MINUTES
PENSION TRUST COMMISSION
2ND FLOOR CONFERENCE ROOM
NEW CITY HALL
August 22, 2013 – 9:00 A.M.

Jerry Ihler, Chair, called the meeting to order at 9:00 a.m. in the New City Hall 2nd Floor Conference Room. Notice of meeting and agenda was posted on the City Hall notice board as required by law.

ROLL CALL

PRESENT: Teri Bayones; Paul Ellwanger; Jerry Ihler; Andy Hill (entered late); Bill Kindt; Steve Livingston; Joe Mercado.

ABSENT: None

ALSO PRESENT: Sherry Anderson and Tanya Riley, Human Resources; Denise Ezell, City Clerk's Office; Tim Wilson, City Attorney's Office.

II. Introduction of Visitors

Ihler stated we have no visitors today.

III. Approval of Minutes from June 13, 2013.

This item was struck.

IV. New Business

Ihler stated let's move to item E.

E. Discuss: (1) the Qualified Domestic Relations Order [QDRO] the City received In re the Marriage of Kimberly Endicott and Richard Endicott, FD-2011-193 District Court of Comanche County, and (2) a memo from the law firm McAfee & Taft regarding the QDRO, and take appropriate action as necessary.

Wilson stated let me give you some background before we get Prince on the phone. Rick Endicott questioned whether his Qualified Domestic Relations Order qualified under Lawton City Code. I brought these concerns to the Commission's attention and you authorized us to make contact with Papahronis. He asked his partner Jim Prince to review the QDRO. Ihler and I had several conference calls with the firm and they sent the attached memo regarding the QDRO. I'll go ahead and get Prince on a conference call so he can explain his memo and his concerns.

Wilson calls Prince. He advised Prince he was on speaker phone and announced everyone that was in the room. He explained he had given the Commission an introduction to Endicott's QDRO.

Prince stated the way the QDRO attempted to divide the benefits is inappropriate. It requires benefits be provided that are not provided for by the plan. It violates both the terms of the plan and state law. A person's benefit under a retirement plan can't be given to another

person. There is a specific exception relating to a divorce. In order to qualify for that exception there are specific requirements that have to be met. The order of the court can't require the plan to provide benefits that aren't otherwise provided or increase the liability of the plan. For those reasons I don't believe this order satisfies the requirements of state law or the plan provisions.

Wilson stated your memo talks about the plan providing that the alternate payee be treated as the surviving spouse if Endicott dies. That violates state law and our retirement plan.

Prince stated right. That is one of the benefits it provides that is not provided for in the plan and it essentially increases the plan. The other provision that is problematic is the provision she is suppose to get benefits paid to her immediately. Both the plan and state law prohibit the benefits to a spouse prior to retirement or withdrawal of the employee.

Wilson asked does anyone have any questions of Prince. They are indicating they have none. I suggest the board make a motion to reject the Endicott QDRO and notify the employee and alternate payee of the action. They can submit a new QDRO if they so desire.

Motion by Ellwanger, **Second** by Kindt, to reject the Qualified Domestic Relations Order received by the City In re the Marriage of Kimberly Endicott and Richard Endicott, FD-2011-193 District Court of Comanche County, and that notification be given to the employee and the alternate payee of this action so they might submit a new Qualified Domestic Relations Order that meets both City Code and State law. **Aye**: Ellwanger; Ihler; Hill; Kindt; Livingston; Mercado; Bayones. **Nay**: None. **Motion Passed**.

F. Discuss the retirement plan provisions that address Qualified Domestic Relations Orders [QDROs], to include the manner in which the retirement system processes QDROs, and take appropriate action as necessary.

Wilson stated on this item there are three things to talk about. McAfee & Taft has submitted two invoices the Commission needs to accept and pay. Since the City doesn't have any QDRO language Price has provided two sample that was included in your packet.

Prince stated I would be glad to answer any questions. One is for someone who is already receiving benefit and the other for someone who is not. Do we want to talk about the overall alternative?

Wilson stated yes. One of the things the Commission authorized Prince to do was to look into our code to see if we needed to make any changes. He did this and has some ideas we may want to consider.

Prince stated we may need to clarify the plan specifically to indicate it has two general categories of benefits. One is a lump sum that is based on the contribution made on behalf of the participate and the other an annuity payment over a period of time. The two different benefits are not necessarily the same in value. Because of the two different benefits you may need to speak with divorce attorneys on how they are suppose to word the QDRO. It might be helpful to clarify and simplify the language in the plan. The former spouse is referred to as the alternate payee. The alternate payee only gets a portion of what the participant would have gotten. The

alternate payee has to get it in the form that that the participant chooses. This doesn't require a lot of changes to the code but we would suggest some specific language.

Wilson asked does anyone have any questions.

Hill stated will a Judge allow the plan to dictate that the participant is the only person that decides how the money is drawn.

Prince stated I think they will if it is in code. Maybe by doing this the court will order the participant to choose a particular form of benefit. They are saying that the plan only provides one of the alternatives. They are different types of benefits. If it is in code I believe it will hold up.

Hill stated there wasn't anything in your language that stated who is to determine the percentages. Should it be in the plan?

Prince stated I don't think it should. That is determined by agreement of the parties.

Ihler stated the one limitation would be that the sum of the two parties could not exceed 100% of the benefit.

Prince stated absolutely. That is in your plan and State law.

Wilson stated that was one of the problems with the Endicott QDRO.

Prince stated correct.

Wilson asked are there any other questions. It doesn't appear the Commission has any other questions. We will discuss this and then I will make contact with you on their decision. I assume if they want to make the changes you have language that would need to be added.

Prince stated that is correct.

Wilson asked would there be a problem using the sample language in the meantime.

Prince stated no.

Wilson stated we appreciate your time. If there are no other questions I'll disconnect the phone call. Thanks.

Prince stated thank you.

Ihler stated I like the idea the alternate payee is to receive the same benefit as the employee. I think it works better from an administrative standpoint.

Wilson asked would the employee have to make that election at the time of the divorce. The DQRO may have to state that the option the employee takes the spouse gets a certain percentage of that.

Ihler stated it is my understanding they could not receive any of the benefit until the employee retires.

Wilson stated that is correct. It is that way right now.

Kindt stated so the employee has a choice of taking a lump sum or an annuity and the spouse has no say in which option the employee chooses.

Wilson stated until an order is entered the spouse doesn't have a right to anything. Their rights are defined in the QDRO. Prince is saying lump sum verses annuity is like apples to oranges. They are not equal. He is suggesting some type of language in code that says the alternate payee has to get the same type of benefit as the employee has elected.

Ihler stated we want it to state it is based on the employee's election.

Wilson stated the language will state that. Prince will prepare language that says alternate payee's benefit would be subject to the election that the employee makes at the time of his/her retirement or at the time of his/her divorce.

Livingston stated there could be problems making a final decision at the time of the divorce.

Ihler stated not knowing how long the employee is going to work I don't know how you could make that decision.

Wilson stated there may have to be some specific language for that. Prince will have to give us some more guidance on that.

Hill stated I can see a Judge totally ignoring what the participant chooses.

Wilson stated if the QDRO goes against the code it would be a non-qualifying QDRO and we would reject it.

Ihler stated just like we are doing now on the Endicott QDRO.

Wilson asked do we want McAfee & Taft to draft language making the benefit the same requirement for the employee and the alternate payee.

Ellwanger stated I think we should clarify that from our point of view.

Wilson stated doesn't mean we have to adopt the language. We have sample QDRO's we can use if an attorney wants some guidance. We also have two invoices from McAfee & Taft and we will need a motion to authorize payment. One is for $330 and the other for $660.

Motion by Kindt; **Second** by Ellwanger; to pay the two outstanding invoices to McAfee & Taft in the amount of $330 and $660. **Aye**: Ihler; Hill; Kindt; Livingston; Mercado; Bayones; Ellwanger. **Nay**: None. **Motion Passed**.

Motion by Ihler; **Second** by Ellwanger; to have McAffee and Taft prepare code language for the Commission to consider. **Aye**: Hill; Kindt; Livingston; Mercado; Bayones; Ellwanger; Ihler. **Nay**: None. **Motion Passed**.

A. Receive quarterly financial report from Morgan Stanley and take action if necessary.

Armstrong stated move to the first part that says "performance report". At the top is a series of numbers. We will start in the upper right hand corner where it says "since inception". Since inception was back in November of 2007 until now. Look at the line that says "net investment capital". That is how much money has been deposited into the account since 2007. You put money in and money comes out. About $34,000,000 has gone in. Next is "net portfolio appreciation". It has grown by $10.7 million for a total value of $44,800,000. That is the value of the account. Below that is 28.42% which is the accumulative return. Divide that by the number of years and it averages out to about 4.5% per year since we started. For the past five years it has averaged 5.75%, for the past three 7.6%, and the last twelve 7.58%. This year it is up 6%. That is not annualized it is the actual amount. It is holding up pretty well. I believe the actuary is 6.5 or 6.75 and we have done that for the past three years. Still a tad below inception because the market crashed 50% in that time period but it has come back up nicely. Right now we are getting a little bit of a headwind on bonds. When interest rates go up bond prices go down even though the maturity value stays the same. When the report says how much you have made or lost we are not calculating off the maturity value it is calculated off the current market value. That will affect it some but it hasn't yet. It will as times goes by so we are trying to take that into account. Are there any questions on the performance?

Armstrong stated flip the page to where it says "annual performance summary". That is what it has made each year. Go to page five. This is the beginning of everything the plans owns. First you see the equities/stocks. The stocks we own are not individuals they are mutual funds or what is called exchange traded funds. There are all the different stocks owned, the current market value and the gain/loss. The ups and downs are all built into the performance. Looking at page six you see stock funds continuing. Below those is the fixed income, treasuries and mortgage backed bonds. Page eight and nine are all the bonds. We are using some mutual funds now instead of actual bonds because of interest rates going up and bond prices falling. We think they will hold their prices better and do better in a raising interest rate environment. They don't have the government guarantee but we think they will make more and be less volatile in price than the mortgage bonds. We won't to keep the bulk in government agencies of some type. At the bottom you see we have $2.7 million in cash. We had some t-bills mature and we are looking to see where to reinvest. Sometimes cash is good. Right now it is paying zero. It is a good idea to keep it there with interest rates going up and bond prices falling. We may get bonds cheaper when the up kick slows down. Are there any questions.

Ellwanger asked on page eight under "total mortgage back" we have about 30% of our portfolio in mortgage back right?

Armstrong stated yes.

Ellwanger asked how are those affected with interested rates right now.

Armstrong stated when interest rates go up they go down. The maturity value stays the same but the price goes down. Look in the middle of page seven where it says "331,000 FHLMC". The current price says 88. That means 88% of the face value. We bought the bond at $1000. That is our cost of 305,000 and we are guaranteed face value. If we sell right we would have a $33,000 lose. That -33,000 is included in the performance reports. We report the performance based upon market value and not guarantee. It causes more volatility in the short run performance figures. That is why when we report to you we look at one, three, five and since inception. That tends to smooth everything out and gives us a better feel. Does that answer your question?

Ellwanger stated yes.

Armstrong stated for the last several years, to protect us, when interest rates got low we bought short term bonds instead of long term. They hold their price better. Another thing we did was change from 35% stocks to 50%. You are long term investors and can live with more volatility. Looking at the next page at the asset allocation you will see that is where we are. The pie chart shows 7.85% in cash. That is the $2.7million and the cash that is buried in the mutual funds. We have 44% in US stocks with 6% in foreign. We are right at 50%. Look below where it says "stock sector". Those are all the different sectors the 50% is invested in. In the upper right hand corner there are two boxes that look like tic-tac-toe boxes. The right one doesn't apply because the mortgage bonds are not picked up on this report. The left is all the stocks and mutual funds owned. They are pretty well balanced. You see where is says 22/23/23. That is the percentages of your large stock. The vertical columns are value/core/growth. The 22 means 22% of the 50% are in large value companies. The 23% is in large growth and the middle is large/medium/small value. We try to keep mostly large because they are safer. The medium and small bounce around more but over time makes more money. We try to balance value/core/growth around33%. So we shoot for 25/25/25 across the top, the middle at 5/6/5 and the bottom at 3/3/3. We are very close to all of that. We are a tad high in medium because it has made a little more money recently and grew a little faster. It is not far enough out that we would sell because we are still well within the range. The rest of the report is about the diversification. Are there any questions.

Ellwanger stated I would like to say thank you. You are here at every meeting and I appreciate that. This is very informing.

Armstrong stated thank you. We enjoy coming and appreciate your trust. You have trusted us for long time now and we appreciate it. So thank you very much.

Ihler stated thank you.

B. Receive Quarterly Employees Refunds Made From Retirement System and Receive Quarterly Statement of Receipts and Disbursement and take action if necessary.

Ihler stated since the Finance Department is not here I would ask you look at the numbers. Our assets are at $47.4 million, total expenditures for the fourth quarter $1.2 million and year to date just under $4.7 million. We had a net decrease of $311,000 for the fourth quarter and our fund balance as of June 30th is $47 million. Next are the employee refunds with a payout of just slightly over $200,000. If you have any questions I can relay those back to Finance and have an answer at the next meeting.

C. Receive Report on Number of Employees Enrolled in the Pension Prior to Career Averaging and the Number of Employees Enrolled in Career Averaging and take action if necessary.

Riley stated as of July 1, 2013 we have 547 general employees. Of those 132 were hired since July 1, 2011 when the career averaging began. That is approximately 24% of your general employee population leaving 415 or 76% that are not under career averaging.

Ihler stated 24% in 2 years that is a lot. I don't believe we will stay on that kind of pace but it is a good start to addressing the unfunded liability.

Livingston asked do we do an actuarial report every 2 years.

Ihler stated yes. Are there any questions.

D. Receive Report on an annual handout for employees updating them on their personal pension status and take action if necessary.

Ihler stated if you recall we had requested HR to work with our actuary to put together a handout for the general employees that showed their retirement benefits. Two weeks ago we received our first one. It advised each employee how many years they had with the City, if they were vested as of December 31, 2012 what their benefits would be, or if they worked until the age of 62 or if they worked until the age of 65. It also included their estimated social security benefits for each of those years.

Wilson stated this was a very positive handout.

Bayones stated all the feedback that I received was positive.

Wilson asked did it consider career averaging for those under career averaging.

Ihler stated yes. It was based on your actual type of retirement. It was a very good information piece. I'm sure HR was flooded with calls since this was the first time but we appreciate you moving forward with that information. The intent is to do this once a year for the employees.

V. Consent Agenda

FOR THE BENEFIT OF THE AUDIENCE, ALL MATTERS LISTED UNDER THE CONSENT AGENDA ARE CONSIDERED TO BE ROUTINE BY THE PENSION COMMISSION AND WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA PRIOR TO ROLL CALL AND WILL BE CONSIDERED SEPARATELY.

A. Consider Application for Normal Retirement for Paula S. Pierce
B. Consider Memo of Information Regarding the Death of Retiree Dorotha Brister
C. Consider Application for Normal Retirement for Alice Sue Sovo
D. Consider Application for Normal Retirement for Vernon Broomfield
E. Consider Application for Normal Retirement for Barbara Taylor
F. Consider Application for Normal Retirement for Juan B. Peredo
G. Consider Application for Normal Retirement for Theeda Gay Jones

Kindt stated I would like to pull items A, E & F. That would be Pierce, Taylor and Peredo.

Motion by Ellwanger; **Second** by Hill, to approve items B, C, D, and G of the consent agenda. **Aye**: Kindt; Livingston; Mercado; Bayones; Ellwanger; Ihler; Hill. **Nay**: None. **Motion Passed.**

Kindt stated the agenda item commentary states she is to receive $1,110.35 per month but in the paperwork it states $2,589.36.

Ezell stated the agenda commentary is incorrect. It should be $2589.36.

Motion by Kindt; **Second** by Mercado, to approve item A, Paula Pierce, of the consent agenda with stated corrections. **Aye**: Livingston; Mercado; Bayones; Ellwanger; Ihler; Hill; Kindt. **Nay**: None. **Motion Passed.**

Kindt stated again the agenda item commentary states $4,144.00 and it should it be $1870.30.

Motion by Mercado; **Second** by Kindt, to approve item E, Barbara Taylor, of the consent agenda with stated corrections. **Aye**: Mercado; Bayones; Ellwanger; Ihler; Hill; Kindt; Livingston. **Nay**: None. **Motion Passed.**

Kindt stated and the same for this agenda item commentary. It states $4,144.00 and it should state $975.85 and the $650.60 for surviving spouse.

Motion by Kindt; **Second** by Mercado, to approve item F, Juan B. Peredo, of the consent agenda with stated corrections. **Aye**: Bayones; Ellwanger; Ihler; Hill; Kindt; Livingston; Mercado. **Nay**: None. **Motion Passed.**

VI. Comments

VII. Audience Participation

Motion by Ellwanger; **Second** by Hill, to adjourn. **Aye**: Ellwanger; Ihler; Hill; Kindt; Livingston; Mercado; Bayones. **Nay**: None. **Motion Passed.**