

BUDGET, FINANCE AND PERSONNEL COMMITTEE

March 1, 2011

3:30 P.M.

Councilwoman Berz, Chairwoman, called the meeting of the Budget, Finance and Personnel Committee to order with Councilmen Rico, Ladd, Robinson, Benson, Scott, McGary, Murphy, and Gilbert present. City Attorneys Ken Fritz and Patrick Bobo; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Dan Johnson, Mike Patrick, Justin Holland, Tony Boyd, Frank Hamilton, Gary Hilbert, Matt Lea, Beverly Johnson, Tony Sammons, Richard Beeland, Fredia Kitchen, Daisy Madison, Ulystein Oates, Randy Ray, Cristy Creel, Danny Thornton, Vickie Haley, Chief Parker, Simone White, Greg Haynes, Paul Page, Steve Leach, Lee Norris, Bill Payne, Dennis Malone, John Bridger, Donna Kelley, Larry Zehnder, Tim Hoback, and Chief Dodd.

Chairwoman Berz stated that there were four items to be considered on the agenda today— Fire/Police Pension Board Quarterly Report; Presentation of 2011-12 Operating Budget; Discussion of the Templeton matter; and Clinic/Wellness Contract. She asked Ms. Kelley if the last item would be a brief presentation, and the answer was “yes”

FIRE/POLICE PENSION BOARD QUARTERLY REPORT

Mr. Ray Ryan made the presentation (copy is made a part of this minute material). The market value at year end 2010 was approximately \$205,310,491. The Fund's total return for 2010 was 11.8%, which exceeded the return target of 7.75%. The two real estate funds resumed paying dividends. The fund was approximately 62% in equities; 30% in fixed income; 5% in real estate; and 3% in cash. The biggest challenge for the Fund continues to be generating current income in an environment of exceptionally low interest rates. Methods are being explored of boosting current income without substantially modifying the risk profile. Progress of all managers is monitored, as well.

Councilman Benson wanted to know what percentage is in the aggressive market? Mr. Ryan responded he would say 62% is the growth portion; that there are some small allocations in aggressive growth, but not excessive.

Councilman Murphy wanted to know how much better the 12% is and was told better than 7 ¾%.

WELLNESS CONTRACT

Chairwoman Berz asked Ms. Kelley for a continuation of the earlier discussion.

Ms. Kelley thanked Chairwoman Berz, stating that this was in preparation for the clinic for the next 3-5 years; that they had put the proposal out and 8-9 good proposals were received; that they were recommending a contract with a well-established company—Marathon Health, Inc. She noted that Well Advantage was started in the 2000's in order to maintain medical costs and offer better benefits; that over the past few years, Well Advantage had established themselves as a primary care provider—that many employees did not have a primary care physician and chose Well Advantage and others made a choice to switch. She stated that they had implemented lifestyle management changes and a good number of employees were involved; that they had maintained medical costs within the budget; that in 2006, we put the insurance program out to bid and our care had taken a unique path, and we were leading in this area; that we had maintained costs; that had we done nothing, costs would have increased—there would have been a much greater increase in costs and a reduction in benefits and higher co-pays. She stated that we wanted to continue this good trend for the next five years and emphasize a medical home for employees and retirees; that this would help us go into Federal reform in a successful way. She stated that Occupational Health is a “Beast” of its own; that the clinic had been able to manage occupational health.

Tim Hoback spoke on Occupational Health. He spoke as to where we are headed, stating that he thought moving with this company, we could do better in providing a safe and healthful workplace. He stated that there will always be injuries; that the goal was to drive costs down and get employees back to work sooner; that in 2009-2010, we were all over the chart, and we got control in 2010—an Injury on Duty Ordinance was passed in July, which leveled things out; that in 2010-2011, we have flat lined; that if we get control of this now, we can move into departments with better training to prevent accidents from happening. He stated that they had been unable to pull data, mentioning the OSHA 300 Report. He again stated the goal was to keep employees at work and if there is an injury, get them back to work quickly. He stated that the City is below the national level; that in 2009 there were 244 incidents, and we cut \$9,000 off of occupational costs; that we have to partner with a company for information and take the next step and drive costs down with the best medical treatment possible.

Councilman Murphy noted that one department went tobacco-free, which made a real impact on health care spending. He asked if this policy would be expanded. He went on to say that Volkswagen are smart people—that they took new hires and had them get in shape; that he thought we could see a real return by a program like this.

Ms. Kelley stated that he was correct; that we do have a program in place in a “pocket” location; that we can do a better job, and they needed the Council's encouragement. She

reiterated that they do have a program in place; that the Fire Department had the tobacco-free policy; that there will be changes coming up.

Councilman Murphy asked about new hires, stating that smokers are not a protected class.

Chairwoman Berz stated that Ms. Kelley had made promises to lower costs and that she had done a fabulous job.

Ms. Kelley stated that this is Part A—that there will be a Part B.

PRESENTATION OF 2011-12 OPERATING BUDGET

Ms. Madison stated that she would make this short; that she was presenting the Budget Requests, and the Council had a book to facilitate review. She went over the Table of Contents, noting that each department has a summary, and it begins with an executive summary, which would explain to the Council the major changes; at the end of each department is a spread sheet, which is organized in a manner to help the Council review the Budget as they come in. She stated that everyone would work on this together. At this time, she recognized her Staff and stated she would respond to questions.

Chairwoman Berz stated that Daisy and her Staff had done a terrific job, and she knew that long hours had been spent.

Councilwoman Scott added that they were a crew of heroes; that she knew this was a draft, and it would change a lot; that in view of the controversy last year, she asked if we could do “draft marks” on all these sheets (water marks).

Ms. Madison explained that to do this, they would have to re-do the whole book.

Councilwoman Scott mentioned the internet file and putting the “water mark” on all. She asked if they thought this could be done? Ms. Madison indicated that she thought this could be done. Councilwoman Scott asked Richard Beeland if we could have a Budget Section linked to Draft? Ms. Madison stated that this was not intended to be a draft but is requests.

Councilman McGary asked when the Budget Draft would be produced? Ms. Madison responded mid-May—subject to their abilities to meet. Chairwoman Berz pointed out that the Council had received a schedule with dates.

TEMPLETON MATTER

Chairwoman Berz stated that Councilwoman Scott had asked to address the Templeton matter at this time during committee; that she had asked that Steve Leach, Lee Norris and Mr. Templeton be present; that she had a power point presentation.

Councilwoman Scott approached the podium. She mentioned that Internal Audit had performed several audits in the last year concerning conflicts of interest, and she was concerned about this; that we could not have a discussion in private and here we were in public. She continued, stating that Internal Audit did an investigation concerning conflict of interest within Citywide Services and possible bid manipulation, She stated that these concerned problems needed to be looked at.

She noted that Attorney McMahan had looked at four issues: (1) Contract relating to operation of scales at Birchwood Landfill with Environmental Materials, LLC entered into in 2004; (2) Solid Waste Handling and Disposal Contract with Chattanooga Transfer, LLC entered into in 2005 involving hauling garbage from the Transfer Station on Wisdom Street to Birchwood Landfill; (3) Blanket Award of bid in 2008 for Refuse and Recyclables Transport from the convenience centers to the landfill with City Disposal Services; and (4) Front End Loader Bid in 2007. She noted that these companies are all owned by the same individual, and there is nothing illegal with this; that Mr. McMahan found no violation of conflict of interest; that this occurred before the Code of Ethics was passed. He found insufficient evidence of bid manipulation. She mentioned Mr. McMahan's quote "The Audit Reports reflect that Mr. Templeton's brother worked for Chattanooga Transfer and stepchildren have worked for one of the entities owned or operated by Mr. Ray Marler". She went on to say that in July of 2007, the Code of Ethics was passed, and she read from the Code of Ethics.

Councilwoman Scott then passed out the job description for the Director of Citywide Services and proceeded to read from the job description in detail. One of his duties was to provide oversight.

She next passed out a copy of the memo sent to the Council by Michael A. McMahan (which is made a part of this minute material). She stated that she would like to point out a few things. She again referred to the four issues previously mentioned. She read from page 2 of the Memo which states "I have concluded from my investigation that Mr. Templeton exercised minimal oversight with respect to any of these contracts". She also mentioned that on the next page he says that there are also video cameras available to record what is occurring, but apparently they have not been utilized by the City to verify compliance by the scale operators. In a following paragraph he states that there is no proof offered in either report (Internal Auditor and Audit Committee) that the scale house has not been honestly and accurately operated. Councilwoman Scott questioned why we have cameras and are not using them.

Councilwoman Scott noted that Mr. McMahan stated that the Contract with Chattanooga Transfer, LLC pre-dated the enactment of the Code of Ethics, which meant to her that we had No Code—so therefore there was no violation. She stated that she did not talk with Mr. Marler, who is represented by counsel. She noted that Mr. McMahan stated that he had been told that Mr. Templeton had no material involvement in either the preparation of the RFP, the evaluation of the proposals, or the negotiation of the contract. The RFP was written by Mr. Stewart. She went on to say that the Report of Mr. McMahan stated that after the enactment of the Code of Ethics, it would have been better if Mr. Templeton formerly notified Mr. Norris and the Administrator of Public Works of his personal interest and avoided any question by totally removing himself from any management responsibilities. He went on to say that there is no evidence, to his knowledge, that Mr. Templeton has in any way participated in a manner detrimental to the City with respect to this Contract; that the Department of Public Works is now fully aware and plans to remove Mr. Templeton from any management involvement by having Mr. Boyd report directly to Mr. Norris for matters relating to this contract.

She noted that Mr. Templeton recommended an increase in the unit price from \$76 to \$92, but Gene Settles, who was then Purchasing Director, refused. Allied Waste submitted a lower bid; that Mr. Settles recognized that the specifications were inadequate. Mr. McMahan says that based upon his interviews of the public works employees involved, he was convinced that they thought their evaluation was proper and would provide the lowest cost to the City; that in his opinion, the evidence is insufficient to support a claim of bid manipulation.

Councilwoman Scott stated that she was so confused by reading the Internal Audit Report and this document by Attorney McMahan of his investigation, that she asked Internal Audit to please do a timeline, which she placed before the Council and which is made a part of this minute material. She added that much has been made that some of this may have happened before 2007—therefore the presumption is that this is a new day—that we adopted a new rule in 2007. She took another look at the Code of Ethics which we have adopted—that the Council approved. She then went over the extensive Timeline. She asked Attorney Fritz if when a bid is thrown out, the ballgame starts all over again? He responded that that was correct. She referred to incidents in the timeline and read from Tennessee State Law.

She then outlined her concerns: (1) During this past year, we have had issues with the City Attorney and conflict of interest has been raised. (2) We have had issues with the Director of Education, Arts and Culture, again with conflict of interest. (3) Director of Citywide Services, and the issue of conflict of interest was again raised. (4) Outdoor Chattanooga—a concern with conflict of interest and also money missing. She stated that she would like someone to tell her—do laws and rules matter? Do ethics matter? She noted that we pay managers more, and we should expect more and for them to exercise good judgment. She wanted to know where the line between right and wrong is? She questioned if we had done enough to educate people, stating that she would like to know that managers understood; that she would like to see Public Works' documents that show people are being educated about this and none exists.

Councilwoman Scott went on to say that managers cannot be role models of what they don't understand, and they should not manage if they don't know the policy. She added that the Council is elected for oversight, which is one of their responsibilities but it may be "overlooking" rather than "overseeing"!

She mentioned personal interest, stating that here we have four different contracts, a job description, and subordinates and that worried her; that from the Council's perspective, we needed to confer with the City Attorney on some matters. She mentioned the case of the Arts, Education, and Culture Director, where the City Attorney had a conflict. She stated that her suggestion would be that we ask for a reallocation of one current part-time city attorney to counsel the council to start the next fiscal year. She said that she would like for this to be re-examined and like to know from the executive standpoint if the City Attorney would be willing for the Council to have a part time City Attorney—that if the Council did not need this person, he or she could help with other matters in the City Attorney's office.

Chairwoman Berz stated that this was an excellent presentation.

Councilman Benson stated that he could agree with Councilwoman Scott when she talked about the responsibility that administration has for performance evaluation as it relates to Appeal Hearings; that we have had excellent evaluations that turned out to be no good. He stated that he did not blame employees and did not want Jim Templeton to be a "sacrificial lamb"; that he had a great deal of faith in him; that the Ethics Ordinance was passed in 2007 when we had a Council person who violated the Code of Ethics; that one should recuse themselves if they had any family who would profit from any action taken by the Council. He went on to say that the perception was that this was Jimmy's problem; that he would like to see his evaluation; that Jimmy Templeton was a man of honor and does a good job; that he thought we all had failed. He stated that he was embarrassed at how we are managing employees; that we never see a Performance Growth Evaluation. He went on to say that this is an educational problem and would be happy to see that administrators do take some initiatives in education; that some employees probably knew nothing about conflict of interest.

Councilman Benson stated that as far as City Attorney counsel with this group, he thought that would be a wise move and someone from the City Attorney's office could be designated; that we have had instances in Appeals Hearings where the City Attorney advises against an employee. He added that in defense of Mr. Templeton, he knew that he was prejudiced, but he had full faith and confidence in him; that he had not been educated by those over him.

Councilwoman Ladd stated that she had been making notes during the presentation; that as far as the timeline, she was interested in Mr. Templeton's job position and when these contracts were awarded. She wanted to know at what point he had this position; that the job description would be observing as how it relates to him getting the job done—that it was more of an

operative to get the work done. She stated that she, too, believed most issues are educational; that we expect reasonable and honest behavior, and employees need to be educated to a conflict being perceived; that they perform their job routinely, and it is our job to educate more; that she agreed with Councilman Benson; that she felt like it was the Council's and Mayor's job to insure that a process is in place that works and repairs flaws; that she thought we had a good checks and balance; that when we approve a process, we have to make sure it is a good process and then support this program. She stated that she was not for over-management, but we need to make sure that the current process works; that lots of checks and balances do work. She then addressed Scale House Operators, stating that the Council voted to hire our own employee, which should take care of this.

Councilwoman Ladd noted that we already have the right to hire an attorney; that we also have MTAS available to us and can also refer to the State Attorney General's office; that we need to use these resources before we look at a part time salary and another person; that she would like to look at other resources. She stated that she knew she was rambling; that she really thanked our managers for doing what they need to do and also appreciated our other checks and balances.

Councilman Gilbert thanked Councilwoman Scott for her presentation, stating that we need accountability; that a lot of employees don't know Federal and State laws; that he did agree that employees needed to be trained better; that Donna Kelley keeps up with Federal and State laws and should be able to advise administration and management; that if people don't take the advice, then they should be terminated. He stated that we needed to evaluate our policy and look at our policy, both written and verbal; that if people don't follow policy, then they should be terminated automatically; that they need to know what could cause them to get fired so that they can follow the rules; that employees need to know the rules. He stated that getting back to Mr. Templeton, he did not know him; that maybe our attorney should look again to see if there were any violations; that he liked Attorney McMahan but knew he had a really difficult job balancing between the City Council and the Mayor; that the Mayor is the "Head Honcho", and we might need a person with a different view, who is not controlled or slapped on the wrist by the Mayor. He stated that he had brought up before the Council having an individual lawyer to look at cases and evaluate cases—that he was not saying that Attorney McMahan would do it one way or another, but he would be going against his "bread and butter" because he answers to the Mayor and few go against him. He stated that he, too, thought we needed someone to look at our concerns.

Councilwoman Scott stated that she appreciated the feedback; that some seem to be interested in representation for the Council and others don't think it is as necessary. She stated that she went to Attorney McMahan before she had all of this information; that she had questions about contracts and how they became the way they were; that we were doing business with multiple entities; that how a private landfill was using a scale seemed unusual to her, and she had a conversation with Attorney Bobo, along with everyone from the heads of

Public Works, the City Attorney, and Mr. Jerry Stewart—that she had conversations with them about this and the owner being the same entity, and they all had no problems with this; that she thought the contract needed to be reviewed because she thought it was not in the best interest, but they all said “no problem, there is nothing wrong”; and then all this comes out. She stated that she had no way of knowing whose friend is someone else’s best friend; that if this was her company, she would be doing things a lot differently.

Councilwoman Scott stated that she expected management to teach about conflict of interest, questioning an employee with a number of years work experience having to be educated on conflict of interest—that there were some things that one just ought to know; that this person had been on the job a number of years and had the same job description in 2007; that this individual wrote this job description; that if you don’t know the policy and are over this many people you “by golly” need to know it and should not have to be instructed about this basic thing; that this was all bad judgment on our part.

Councilman McGary stated that he would like to speak to this Council needing our own personal attorney—that he wanted to know “how we get this train moving” and move to the next step versus just talking about it.

Attorney Fritz stated that the Council can already have their own counsel when there is a conflict of interest; that the authority is already there.

Councilman McGary responded “then we are authorized to do it and just need to do it”.

Attorney Fritz stated that the authority is there when the conflict is identified.

Councilman Murphy noted that there is a limited number of attorneys in this city with municipal experience and most of them are already working for us; that there would be very few part time people available with this expertise and that it would be very expensive for this Council to have a full time attorney in-house or out-house. He stated that in looking at how an in-house attorney would get paid, with the level of expertise needed, he was stunned. He stated that he would caution the Council that this would be a very, very large fiscal cost; that when we have an actual conflict, we have the authority to hire an attorney.

Councilwoman Robinson stated that she agreed with Councilman Murphy; that we wrestled with this when talking about an individual auditor, and it was handled with Randy Burn’s expertise, and the system is working; that with regards to a city attorney for temporary assistance, she was not sure how practical this would be; that there was no question in her mind but that our attorneys can work in the City Attorney’s Office and can work on assignments independently for the Council—that they are perfectly capable; that she was willing to talk about this more but was not sure it was a practical solution.

Chairwoman Berz reminded everyone that we have two more committee meetings to come forward and asked if this matter should not be deferred for further conversation.

Councilman Rico stated that there was no doubt in his mind that we could get an attorney if something “bad” or “illegal” was going on—that we could hire an attorney, and he knew we could; that it is proven that this would cost a big amount of money, and we should not be spending any money at this point and should not be worrying about an outside attorney on this situation; that we were wasting our time.

Councilman Benson stated that the real problem is when a Council person is in conflict with the Mayor and his Staff, and when this happened, we hired Roger Dickson at a good price, and it was a very beneficial agreement to have our own attorney, but these were hard economic times. He questioned if we could afford an “East Ridge” attorney.

Chairwoman Berz noted that Councilwoman Scott had asked for other people to be present at this meeting and speak. She asked if this was still a necessity?

Councilwoman Scott stated that when we exercised our right to an outside attorney, it was 5, 6, or 7 years ago; that she would repeat, she was not asking for a new attorney to be hired; that we could have one work part time, and he would be our dedicated attorney but could also do work for the City Attorney’s office as well, but he would be our “point” person. She stated that she did call the City Attorney’s office a lot—that it would be no different—that the work load for the attorney would be based on what they were doing. She stated that this was not a money issue; that she would be asking for a legal opinion; that she liked the idea that there could be an attorney who could take “one hat off and put on another” and be our resource. She questioned if the Council really had anyway of knowing if anything is wrong or money is missing. She stated that if the Council did not take off their blinders, they would not know. She went on to say that this question is being asked for transparency purposes and to protect the public from things that do happen and that was why she was bringing this up; that adequate protection was not in place, and she strongly agreed that we needed this; that we needed to get a City Attorney allocated to the City Council to be our own representative and to work overtime when we have questions, and they could look at it from our perspective rather than globally. She stated that we were two bodies that need to work together, and this is an incomplete process.

Councilman Benson stated that if this were a motion, he would second it or asked if we needed a consensus vote.

Chairwoman Berz asked if it were the consensus of the committee that we want a separate counsel out of the City Attorney’s office to address council issues?

Councilwoman Robinson stated that she was in favor of an as-needed basis.

Councilman McGary noted that according to the Charter, it was his understanding that in times of a conflict, we can ask for broader representation, but this is only if there is a conflict.

Councilwoman Scott stated that we could try this, and if it does not fit we can re-look at it.

Councilman McGary wanted to know what she was talking about.

Councilwoman Scott responded having an attorney on the City Attorney's Staff that would be our point attorney if we have legal questions.

Councilman McGary stated that he thought this was two separate things—that if there is a conflict, we can hire an outside attorney. He wanted to know if there was something different in the Charter to cover what Councilwoman Scott was talking about?

Councilwoman Scott noted that he was asking if the Council had the ability to do this; that perhaps we needed clarification and a separate Ordinance.

Chairwoman Berz stated that the Council has the right to go for outside counsel when in-house counsel cannot properly handle matters.

Councilwoman Scott stated that she agreed with this.

Councilman McGary again stated that this was in time of conflict—that we could have an outside attorney as needed but what he understood Councilwoman Scott was saying was that we have someone working for us, whether it is a conflict of interest or not and one who will be able to do assignments over and above just conflicts. He wanted to know if we had this broader process.

Councilman Murphy stated that he understood Councilwoman Scott's point, with Chairwoman Berz stating let her explain it.

Councilwoman Scott stated that she wanted to know if we could consult with an attorney about an issue relative to the business of the City Council and find out what the law says about this; that we don't have this ability now; she wanted to know what would give us this option looking from a legal perspective and not just conflict of interest. She stated that she would like to be able to contact someone and would like a person designated in the City Attorney's office who the Council can call; that she would be asking questions and would prefer to have this person looking at this with fresh eyes; that one of the Council's functions is oversight and would like to have someone to back away from the administrative side and perceive things from the Council's side. She questioned how we could get that—that she did not know, but she would continue to need it.

Dan Johnson stated that he thought our Attorney would answer any question when Councilwoman Scott calls; that he had a problem with one attorney being designated; that he did not think we had a problem here; that the City Attorney is subject to all of our use.

Councilman Murphy noted that the City Attorney has a small department to run and should be able to run it as he sees fit; that he would not expect the Public Works Department to designate one person to work with the Council; that all of our municipal lawyers are specialists and have expertise in a certain field; that one attorney will turn to another attorney as to what the law is in his specific specialty—that they will turn to their colleagues to ask the law, which is way more efficient. He stated that he did not see a problem and that counsel for the City Council should be in his committee's jurisdiction, and we should not be hiring an attorney at a great expense.

Attorney Fritz explained that as attorneys, they were bound to look at an organization as a client; that there would be conflicts between administration and the legislative body, but they tried not to have an opinion; that they were bound to look at the organization and could not show favor.

Chairwoman Berz stated that we had to close down; that this could be put on another agenda.

On motion of Councilman McGary, seconded by Councilman Gilbert, the minutes of the previous meeting were approved as published.

Councilman Murphy stated that there would be no time for a Legal and Legislative Committee today.

This meeting adjourned at 5:00 P.M.