pension liability reduction. Council Member Schellenberg reported that he had attended a Florida Association of Counties meeting at which he suggested the idea of the association petitioning the Florida Legislature to authorize a local option sales tax dedicated to payment of unfunded pension liabilities. Other county representatives did not express much interest in a sales tax restricted to that specific use.

In response to questions from Council Members Crescimbeni and Gulliford, Mayor Brown stated that he did not support levying any new taxes to provide funding for the pension liability reduction payments and would veto legislation authorizing a referendum to ask the voters if they favored a local option sales tax restricted to pension payments. Mr. Crescimbeni asked for details of when and how the administration and General Counsel’s Office made the decision to withdraw the impasse finding and why it was done without consultation with the City Council. Council Member Boyer expressed disagreement with the way the proposal is crafted with regard to finding a funding source for the $40 million annual payment; she sees a potential for the City Council to be placed in the bad position of having to find a funding source itself if the Mayor’s budget proposal doesn’t contain sufficient reasonable revenue sources to meet all budgetary needs.

Council Member Crescimbeni was informed that the front doors of City Hall were locked and security guards had gone off-duty, so the public ~~did not have open~~ had restricted access to the meeting only through the back door.

The meeting was in recess from 7:24 to 7:32 p.m.

The meeting resumed and was immediately adjourned in recognition of the restricted public access.

**Meeting adjourned:** 7:34 p.m.

Minutes: Jeff Clements, Council Research

 10.24.14 Posted 3:30 p.m.

Tapes: City Council Committee of the Whole – 2014-386 – LSD

 10.22.14