

LEGAL AND LEGISLATIVE/SAFETY COMMITTEE

April 11, 2000

4:15 P.M.

The meeting of the Legal and Legislative Committee was called to order by Councilman Eaves, Chairman, with Councilmen Hakeem, Hurley, Taylor, and Franklin present. Councilmen Lively and Pierce joined the meeting later. City Attorneys Randall Nelson and Michael McMahan; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Chief Dotson, Chief Coppinger, Adm. Boney, Carl Levi, Donna Kelley, and Frank Hamilton.

Chairman Eaves called the meeting to order and stated that we would be hearing changes to the Firemen's and Policemen's Pension Fund. He asked Attorney Nelson if he wished to proceed with this. Attorney Nelson noted that their representative, Bill Robinson, was present; as Adm. Boney nor Chief Coppinger were in the room at that moment, Attorney Nelson went over several other Charter Amendments.

CHARTER AMENDMENTS

The first Amendment that Attorney Nelson discussed pertained to filling the vacancy in the City Judge's Office; that the Charter presently says that the vacancy shall be filled for the unexpired term by the City Council. He explained that this conflicts with State Law; that State Law requires that any filling of a position shall wait until the next General Election in the municipality and not be for an expired term. He explained that he had struck the conflicting language.

The next Amendment dealt with nominations made by the Mayor and affirmations by the Council. Attorney Nelson noted that we had until May 9th to work on this for first reading, but he would like to do it by May 2nd. Councilman Franklin asked if this was just for the vacancy in the Judge's Office, and Attorney Nelson responded "yes".

Councilman Hakeem asked if this would be on the August ballot and when the election would take place. Attorney Nelson responded in all probability in August; that he was amending the Charter only for the vacancy. Councilman Hakeem asked if there would be no interim this time. Attorney Nelson indicated that he did not have a response yet as to when the last day to qualify will be; that it needs to be 45 days before the election; that the 2nd Division of City Court will be in place by June in time for people to qualify and run.

Chairman Eaves asked if Attorney Nelson said this would be at a Municipal Election. Attorney Nelson responded that he said the next General Election, which would be August or November.

The next Amendment also dealt with City Court and striking the provision as to City Court holding several sessions; that the Judges say Court should rotate; that we will strike any provisions as we will be setting up Night Court, which will be from 3:30 or 4:00 until Court finishes.

Chairman Eaves asked as it stood right now, if we put in a second Judge would both Judges have to go on night duty. Attorney Nelson stated that the Charter says this. Chairman Eaves asked if he was wrong here, indicating that we don't know whether citizens will approve this Charter Change or not.

FIREMEN'S AND POLICEMEN'S PENSION FUND CHANGES

Bill Robinson, representing the Board of the Firemen's and Policemen's Pension, was present to address these changes. He had with him Frank Hamilton, Chairman of the Board, and Rocky Joiner, who is the Actuary. He stated that firemen and policemen work long hours at a very demanding job, and these changes are designed to bring this Pension Plan into the 21st Century. He explained that he would go over these proposed changes and then entertain questions. He stated that he hoped everyone had their Firemen's and Policemen's Insurance and Pension Fund Booklet, which is made a part of the minute material. He directed everyone's attention to Page 3.

At this point Councilwoman Hurley suggested that we move the meeting to the large assembly room as there were so many people present who were interested in this discussion. The meeting adjourned to go into the Assembly Room.

Mr. Robinson proceeded with his presentation, noting that he had Mr. Rocky Joiner to stand with him to assist in the presentation.

He stated that they were coming before this committee to ask the Council to consider some fundamental changes that are to be on the referendum in August to be voted on by the general public. He stated that he would explain the changes and then take questions from the Committee members, whom had already received an outline. He then proceeded to go over the changes, again directing everyone's attention to Page 3 which included **Highlights of Proposed Pension Improvements Subject to Public Referendum Approval 8/3/00**. He noted that there were four bullets on Page 3 and two on Page 4, which amounted to six changes in all.

The first change was to **modify sections of the pension legislation to increase the pension payment to a member's beneficiaries to \$500 per month, and establish a monthly benefit minimum for current retirees of \$750.00**. He explained that the current amount for widows is \$350 and \$100 for orphans, and this will be increased to \$500.00.

The second change **amends Section 13.75(b) to allow a member to retire after completion of 25 years of active service if he/she so chooses.** Mr. Robinson pointed out that the Board believes that the provision requiring a member to be at least 55 years old in addition to serving 25 years creates a disadvantage for those members who began active service prior to turning 30 years old. He explained that they would remove the stipulation of 55 years old and bring it back to what it was several years ago; that in 1992-93 the change was made to 55 years old, and we are taking it out again.

The third change **would add a new section to allow for a retro Deferred Retirement Option Plan (DROP) for a member who has provided at least 25, but not more than 30 years of active service.** Mr. Robinson explained that this was designed to allow a member to take a portion of their benefits in a lump sum. Mr. Joiner added that this was designed for people who had 25 years of service and wanted to keep working; that in addition to monthly payments, he or she could also get a lump sum with 7%. Mr. Robinson explained that our situation is limited to three years of pay for the lump sum. Chairman Eaves verified that this does not apply to more than 30 years. Mr. Joiner added that there is a 25-30 years of service window period.

Chairman Eaves asked if the Pension Fund had actuarially gone over each of these items and found that the Pension Fund could stand what was being proposed. Mr. Robinson explained that there would be no increase on the part of the City. Chairman Eaves asked if there would be an increase on the part of the firemen and policemen. Mr. Robinson responded “yes”—that it is now 8% and one of the changes is that the benefits will be calculated on the actual listed rank. Chairman Eaves asked if the contributions are now a percentage of the actual pay. Mr. Robinson explained that it was up to a sergeant’s pay. Chairman Eaves verified that anyone above the rank of sergeant pays no more and that under the new Plan everyone will make a contribution as a percentage of their actual pay, and it will not cut off at the sergeant’s level. Mr. Robinson verified that benefits are stopped at the sergeant’s rank now.

Councilman Taylor went back to the change pertaining to the Deferred Retirement Option Plan and the three years and five years. He asked if the “freezing” takes place after 25 years of service. Mr. Joiner responded that it is after 25 years and that any point up to 30 years, an employee can elect to take this. He stated that there was a 5-year window to pick up to three years lump sum. Mr. Robinson added that the Board feels we can do this—that we have had good investment returns, and we can absorb this.

The third amendment **amends language to have Board approved changes come before the Chattanooga City Council versus a public referendum.** Mr. Robinson explained that when changes have to go to public referendum it is expensive and cumbersome; that this additional measure would allow the City Council to consider plan changes approved by the Fire and Police Board on such matters as benefit increases. He reiterated that the City Council could only act on recommendation of the Board; that they felt this would be the best way to handle future changes.

Councilwoman Hurley asked for an example of changes that would not be a benefit change. Mr. Robinson responded that changing the name of the Pension Fund was one thing; that the Board would like to change the name from Firemen's and Policemen's Pension Fund to Fire and Police Pension Fund since women are involved; to make that change now it would have to go to public referendum.

Chairman Eaves questioned if this would not also include recommendation of Administration. Mr. Robinson responded that these are members of the Fire and Police Dept., and they have always had a separate Plan from the City's, and they would like to see it maintained as a separate entity governed by its Board of Directors; that the Mayor is an ad hoc member if this was a "sticking" point.

Chairman Eaves stated that it would be a "sticking" point with him; that the firemen and policemen work for the City and that he would want to make sure that Administration was included in this.

Attorney Nelson stated that we would have to change the Charter to get a different method.

Councilwoman Hurley asked if the changes the City Council and Administration would make would be non-financial. Mr. Robinson stated that they could be financial; that it would have to have the recommendation of the Actuary; that it could be something such as minimum benefits. Councilwoman Hurley asked if he did not say it would be Plan changes that have nothing to do with benefits. Mr. Robinson responded that they can increase the benefits now; that the changes he was talking about would go beyond benefit increases. Councilwoman Hurley verified that they cannot reduce benefits but can increase benefits.

The next change **amends sections of pension legislation to provide that retirement benefits will be calculated based upon such member's actual salary up to the highest position achieved through an objective qualifications test. Members will be required to contribute 8% of their actual salary to the plan.** Mr. Robinson stated that this was the most controversial of all the changes, and the Board is not in 100% agreement on this; that management of the Board believes this is the measure that brings us into the 21st Century; that it is a Plan like those around us in the southeast; that it would work as an incentive for officers to want to advance and stay in Chattanooga; that it would promote a professional work ethic; that it is based on a sergeant's pay now and there is little incentive to advance in rank, and this change would make it possible to obtain the highest benefit possible and is an important change to the Plan.

The last change **amends language to provide a 3% cost-of-living adjustment (COLA) each year to retired members, survivors, and beneficiaries. The increase will no longer be tied to the Consumer Price Index. Adjustments will begin after one year of retirement, regardless of age.** Mr. Robinson stated that it was determined that the actual Fund can afford this 3%; that the Board wants the City to know it is doing everything possible within its financial constraints to afford decent benefits to retirees; that this is the best the Plan can afford to do; that they want decent benefits for their retirees.

Chairman Eaves asked Mr. Robinson if when they vote on these measures if it is “rank and file” people; if it is both active Firemen and Policemen and also retired Firemen and Policemen. Mr. Robinson stated that their meetings were open to the public and included both active and retirees on the agenda; that retirees had a chance to listen to all that was being said.

Councilman Hakeem questioned the situation of a top individual who was a Deputy Chief for six months—if that individual would retire at a salary that high or would they have to have served for a number of years. Mr. Robinson stated that that was a difficult question; that he was not sure if a Deputy Chief was subjected to an objective qualifications test; that it would be based on his salary over the last three years and would be “smoothed-out”.

Attorney Nelson asked if he was talking about the last three years or the highest three years. Mr. Joiner answered it would be the highest salary he had been at over a three-year period.

Chairman Eaves questioned if a Deputy Chief position was not achieved through objective testing but was an appointed position.

Chief Coppinger spoke next and stated we would need to define what objective testing is; that he would contend that positions in the Fire Dept. are based on accountability; that he would take exception to saying that it is not a tested position.

Chief Dotson stated that he performed the examination himself and there is a Citizen Group that screens applicants; that it is not a “handed” position but one that is very competitive.

Chief Coppinger stated that he would like to see it based on the highest three years and not the final three years; that a person’s highest paid three years might not be his last three years.

Mr. Robinson stated that it would be based on the highest three years. To clarify this to the chiefs, he reiterated that this was the most controversial in this group of changes; that some felt it should stay at a flat benefit based on a sergeant's pay; that as a compromise they had stopped at the last tested position to make it palpable to everybody.

Councilman Hakeem noted that there seemed to be some disagreement on how high a tested position we should go. Mr. Robinson stated there seemed to be more objective testing up to the rank of captain; that the chiefs believe they give objective tests to ranks above this.

Chairman Eaves stated that he would "play Devil's Advocate"; that he thought we had a good professional organization in our Fire and Police departments but suppose in the future we had people not quite so professional that had a friend who was a guy that had worked hard and long, so he gives him a promotion and sets him up with a pretty good pension. He noted that it seemed to be divided on this point. Mr. Robinson agreed that this appeared to be the perception and concern. Chairman Eaves stated he did not like to think this could happen. Mr. Robinson stated that the possibility was too slim to leave the Pension in the state it is in now; that the situation is that the Pension Plan is not the type that provides incentive; that they were concerned about keeping bright and upcoming people in Chattanooga and also those looking around to come to Chattanooga; that they need an interesting and exciting career.

Chairman Eaves stated that this was a "fuzzy" issue, and we would have to bind the words. Attorney Nelson stated we would have to have a definition of the top position that was put in. Mr. Robinson stated that this was something they had considered; that in using rank in the Police Dept. we have to be careful how we draft the language. He noted that the pay scales differ in the Fire and Police Departments. Chief Coppinger agreed that it was important to realize that the pay scales are not the same.

Councilman Franklin asked the Actuary how he felt about this if it goes above a captain. Mr. Joiner responded that the number of people above that rank is a small number, and the impact on the fund would be small; that this decision need not be made on a financial impact. Councilman Franklin asked Adm. Boney's advice.

Adm. Boney stated that he would like to make two or three comments. First, they supported this wholeheartedly; that it was actuarially sound and would make the Plan more modern and comparable to others. However, Adm. Boney added that even though the Plan is independently funded, the Mayor and himself, as Administrator of Finance, are responsible and that if the City Council can make changes, they believed it should be on the advice of the Mayor as an approval step. Secondly, he stated that it was a great step to be calculated on a three-year average, and this should be taken and not what is the highest rank; that it should be awarded on accomplishment, and they did not support a testing cap.

Councilman Franklin stated that he thought this was a step in the right direction; that we are dealing with individuals above the captain's rank; that this was a step to move toward a consecrated effort worthy of tenure and experience and should be from an educational standpoint as well. He added that it should also be diverse.

At this point Chairman Eaves asked for one representative from the retired sector and one from those presently employed to speak if they wished and to limit their remarks to three minutes.

Johnny Frazier, a retired police officer was the first to speak. He stated that there were two items that they were opposed to on this proposal for the ballot, the first being percentage benefit according to the actual salary. He stated that the present pension is across the board and everyone pays in the same contributions virtually; that they draw the same benefits based on the years of service, which makes it fair. He stated that the Pension Fund was fair and sound, and he saw no reason to change it; that this would not make it any stronger or more sound but would make the pension unfair.

Mr. Frazier stated that the legislative intent was to provide equal benefits and the way the Plan is set up is fair and takes the subjectivity out of the decision on how valuable a person's service is to the City; that the present plan gives a pension based on the years of service and not rank, and this new Plan will hurt those on the street. He noted that it had been said that the new Plan will give more incentive to achieve rank; however he stated that he had never seen a lack of incentive to achieve rank. He reiterated that there was no reason to change this; that there would be a huge disparity between a deputy chief with 30 years at \$52,000 for rest of his life and 3% cost-of-living; that if they agreed to this it would continue to broaden the gap considerably. He noted that the 3% cost-of-living was good but tainted by other proposals. He ended by saying the Pension Fund is fair, and he would like to keep it this way.

Councilman Hakeem asked the actuary if the money paid in by a deputy chief as opposed to an officer on the beat was minimal. The response was that it was 8% of a patrolman's salary until 1993. In 1993 the formula was changed to read that the pay is 8% of the actual salary or 8% of the highest patrolman's salary, whichever is less; that if you make less, you would pay 8% of the actual salary; you contribute in as a patrolman or private. Councilman Hakeem asked what his understanding was of what an administrator pays as opposed to a regular street officer; if we were talking about an administrator paying in up to a police sergeant's pay. Mr. Joiner explained that it would be 8% of his salary, but no more than a police sergeant's pay. Councilman Hakeem verified that no one was paying more into the system than anyone else.

Mr. Frazier continued, stating that this change would give them \$22,000 a year for the rest of their lives above what a patrolman would get; that there would be a \$22,000 discrepancy and the 3% cost-of-living would kick in and would compound each year in making the gap broader.

Councilman Hakeem asked Adm. Boney if his math matched Mr. Frazier's. Adm. Boney responded "yes"—that the provision was that an individual would have to pay in a different amount to draw this. He agreed that it was traumatic to go from a fixed pension to one based on rank.

Councilman Hakeem verified that actuarially this can be done and the funding will still be the same; that the contention is one of fairness.

Adm. Boney added that current patrolmen would be grandfathered in at a sergeant's pay in rank.

Mr. Frazier stated that we were talking about a patrolman being grandfathered in as a sergeant; if that difference in pay is eclipsed, he would fall back to a patrolman; that actually patrolmen in the future will lose money under this Plan; that if it were left alone, patrolmen would benefit; that raises should be given on what the Fund could actually afford equal to what it has been and everyone should go out on the same benefit; that this is fair benefits, and it takes the politics out of their pension. He stated that he had seen people promoted not on performance; that people like himself could work 25 years and not make any rank; that they would be penalized in their career and even after their career and service; that it was not fair.

Lt. Carrage spoke next on behalf of active policemen. He stated that he had been with the City 20 years and had discussed this with lots of officers, and the majority feel it is only fair that people pay in a percentage of what they make and go out on a percentage of what they have made; that the change in 1993 made it so you would pay in a percentage of a top sergeant and when you retired everyone would get the same pension, and he was being overcharged to get the same benefits. He stated he had worked in hard areas and was not opposed to paying a percentage of whatever his salary was. He stated that the old Plan came in in the 40's; that now no Plan has a chief and a private drawing the same pension; that the new Plan is only fair, and he looked forward to it.

Chairman Eaves reiterated that he would like to see Administration included on any change; that the Council would vote on the package at a later date and would decide what the package will be. He questioned those present today if we should include Administration.

Councilwoman Hurley moved that the action be approved to read upon the advice of the Mayor and Administration. This was seconded by Councilman Taylor.

Chairman Eaves asked should or should we not remove the words “objective qualifications test”. He questioned if we needed to use that phrase. **Councilman Hakeem moved to remove that phrase. This was seconded by Councilwoman Hurley.**

Chairman Eaves asked, with these two changes, when this would be ready to put on the agenda. Attorney Nelson stated that it could be in two weeks if the Council preferred. Chairman Eaves stated that we should do it all at one time.

Councilman Lively stated that we wanted to see the Fire and Police Department retire with the best retirement they can. He questioned if they retired with 25 years of service and less than the age of 55 if they would get full or reduced benefits. Mr. Robinson responded that they could get full retirement after 25 years of service; that with a Public Safety Pension Plan we are talking about people who do demanding and physical work, and they draw a full pension after 25 years of service, which is deserved.

Councilman Taylor verified that rather than a sergeant’s pay, they would be able to contribute at their present salary. Attorney Nelson stated that they would contribute with a percentage of their pay, whatever it might be.

Chairman Eaves stated that this Council was not Solomon and were taking into consideration the Pension Board’s wishes and Administration’s wishes and trying to arrive at what is best for everyone.

A lady from the audience asked if she could speak on behalf of the widows. Chairman Eaves responded “No ma’am. I will not extend this”, noting that we had several more items that had to be considered.

CHANGES TO THE GENERAL PENSION FUND

Chairman Eaves stated that this was the Fifth Draft of Change to the General Pension and called on Adm. Boney to go over this.

Adm. Boney stated that he would like to make the Council aware of the direction that they were heading with the General Pension; that three members of the Board were present tonight—Chairman Franklin Davis, Carl Levi, and Donna Kelley. He stated that they were not asking for an “up or down” approval; that they just wanted to make the Council aware of their direction. In an overall remark he stated that every change they were proposing was to make retirement provisions less punitive.

Adm. Boney explained that the rule of 85 is now in effect, which equals age plus years of service where an employee can retire without penalty; that they were proposing that this be changed to a rule of 80, where you can retire without penalty.

Adm. Boney went on to explain that one has to work to the age of 62 to obtain full benefits with a 5% penalty for every year you retire before that age; that they proposed to change the early retirement reduction from 5% per year to 2.5% per year.

Adm. Boney went on to explain that there would be a new definition for part-time employee which would read that a *“Part-time employee shall mean an employee who is expected to work more than one thousand hours per year and thereby eligible to be a participant, but this term shall not apply to an official of the city elected by popular vote who is also eligible to be a participant.”* Adm. Boney noted that 2080 hours is a full year.

Adm. Boney explained that they proposed to provide additional benefits for service in excess of thirty years at 1% per year. This would remove the 30-year cap on service.

Adm. Boney stated that under the old method there is an offset for social security—pension and social security cannot exceed 75%. The proposal would eliminate the 75% of pay cap related to the social security offset formula.

The proposal would eliminate Age 65 to be eligible for COLA and could be applied the year after one retires.

Adm. Boney explained that this would eliminate sexist language by deleting the word “widow” and substituting the word “spouse”.

Adm. Boney explained a DROP Plan (Deferred Retirement Option Plan) that would be cost neutral.; that if an employee serves 30 years and elects to retire, the pension can be based on 27 years and the employee given a lump sum of three years. He reiterated that this would be neutral to funds.

He stated that Future Amendments by Ordinance, passed by the City Council, would be based on recommendation of the Board of Trustees, upon advice by the Mayor, and upon receipt of an actuarial report as to the costs and actuarial soundness of such changes.

Adm. Boney noted that Fire and Police changes are to be retroactive to July of 1999; that there are 160 civilian employees, and we will want to have our actions retroactive to July of 1999 as well. He noted that the Plans were getting closer together.

Councilwoman Hurley asked if civilians were covered under the General Pension Plan or the Fire and Police Pension. Adm. Boney responded that it was the General Pension Plan, and this Plan is based on total salary.

Councilman Lively asked Adm. Boney if it was based on a percentage of the three highest years, and the answer was “yes”. He added that where they were heading was sound.

OTHER CHARTER AMENDMENTS

Attorney Nelson stated that he needed to touch on two other Charter Amendments: (1) Public Works Section of Charter—public bids over \$1,000 is in conflict and will be struck from Charter and (2) Request from a Councilperson—regarding disqualifying any person convicted of felony from running for public office.

AT THIS POINT CHAIRMAN TAYLOR COMMENCED THE SAFETY COMMITTEE.

DESIGN AND CONSTRUCTION OF FIRE STATION

Chairman Taylor called on Chief Coppinger.

Chief Coppinger explained that this was a resolution authorizing an amendment to the Agreement with Thomas Johnson, Architect, relative to the design and construction of the fire station to be located at Main Street and Old Rossville Boulevard. He explained that the fee was 6.5% and now the cost of the building is in excess of \$2 million, and they had come to the agreement to increase the contract by \$24,240.00 for a revised contract amount not to exceed \$117,840.00.

Councilman Eaves asked if this had added to the Architect’s work and time schedule. Chief Coppinger responded “yes”—in an effort to blend in.

On motion of Councilman Eaves, seconded by Councilman Pierce, this will be recommended to the full Council.

The meeting adjourned at 5:45 P.M.