MINUTES
CITY OF LAWTON PENSION TRUST COMMISSION
SPECIAL MEETING
CITY HALL 3rd FLOOR CONFERENCE ROOM
MARCH 13, 2024 10:30 A.M.

Chairman Bayones called the meeting to order at 10:30 A.M. in the third-floor conference room of City Hall.

ROLL CALL

PRESENT: Paul Ellwanger, Christine James, Richard Rogalski, James Apple, Ed Petersen, Teri Bayones

ABSENT: Andrew Hill

ALSO PRESENT: Craig Akard, Human Resources Director; Taressa Macias, Human Resources; Kristin Huntley, Financial Services; Kaitlin Nunley, Financial Services; Gregory Gibson, Assistant City Attorney; Tim Wilson, Acting City Attorney; Tammy Branstetter, City Clerk's Office; Ward 4 Councilman George Gill; Ward 8 Councilman Randy Warren

STATEMENT OF COMPLIANCE WITH OKLAHOMA OPEN MEETING ACT, 25 O.S. 301-314

Notice of meeting and agenda were posted by the City Clerk's Office as required by law.

INTRODUCTION OF GUESTS

Chairman Bayones noted that Council representation is present, and she introduced Councilman Gill and Councilman Warren.

NEW BUSINESS

A. Consider approving the minutes of the January 25, 2024 meeting.

Timothy Wilson, Acting City Attorney, said there was an issue with the draft minutes regarding the item discussing the retirement of Julie Snodgrass. Wilson recommended this item be tabled until the draft minutes are updated with a more accurate and complete analysis of the discussion.

Motion by Apple, **Second** by Ellwanger, to **TABLE** approval of the January 24, 2024 meeting minutes until the April 25, 2024 meeting. **AYE:** Ellwanger, James, Rogalski, Apple, Petersen, Bayones. **NAY:** None. ***MOTION PASSED.***

B. Discuss and consider approving a correction of pension benefits to Cindy Porter, surviving spouse of Michael Porter, pursuant to Sections 17-3-4-335 and 17-3-4-347, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, authorize payment of the corrected monthly amount of $4,208.41 and retroactive payment of the arrears due to the underpayment, including interest on said arrears, and take other appropriate action as necessary.

Wilson placed a conference call to John A. Papahronis, McAfee & Taft. He introduced Papahronis to the Commission and explained that Papahronis will help cover the background information regarding this item.

Wilson said that Michael Porter began employment with the City of Lawton in 1991. Porter passed away in February of 2020, while he was still employed with the City. He was not at work when he passed away, nor was his cause of death due to employment. At the time of his death, he was eligible for a retirement benefit. According to Lawton City Code that deals with death benefits, the amount of each monthly payment shall be computed in the same manner for a normal retirement.

Wilson said Michael has a surviving spouse, Cindy Porter. Cindy is receiving a monthly benefit based on a Joint & 100% Survivor. Based on the language in city code, Mrs. Porter is not receiving the correct amount due her. City staff, working with the Pension Trust's outside actuaries, is involved in an ongoing review/investigation of pension calculations. The need for this correction was discovered during this investigation. When recalculating Mr. Porter's retirement benefit, it was determined that Mrs. Porter is being underpaid. If the correction is approved, Ms. Porter's new monthly benefit will be $4,208.41 and there will be a retroactive arrears payment of approximately $33,680.30, including interest on the arrears.

Papahronis said at one time it was discussed to wait on these types of corrections until they've been included in the long-term correction filing with the IRS, but this process is taking quite some time. Because the City has been made aware of those retirees who have been grossly underpaid, from a fiduciary standpoint it would be best to makes the corrections now.

Ellwanger asked why the five retirees listed on the agenda were selected to receive a correction of pension benefits – he thought there were more than five retirees with miscalculations.

Wilson said there are more, but these are five large ones. These five also have additional errors that need to be corrected. He noted that these miscalculations will be corrected in the most conservative way – he believes they'll be corrected under the three-calendar year method. If the Council wants to pursue the 78 pay period method, there might be some further slight adjustments, but they wouldn't be anything near as significant as what we're doing today.

Rogalski said Cindy Porter's adjustment appears to be based on the 78 pay period method.

Taressa Macias, Human Resources, said the pay total was based on the calendar year method – it was notated incorrectly on the spreadsheet.

Rogalski asked what the two columns represent.

Macias said the column on the right is the original calculation (showing the benefit that's being paid currently), and the column on the left is recalculated monthly benefit based on the calendar year method. In Ms. Porter's case, it's a lifetime benefit instead of the joint and 100% survivor benefit.

Craig Akard, HR Director, noted that these five retirees were the only ones underpaid by more than $10,000.

Ellwanger said it's his understanding that the IRS could make additional changes that could lead to the need for additional retroactive arrears payments.

Akard said that is correct.

Motion by Petersen, **Second** by James, to approve a correction of pension benefits to Cindy Porter, surviving spouse of Michael Porter, pursuant to Sections 17-3-4-335 and 17-3-4-347, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, authorize payment of the corrected monthly amount of $4,208.41 and retroactive payment of the arrears due to the underpayment, including interest on said arrears. **AYE:** Ellwanger, James, Rogalski, Apple, Petersen, Bayones. **NAY:** None. ***MOTION PASSED.***

C. Discuss and consider approving a correction of pension benefits to Lisa Cole, disability benefit, pursuant to Sections 17-3-4-335 and 17-3-4-342, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, authorize payment of the corrected monthly amount of $975.64 and retroactive payment of the arrears due to the underpayment, including interest on said arrears, and take other appropriate action as necessary.

Wilson provided background information on this item.

Lisa Cole was an employee with the City of Lawton from March 30, 1998 until April 27, 2012. She took a disability retirement from the City of Lawton based on Lawton City Code, Chapter 17-3-4-342. Her disability resulted from a non-job-related disability. City staff, working with the Pension Trust's outside actuary, is involved in an ongoing review/investigation of pension calculations. Based on an audit of Ms. Cole's calculations, it was determined that she was not paid in accordance with referenced code. When recalculating Ms. Cole's disability benefits, it was determined that her benefit was not compared to the accrued benefit, which was larger. By code, Ms. Cole is due a lifetime only benefit. The correction would change Ms. Cole's monthly benefit to $975.64 and there would be a retroactive arrears payment of approximately $45,907.34, including interest on the arrears.

Ellwanger said the total amount of the back payment listed on the agenda item does not reflect the number in the chart.

Apple said the amount listed on the agenda item is $45,907.34, but the amount listed on the chart is $46,849.15.

Macias said the supporting chart includes accrued interest through February.

Rogalski said the amount is listed correctly in the item title.

Wilson asked when these adjustments will be made if they are approved today.

Akard said they will receive a special one-time payment by the end of this month. Their new monthly payment would become effective the first paycheck in March.

Motion by Apple , **Second** by James, to approve a correction of pension benefits to Lisa Cole, disability benefit, pursuant to Sections 17-3-4-335 and 17-3-4-342, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, authorize payment of the corrected monthly amount of $975.64 and retroactive payment of the arrears due to the underpayment, including interest on said arrears in the amount of $46,849.15. **AYE:** Ellwanger, James, Rogalski, Apple, Petersen, Bayones. **NAY:** None. ***MOTION PASSED.***

D. Discuss and consider approving a correction of pension benefits to Mack Cheatham, job related disability benefit, pursuant to Sections 17-3-4-335 and 17-3-4-342, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, authorize payment of the corrected monthly amount of $1,392.68 and retroactive payment of the arrears due to the underpayment, including interest on said arrears, and take other appropriate action as necessary.

Wilson provided background information on this item.

Mack Cheatham was an employee with the City of Lawton from August 23, 1988 until October 28, 2011. He took a job-related disability retirement from the City of Lawton based on Lawton City Code, Chapter 17-3-4-342. His disability resulted from a job-related disability. City staff, working with the Pension Trust's outside actuary, is involved in an ongoing review/investigation of pension calculations. Based on an audit of Mr. Cheatham's calculations, it was determined that he was not paid in accordance with referenced code. When recalculating Mr. Cheatham's disability benefits, it was determined that his benefit was not compared to the accrued benefit, which was larger. By code, Mr. Cheatham is due a lifetime only benefit. The correction would change Mr. Cheatham's monthly benefit to $1,392.68 and there would be a retroactive arrears payment of approximately $64,282.74, including interest on the arrears.

Ellwanger asked if official notification will be given to retirees regarding the status of the pension miscalculations.

Akard said staff is waiting until they hear back from the IRS.

Wilson said these were errors that appear to be above and beyond the final average monthly calculation or the fractional month issues that were primarily identified a couple years ago. These were the pro rata issues, or the miscalculation or misapplication of the disability benefits. He said that's why a lot of these are regarding disability benefits – they weren't done by code.

Wilson noted that these retirees may again have the same or similar error on the average final monthly pay calculation that the bigger group has, which could require further adjustments. However, staff felt that the City could not, in good conscience, let these large miscalculations remain underpaid. The other miscalculations aren't to the same degree as these ones are. Wilson said the plan is to ask the IRS to approve the voluntary correction. Staff's recommendation is to grandfather in the 78 pay period method, but that will ultimately be left up to the City Council to decide.

Wilson said we are making some corrections today – after speaking with Papahronis, he felt these corrections could be made without having to go to the IRS first, but they will ultimately have to go to the IRS. Wilson said if there are people who want to ask what's going on with their pension payments, he noted that the audit is still being looked at and staff has no comment to make at this point.

Councilman George Gill, Ward 4, said the City Council has looked at these miscalculations on several occasions, and there's quite a few of them. He said staff might want to send some sort of letter to retirees explaining that it's the beginning of an investigation and staff is still working on determining the magnitude of the miscalculations.

Rogalski said he was also wondering if staff has sent any sort of information to retirees letting them know that this is going on.

Wilson said no – staff wants to be very careful of what we say and when we say it because we want to make sure it's *accurate*. As we've gone through this process, we've seen where we thought someone was being grossly underpaid, but it turned out they weren't – they were receiving what they're supposed to be paid. Wilson said if staff would have hit the panic button too early, it would've caused more harm than good.

Rogalski said he meant a letter stating that the process is going on. He said he's a recent retiree, and he can understand wanting to know what's going on.

Apple said he anticipates the City receiving many phone calls regarding these miscalculations. He thinks the City should have a statement prepared for when they receive these calls.

Councilman Gill said he believes sending retirees a letter would be beneficial.

Wilson said these are things staff has been talking about during our frequent team meetings. They've discussed when to notify retirees. Wilson said there's been no notification to retirees at this point. Wilson said he's been working with Dewayne Burk from the City Manager's Office, the Human Resources Office and Chairman Bayones. He said until the City files the voluntary correction plan, there's really nothing to say. He asked for Papahronis's opinion on when a notice should be sent. The talk had been that staff was going to wait and see what the IRS does first.

Rogalski asked if there was any chance that the IRS is going to say you don't have to correct anything.

Chairman Bayones asked that the Commission get back to discussion regarding Business Item D, specifically.

James noted that these five corrections will not be going to Council because the Commission has the authority to make corrections – the action taken today will be the final action.

Motion by Petersen, **Second** by James, to approve a correction of pension benefits to Mack Cheatham, job related disability benefit, pursuant to Sections 17-3-4-335 and 17-3-4-342, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, authorize payment of the corrected monthly amount of $1,392.68 and retroactive payment of the arrears due to the underpayment, including interest on said arrears. **AYE:** Ellwanger, James, Rogalski, Apple, Petersen, Bayones. **NAY:** None. ***MOTION PASSED.***

E. Discuss and consider approving a correction of pension benefits to Monty Brooking, early retirement benefit, pursuant to Sections 17-3-4-335 and 17-3-4-341, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, authorize payment of the corrected monthly amount of $1,497.06 and retroactive payment of the arrears due to the underpayment, including interest on said arrears, and take other appropriate action as necessary.

Wilson provided background information on this item.

Monty Brooking was an employee with the City of Lawton from October 1, 1979 until March 10, 2006. He took an early retirement from the City of Lawton based on Lawton City Code, Chapter 17-3-4-341. City staff, working with the pension trust's outside actuary, is involved in an ongoing review/investigation of pension calculations. Based on an audit of Mr. Brooking's calculations, it was determined that he was not paid in accordance with referenced code. Mr. Brooking left employment on March 10th, which he received a prorated benefit for his first month. When recalculating Mr. Brooking's early retirement benefits, it was determined that his benefit payment was never adjusted from the pro-rated amount. He has never been paid his actual benefit amount. The correction would change Mr. Brooking's monthly benefit to $1,497.06.

Wilson said the retroactive arrears payment due to Mr. Brooking is listed as $192,779.15 in the background of the agenda item commentary, but the attached spreadsheet lists the retroactive arrears payment as $195,851.15. He said he's not sure where this difference came from.

Motion by Apple, **Second** by Rogalski, to approve a correction of pension benefits to Monty Brooking, early retirement benefit, pursuant to Sections 17-3-4-335 and 17-3-4-341, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, authorize payment of the corrected monthly amount of $1,497.06 and retroactive payment of the arrears due to the underpayment, including interest on said arrears. **AYE:** Ellwanger, James, Rogalski, Apple, Petersen, Bayones. **NAY:** None. ***MOTION PASSED.***

F. Discuss and consider approving a correction of pension benefits to Steven Bowen, disability benefit, pursuant to Sections 17-3-4-335 and 17-3-4-342, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, authorize payment of the corrected monthly amount of $1,374.86 and retroactive payment of the arrears due to the underpayment, including interest on said arrears, and take other appropriate action as necessary.

Wilson provided background information on this item.

Steven Bowen was an employee with the City of Lawton from August 18, 1997 until January 18, 2016. He took a disability retirement from the City of Lawton based on Lawton City Code, Chapter 17-3-4-342. His disability resulted from a non-job-related disability. City staff, working with the pension trust's outside actuary, is involved in an ongoing review/investigation of pension calculations. Based on an audit of Mr. Bowen's calculations, it was determined that he was not paid in accordance with referenced code. When recalculating Mr. Bowen's disability benefits, it was determined that his benefit was not compared to the accrued benefit, which was larger. By code, Mr. Bowen is due a lifetime only benefit. The correction would change Mr. Bowen's monthly benefit to $1,374.86 and there would be a retroactive arrears payment of approximately $68,481.78, including interest on the arrears.

Rogalski asked what interest rate is being charged and how it is determined.

Papahronis said we used the interest rate that's listed in the plan document as the appropriate actuarial assumption. These can fluctuate depending on the year.

Motion by Petersen, **Second** by Apple, to approve a correction of pension benefits to Steven Bowen, disability benefit, pursuant to Sections 17-3-4-335 and 17-3-4-342, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, authorize payment of the corrected monthly amount of $1,374.86 and retroactive payment of the arrears due to the underpayment, including interest on said arrears. **AYE:** Ellwanger, James, Rogalski, Apple, Petersen, Bayones. **NAY:** None. ***MOTION PASSED.***

G. Discuss a cost-of-living adjustment and/or stipend for retirees.

Wilson provided background information on this item. He said this was mentioned at a previous Pension Trust meeting. The discussion at the time was to have the actuary prepare a report with regards to how a cost-of-living increase would impact the pension plan. Wilson said Human Resources has been working with the actuary, but it's his understanding that the actuary is not prepared to give this report today.

Akard said that is correct - Chuck Dean, Dean Actuaries LLC, recently had surgery. Chuck Dean has said he will be able to attend the Pension Trust meeting in April. Akard said the stipend idea came up during a conversation staff had with Papahronis. He said if staff were to give a cost-of-living increase now, they would have to explain to the IRS why they are making this change when the pension fund is in such turmoil. As an alternative solution, the idea of a stipend came up. While it wouldn't help much with regards to future monthly benefits, it would be at least something to give the retirees. Once a solution is worked out with the IRS, staff could revisit cost of living increases.

Rogalski asked when retirees last received a cost-of-living increase.

Akard said 2005.

Rogalski asked if the Pension Trust has consistently considered cost-of-living increases every two years.

Chairman Bayones said yes, up until the point staff began discovering the pension miscalculations.

Chairman Bayones said there is no action to take on this item. Staff is seeking feedback from the Commission with regards to what they want to do.

Wilson said the stipend idea came from the City Manager's Office – they liked that idea because it's a one-time deal and it wouldn't be making additional changes to the pension calculations.

Apple said according to his findings, the latest CPI rating is 3. He noted that according to policy, a cost-of-living increase can only be for half of what the current CPI is. The most we could do is a 1.5% cost of living increase, which is not much. He said the pension fund is not being properly funded.

James said staff will soon propose to the City Council increases in employer and employee contributions to the pension plan that have been worked into the FY 24-25 budget. James said when the IRS comes back with their findings, the Commission would be in a better position to make further adjustments.

Chairman Bayones said finance was asked to increase employee and employer pension contributions by 3% for the FY 2024-2025 preliminary budget. Council would have to bless off on this change before it can be implemented.

Ellwanger said a COLA seems to be out of the question right now. He said the issues with the pension fund need to be addressed and corrected before this happens. Ellwanger said he thinks staff should send a notification out to retirees letting them know about the pension miscalculations.

Wilson said the five individuals on the agenda for today will be receiving a letter explaining their situation.

Rogalski said he thinks it would be reasonable to send a letter to all employees advising them there is an issue that staff is currently working out, it's going to take a while to get resolved and staff is suspending cost of living increases until the issue is resolved. He said if we are going to sit on COLA increases, then we should explain to retirees why we're doing it.

James asked for opinions regarding a stipend.

Rogalski said it would be good, if it were to be coupled with a COLA in the future.

Wilson said he does not believe City Code allows for a stipend for retirees.

Rogalski said obviously City Code could be changed to allow for a stipend, but he believes a COLA should be considered after the miscalculations are addressed.

Chairman Bayones noted that Andrew Hill will soon be resigning from the Commission. She asked for recommendations on a replacement for Mr. Hill.

Wilson said we will have to pull the Trust Indenture and City Code to see what the membership requirements are.

ADJOURNMENT

Motion by Apple, **Second** by Ellwanger, to adjourn the March 13, 2024 meeting. **AYE:** Ellwanger, James, Rogalski, Apple, Petersen, Bayones. **NAY:** None. ***MOTION PASSED.***

There being no further business, Chairman Bayones adjourned the meeting at 11:30 A.M.