



City of Grand Island

Tuesday, January 22, 2013

Council Session

Item G2

**Approving Minutes of January 15, 2013 City Council Study
Session/Special Meeting**

Staff Contact: RaNae Edwards

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL STUDY SESSION

January 15, 2013

Pursuant to due call and notice thereof, a Study Session of the City Council of the City of Grand Island, Nebraska was conducted in the Council Chambers of City Hall, 100 East First Street, on January 15, 2013. Notice of the meeting was given in the *Grand Island Independent* on January 9, 2013.

Mayor Jay Vavricek called the meeting to order at 3:00 p.m. The following Councilmembers were present: Vaughn Minton, Mike Paulick, Mitch Nickerson, Julie Hehnke, Chuck Haase, and Bob Niemann. Councilmembers John Gericke recused himself due to a conflict of interest, Linna Dee Donaldson, Scott Dugan, and Peg Gilbert were absent. The following City Officials were present: City Administrator Mary Lou Brown, City Clerk RaNae Edwards, City Attorney Robert Sivick, and Finance Director Jaye Monter.

The PLEDGE OF ALLEGIANCE was said.

SPECIAL ITEMS:

City Staff Presentation of Pre-84 Retiree Pension. Finance Director Jaye Monter reported this was the second meeting to decide on the Pre-84 Retiree Pension plan. Explained was that the Pre-84 employees started work with the City before January 1, 1984. There were 7 Police Officers and 1 Firefighter that fell in this category. Introduced were the following presenters: Gregg Rueschhoff with Milliman, Inc.; Jay Huston with Ryder, Rosacker, McCue & Huston; Terry Galloway with Almquist, Maltzahn, Galloway & Luth, CPAs; Greg Anderson with Wells Fargo; Robert Evnen with Woods & Aitken LLP and Rodney Cerny with Smith Hayes Advisors, Inc.

Peg Gilbert was present at 3:11 p.m.

Robert Evnen presented the history of Police and Fire statutes. Explained was the difference between a Defined Benefit Plan and a Defined Contribution Plan. Police Officers and Firefighters hired before January 1, 1984 who retire after 1984 were under the Defined Benefit Plan and receive a monthly benefit. Calculating the present value of the benefit was the issue of this meeting. State statutes require at least a Single Life Annuity. The past several years the City had figured pension payouts on Joint Life Annuity.

Miscellaneous Legal Subjects: City Attorney Robert Sivick commented on written questions from City Council concerning any cases in Nebraska when a city was asked to refund an overpayment to a pre-84 pensioner. Reviewed was a court case from Bellevue Police Officers Association. Further discussion would be held in closed session.

Linna Dee Donaldson present at 3:20 p.m.

Mr. Sivick answered the question concerning the 4 year statutes of limitations. Nebraska Law provided limitations for when various suits may be filed from the time the underlying cause of action arises. Reviewed were several exceptions. Under Section 25-212 actions not specified

would be 4 years. Question was when the limitations started, when the action occurred or when it was found. Further discussion would be held in closed session.

Mr. Sivick answered the question with regards to a joint annuity regarding the LGBT policy. Resolution #2012-338 was based on hiring practices.

Question as to if there was an ordinance that gave the firefighters a joint annuity instead of single. Mr. Sivick stated in searching the City records there were no ordinances setting forth a policy of calculating benefits on a single or joint annuity basis for police or fire.

Question concerning the legitimate claim of Mr. Cole regarding pension committee meeting, no city representative, no minutes, and only 2 legitimate bids. Mr. Sivick stated the police pension committee did not violate any State or City laws. Mentioned was that Council had not directed the Pension Committee to figure retirement on joint life annuity. Authority delegated to the Pension Committee had to be done by Ordinance under Section 16-1014.

Discussion was held concerning the responsibilities of the Pension Committee as set out in state statutes. Mayor Vavricek commented on the process of the Pension meetings and that Council received copy of the minutes. Included in those minutes were the three quotes required for retirement. Ms. Monter commented on the most recent retiree. No formal meeting was held to approve the retirees quote. Comments were made regarding what the Council sees on the Payment of Claims for the most recent retiree. Ms. Monter stated this was the way it had been done since 2001.

Scott Dugan present at 3:47 p.m.

Council commented on the lack of minutes. Mr. Rabe answered questions concerning the calculation of the quotes. He stated the quotes were typically handled by the Finance/Human Resources offices and not brought to the committee. Typically the Pension Committee met quarterly. Comments were made concerning the quotes being within 5% of each bid. Question was asked if the Pension Committee fell under the Open Meetings Law. Mr. Evnen stated he would have to look at the Open Meeting Laws. He stated most of these questions would be answered in Executive Session.

Comments were made concerning trusting the staff to do the right thing.

Pension Committee Authority and Membership. Question concerning members of the pension committee. Mr. Sivick stated Council approves the appointment of public safety retirement committee members, but the two City positions had been sporadic. The Finance Director had traditionally provided support to the City's committees. Successor Finance Directors assume the duties of the preceding Finance Director which included the retirement committees. This question would be further discussed in Executive Session. Mr. Sivick stated these appointments should be brought before Council for approval. Mr. Sivick commented on the difference in State Statutes between the Fire and Police Pension Committees.

Question concerning state statutes directing 1st Class cities on the matter of paying joint or single. Mr. Sivick again stated Neb. Rev. Stat. Sec. 16-1014 which stated "the governing body of the City shall continue to be responsible for the general administration of such retirement system

unless specific funds or all functions with regard to the administration of the retirement system are delegated, by ordinance, to the retirement committee.”

Budget – Cash Reserves vs. Unallocated Funds. Questions concerning impact to the budget, liability of disabled, and funds to cover disability. Ms. Monter explained the accounts for the 800 Fund – Police and Fire Pension Fund, 805 Fund – Police Reserve Fund, and 810 Fund – Fire Reserve Fund. Discussion was held regarding disability liability. Actuarial Report for January 1, 2011 was reviewed. Mr. Evnen stated State Statutes require an Actuarial analysis be done every 4 years. Gregg Rueschhoff with Milliman, Inc. explained the process of acquiring an Actuarial analysis. Ms. Monter stated Actuarial analysis had been completed for 2003, 2007, 2008 and 2011. Mr. Rueschhoff stated he does not take into account any disability in the Actuarial.

Terry Galloway explained how the audit reports were tied in with the Actuarial report and he commented on the management letters each year stating there was excess dollars in the Pension funds. Discussion was held concerning the difference between a Reserve Fund and an Unallocated Fund.

Liability of the seven Police Officers (805 Fund) at the Single Life Annuity would be underfunded by \$23,085 and underfunded by \$25,993 for the Joint. Comments were made concerning the loss on investments for seven years in a row beginning in 2002/2003 through 2009/2010. Rodney Cerny with Smith Hayes Advisors commented on the performance of the City’s retirement account from 2005 through 2010 which averaged about 8% net gain.

Council recessed at 5:15 p.m. and reconvened at 5:30 p.m.

Human Resources Director Brenda Sutherland reviewed the disability benefit. State Statutes 16-1031 and 16-1032 defined Police and Firefighters. Administrator of the program was EMC with the risk management coordinator through the Human Resources department. The order of disability benefit payments were: Workers’ comp, employee’s retirement account, unallocated funds and then city cash reserves. The City was self-insured for disability obligations.

Ms. Sutherland answered questions concerning the number of employees in each category. Currently there was two in the workers’ comp category with a possibility of one more to be added. There were no employees in the other categories. History showed that the City had very few disabilities. Question was should the City do an Actuarial on disability. Mr. Rueschhoff stated it was always a good idea.

Revision of Current Policies and Procedures. Question regarding an established process for Pre-84 Retirement in writing. Ms. Monter stated currently there was no Pre-84 retirement process/policy in writing, but Council had the authority to enact pension policies and procedures. Question concerning the gap between the City bids and the employees bid. Ms. Monter stated she had no idea why they came in the way they did. Discussion was held concerning the 5% between bids. Mr. Evnen stated the 5% spread was required by State Statues for the Firefighters. Mayor Vavricek commented on the difference between the Police and Fire in figuring retirement. Mr. Evnen stated he was unaware of any other city dealing with the situation that the City of Grand Island was in. He stated checks and balances could be put in place to get reliable annuity quotes. Quotes should be fair to both the retiree and the taxpayers.

Payment of Claims Prior to Council Approval. Question regarding Mr. Cole's retirement paid before approved by Council, what steps are being taken by administration to assure that payment of claims, with exception of a few payments, not be paid until after approval by Council. Ms. Monter reviewed those payments made prior to Council approval. Mentioned was every Thursday those claims that were due before the Council meeting were created manually. Pre-84 retiree pension payments were due to the employee the day of retirement. She stated these types of payments could be brought before Council in Resolution form for approval before payment. Discussion was held concerning the due date for retiree's pension payment to be paid.

Audit. Question regarding a process audit in place. Terry Galloway explained the audit process for the City. Testing of controls regarding procedures and specific audit procedures applied to Defined Benefit Plans were mentioned.

Errors and Omissions Insurance Coverage. Question regarding investigating the availability of errors and omissions insurance to help cover the overpayments that have been made over the years. Jay Huston with Ryder, Rosacker, McCue & Huston explained the Linebacker Public Officials and Employment Practices Liability Coverage Form referred to as the "Public Officials Errors and Omissions" policy. He stated a claim had not been submitted. The Linebacker Policy had no coverage for the City's financial loss for the over-payment of a pension plan because of the "Fiduciary Liability" exclusion. The insurance company would pay for an administrative error, committed by an "insured", involving an "employee benefit program", which included the pension plan. However, there must be a claim made against the City. Further discussion would be held in Executive Session.

Miscellaneous. Question regarding tax implication for either the retiree or the City. Ms. Monter stated there were no tax implications.

Comments from Public:

Tom MaCarty, Attorney for FOP commented on the contract clause under the Constitution. Based on past practices of paying retirement at joint life annuity any changes would be a violation of the Police Officer's first amendment right and be cause for a law suit. The union stands firm that the City should continue to pay retirement at the joint level.

ADJOURNMENT: The meeting was adjourned at 7:01 p.m.

RaNae Edwards
City Clerk

CITY OF GRAND ISLAND, NEBRASKA

MINUTES OF CITY COUNCIL SPECIAL MEETING

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Mayor Jay Vavricek called the meeting to order at 7:15 p.m. The following Councilmembers were present: Vaughn Minton, Mike Paulick, Scott Dugan, Peg Gilbert, Mitch Nickerson, Julie Hehnke, Chuck Haase, Linna Dee Donaldson, and Bob Niemann. Councilmembers John Gericke was absent. The following City Officials were present: City Administrator Mary Lou Brown, City Clerk RaNae Edwards, City Attorney Robert Sivick and Finance Director Jaye Monter.

ADJOURN TO EXECUTIVE SESSION: Motion by Niemann, second by Donaldson to adjourn to Executive Session at 7:19 p.m. for the purpose of a strategy session with respect to possible litigation. Unanimously approved.

City Administrator Mary Lou Brown stated the Executive Session would be held downstairs with the following people present: City Council, Mayor, City Administrator, City Attorney, Finance Director, Human Resources Director, Gregg Rueschhoff, Jay Huston, Terry Galloway, Greg Anderson, Robert Evnen and Rodney Cerny.

RETURN TO REGULAR SESSION: Motion by Niemann, second by Haase to return to Regular Session at 9:25 p.m. Unanimously approved.

RESOLUTIONS:

#2012-367 (B) – Pre-84 Retirees – Public Safety Pension Plans – Remedy Request of Most Recent Retiree Claim. This item was carried over from the December 18, 2012 City Council meeting. The original motion was made by Paulick, second by Minton to approve Resolution #2012-367 (B).

Finance Director Jaye Monter reported that Resolution #2012-367 (B) required no change in the pension paid to Sergeant Cole.

Discussion was held concerning the motion on the floor from the December 18, 2012 meeting regarding the most recent retiree claim.

Motion by Gilbert, second by Minton to have a Special City Council meeting on Thursday, January 17, 2013 at 7:00 p.m. Upon roll call vote, all voted aye. Motion adopted.

#2013-14 (A) – Pre-84 Retirees – Public Safety Pension Plans – Remedy Request of Most Recent Retiree Claim. Finance Director Jaye Monter reported that Resolution #2013-14 (A) would direct City staff, the Police Pension Committee, and Sergeant Cole to recalculate Sergeant Cole's lump sum pension benefit using a straight life annuity and reimbursement of the difference.

#2013-15 (A) & #2013-15 (B) – Pre-84 Retirees – Public Safety Pension Plans – Remedy of Past Claims for Police. Finance Director Jaye Monter reported that Resolution #2013-15 (A) would direct City staff, the Police Pension Committee, and the four Police retirees to recalculate their lump sum pension benefit using a straight life annuity and reimbursement of the difference. Resolution #2013-15 (B) would require no change in the pension paid to the four Police retirees.

Motion by Nickerson, second by Niemann to postpone Resolutions #2013-14 (A), #2012-367 (B), #2013-15 (A) and #2013-15 (B) to the Thursday, January 17, 2013 City Council Special meeting. Motion was withdrawn after further discussion.

Motion by Dugan, second by Gilbert to deny Resolutions #2013-14 (A), #2012-367 (B), #2013-15 (A) and #2013-15 (B). Upon roll call vote, all voted aye. Motion adopted.

ORDINANCES:

#9414 (A) – Pre-84 Retirees – Public Safety Pension Plans – Straight
#9414 (B) – Pre-84 Retirees – Public Safety Pension Plans - Joint

Motion by Paulick, second by Nickerson to deny Ordinances #9414 (A) and #9414 (B). Upon roll call vote all voted aye. Motion adopted.

Discussion was held concerning bringing Resolutions or Ordinances forward to the January 17, 2013 meeting. Mr. Sivick asked for direction from Council.

ADJOURNMENT: The meeting was adjourned at 9:43 p.m.

RaNae Edwards
City Clerk