



# City of Grand Island

Tuesday, March 25, 2014

Council Session (Corrected)

## Item F-5

**#9477 - Consideration of Setting Forth Gender Neutral Calculation for Pre-84 Police Pension (Second & Final Readings).**

Staff Contact: Robert Sivick

# Council Agenda Memo

**From:** Robert J. Sivick, City Attorney

**Meeting:** March 25, 2014

**Subject:** Consideration of Setting Forth a Method for Calculating Gender Neutral Lump Sum Pension Benefits for Pre-1984 Police Retirees

**Item #'s:** F-5

**Presenter(s):** Robert J. Sivick, City Attorney

## Background

In 1983 the Nebraska Legislature passed LB237 which contained the Police Officers Retirement Act (Act), codified in Article 10(a) of Chapter 16, §§16-1001 - 1019 of the Nebraska Revised Statutes. The Act and the resulting statutes addressed issues regarding pensions for police officers employed by Cities of the First Class.

In November, 2012 it was discovered in 2005 the Police Pension Committee (Committee) ceased calculating lump sum pension benefits for pre-84 police retirees on a gender specific basis. On February 5, 2013 the Grand Island City Council (Council) approved Resolution 2013-26(B) which directed the Committee to henceforth calculate those benefits on a gender specific basis.

In April, 2013 retired Grand Island Police Captain Peter E. Kortum filed a complaint against the City of Grand Island (City) with the United States Equal Employment Opportunity Commission (USEEOC) alleging he suffered discrimination on the basis of his gender when the City calculated his lump sum pension benefits. Shortly thereafter five other current Grand Island Police Officers hired prior to 1984 also filed complaints with the USEEOC alleging they would face gender discrimination when they retired.

In July, 2013 the USEEOC issued a determination there was reason to believe Captain Kortum suffered gender discrimination on the basis of how his lump sum pension benefits were calculated. Rather than litigating the matter the City entered into settlement negotiations with Captain Kortum and the USEEOC. On November 26, 2013 the Council approved Resolution 2013-376 setting forth a monetary settlement between the City and Captain Kortum.

However, the passage of Resolution 2013-376 did not settle the City's dispute with the USEEOC or the five other police officers alleging prospective gender discrimination. City legal staff negotiated terms which include a provision the City will not admit violating any provision of Title VII of the Civil Rights Act of 1964 which prohibits various forms of discrimination. In addition, City legal staff negotiated a term the City's governing body, that being the Council, will set forth a method of calculating lump sum police pension benefits on a gender neutral basis. The Ordinance before you for consideration tonight does so.

## **Discussion**

This matter arose largely because the Act was poorly drafted in 1983 and contained numerous inconsistencies. In particular, §16-1002(1) of the Act requires, "[a]ll actuarial and mortality assumptions adopted by the city or retirement committee shall be on a sex-neutral basis". In contrast, §16-1007(2)(c) of the Act requires lump sum pension benefits be calculated based on "the average of the cost of three annuity contracts purchased on the open market." City staff discovered gender neutral annuity products were unavailable for purchase in Nebraska and the gender neutral annuity quotes used to calculate benefits were actually quotes for females. This vastly increased the cost borne by the City's taxpayers as the purchase price of an annuity for a female of a particular age is much higher than that for a male of the same age due to the longer life expectancy of females. Given this situation it was difficult if not impossible for the City to comply with the Act as presently written.

Grand Island City staff in conjunction with the staff of other First Class Cities and the League of Nebraska Municipalities worked with Senator Mike Gloor in drafting LB 929 which was amended into LB 759 last week. That bill sets forth a definition of "sex neutral" and a method of calculating lump sum pension benefits on a gender neutral basis. The language of proposed Ordinance 9477 mirrors the language of LB 759.

Approving Ordinance 9477 will allow the City to settle its disputes with the USEEOC related to gender discrimination complaints filed by past and present Grand Island Police Officers. Not approving Ordinance 9477 will constitute a rejection of any settlement with the USEEOC necessitating the matters be resolved through further litigation.

## **Alternatives**

It appears the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve.
2. Move to deny.
3. Take no action on the issue.

## **Recommendation**

The City Administration recommends the approval of Ordinance 9477.

## **Sample Motion**

Move to approve Ordinance 9477.

ORDINANCE NO. 9477

An Ordinance to set forth a method of calculating gender neutral lump sum pension benefits for police officers hired prior to 1984.

WHEREAS, the Grand Island City Council has decided to repeal Resolution 2013-26(B) and replace the method of calculating Lump Sum Police Pension Benefits provided by the City of Grand Island in that Resolution with the method set forth in this Ordinance and to bring the City's method of calculating said benefits in accordance with LB 759 presently pending before the Nebraska Legislature.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA:

That in calculating Lump Sum Police Pension Benefits on a sex neutral basis in accordance with the Nebraska Police Officers Retirement Act set forth in Article 10 of Chapter 16 of the Nebraska Revised Statutes the following definition of sex neutral shall mean:

- I. The benefit calculation provided to the City by a licensed domestic or foreign insurance or annuity company with a product available for purchase in Nebraska that utilizes a blended, non-gender specific rate for actuarial assumptions, mortality assumptions, and annuity conversion rates for a particular participant, except that if a blended, non-gender specific rate is not available for purchase in Nebraska, the benefit calculation shall be performed using the arithmetic mean of the male-specific actuarial assumptions, mortality assumptions, or annuity conversion rates and the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates, as applicable, for a particular participant, and the arithmetic mean shall be determined by adding the male-specific

Approved as to Form	☐ _____
March 23, 2014	☐ City Attorney

ORDINANCE NO. 9477 (Cont.)

actuarial assumptions, mortality assumptions, or annuity conversion rates to the female-specific actuarial assumptions, mortality assumptions, or annuity conversion rates applicable to a particular participant and dividing the sum by two.

- II. Any ordinances or parts of ordinances or Resolutions in conflict are hereby repealed.
- III. This ordinance shall be in full force and will take effect from and after its passage and publication pursuant to law.

Enacted: March 25, 2014.

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Jay Vavricek, Mayor

ATTEST:

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RaNae Edwards, City Clerk