



MINUTES
Committee on Ways and Means
August 1, 2017 @ 3:30 p.m.
10th Floor Conference Room, City Hall

CALL TO ORDER

The meeting was called to order at 3:30 p.m.

ROLL CALL

Councilmember Jody Washington, Chair
Councilmember Kathie Dunbar, Vice Chair- excused
Councilmember Carol Wood, Member

OTHERS PRESENT

Sherrie Boak, Council Staff
Eric Brewer, Council Internal Auditor
Jim Smiertka, City Attorney
Mitch Whisler, Public Service
Lynne Meade
Denise Estee
Steve Maloney
Elaine Womboldt
Kathy Miles
Mary Riley, HR Director
Susan Brownlee
Mary Sabaj, CCAB

Minutes

Council Member Washington moved action on the minutes to the next meeting,

Public Comment

Public Comment will be made at each agenda item.

Discussion/Action

RESOLUTION – Grant Acceptance; Kalamazoo Street Bike Lane Extension Project

Mr. Whisler presented a plan to the Committee and explained that the project would be done between Larch and Washington. This project will also include an ADA ramp extension; curb radius improvements at the intersection of Cedar and Kalamazoo, and new stripping over the bridge. The City match will be \$45,000 coming from ACT 51 funds. Council Member Wood asked for the plan on maintenance and street sweeping. Mr. Whisler confirmed it will be the

routine maintenance schedule, larger projects require specifics, and however this is not one of those.

MOTION BY COUNCIL MEMBER WOOD TO APPROVE THE RESOLUTION FOR THE GRANT ACCEPTANCE FOR THE KALAMAZOO STREET BIKE LANE EXTENSION PROJECT. MOTION CARRIED 2-0.

RESOLUTION – Request for Approval of the Office of Community Corrections Funding Application

Ms. Sabaj presented the Committee with a summary of the key points in the plan. This is the 26th year of the joint application, and this year they did add programs including Opioid Specific Program Services and MRT Cognitive Change Groups. The total amount for the plan and services will be \$291,562.

Council Member Wood held a brief discussion with Ms. Sabaj on her potential role on the Ingham County task force addressing opioid use, and which Ms. Sabah confirmed she currently was not involved but was receiving information.

Council Member Wood asked about the bed space since the Wings of Hope closed, and Ms. Sabaj noted they recently released 30 people.

MOTION BY COUNCIL MEMBER WOOD TO APPROVE THE RESOLUTION FOR THE REQUEST FOR APPROVAL OF THE OFFICE OF COMMUNITY CORRECTIONS FUNDING APPLICATION. MOTION CARRIED 2-0.

Sole Source Purchase; Segal Waters Consulting Group, Human Resources

Council Member Washington recapped that the item was on the agenda from a referral in May; however the Committee believes that the item is not a Sole Source because they are not the only company that provides the services.

Ms. Riley defended that the prior consulting firm, Hay Group, canceled their contract unexpectedly in March 2017, and since the Department believed they had pending classifications and reclassifications, the Department chose to act on Segal Waters Consulting since Ms. Bennett the Finance Director was currently using them for the FHT, and also since the City had just done a compensation study with them for Grand Rapids. Council Member Washington reminded Ms. Riley that those explanations did not verify them as a sole source. Council Member Wood pointed out that even if it was a temporary contract to address current issues, the Ordinance does not preclude the Department from doing an RFP to engage other companies. Both Committee members believed that the procedure that was done by the HR Department was a violation of the procurement ordinance and asked Law for input. Ms. Riley then admitted that on July 10th the Department signed a retainer agreement with Segal Waters Consulting. Council Staff verified for the Committee that the Sole Source was referred on the Council agenda on May 22, 2017, then it went onto Committee and Ms. Riley was invited to attend from that point forward. Ms. Riley stated she was not able to attend any meetings until now because she was out of town on other meetings dates and also wanted to take the agreement to the Unions. Council Member Washington again stated that the procedure side-stepped the ordinance. Ms. Riley stated her belief it was an emergency situation.

Mr. Smiertka referred to two sections in the ordinance, 206.04 which speaks to emergency procurement if there is an issue that will affect the health, safety and welfare of the public. Council Member Wood noted that under that ordinance the department has to come to Council

within so many days after that. Mr. Smiertka then referred to Section 206.05 which stated it can be awarded by the Director after they have determined they have done a good faith review. It appeared, he stated, that they believe there was an exercise of discretion, and someone made the choice. Council Member Washington stated to Ms. Riley that inconvenience in this case does not affect the safety and welfare of the public. Ms. Riley justified it by stating it affected employees. Mr. Smiertka added to the discussion that under Section 206.05 it also gives the discretion to the Mayor, and has made a determination it was based on a good faith review. Council Member Wood asked Law what recourse the Committee had. Mr. Smiertka stated they could challenge the Mayor's decision, but there is no set procedure for that. However an outside competitor could challenge. Ms. Riley tried to explain further that her opinion was that Segal Waters were a sole source, because as the Director she saw mitigating reasons. Council Member Wood again stated that if it was an emergency the Council still needs to see it when the emergency occurred. Ms. Riley tried to justify it by stating the contract is only a one year contract. Mr. Smiertka clarified with the Committee that under Section 206.04 the Sole Source report needs to come to Council, and under Section 206.05 if an emergency is determined it is to be filed with the Clerk. He concluded that he will look into the issue if it is an ordinance violation. Council Member Wood asked if an RFP had been done for more vendors since Ms. Riley stated the agreement with Segal was temporary. Ms. Riley admitted they had not done anything but assist Segal. Council Member Wood then asked Ms. Riley why Hay left and Ms. Riley stated Hay wanted to have the City do a comprehensive compensation study which she believed could cost up to \$6,000 that the City could not afford. Mr. Smiertka confirmed that the current ordinance does referenced Hay Group by name. Ms. Riley then informed the Committee they had submitted the Segal information to the Unions. Ms. Meade confirmed the group she represents did participate in a presentation but they were undecided, and which point Ms. Riley stated that it did not require all three unions to agree, and she got the other two to agree.

Mr. Smiertka confirmed his two tasks from the Committee were to see if there was a violation and what the remedy would be, and secondly under 296.05 regarding collective bargaining approval, if that means all three. The information was requested to be submitted at the next meeting on August 15, 2017.

Ms. Womboldt asked the Committee what their next task would be. Council Member Wood admitted she was not sure what is next in the procedure. Ms. Riley again stated her belief she had the discretion.

Mr. Smiertka was asked to speak to the unions on their understanding of what occurred.

Ms. Meade asked how the City could get out of a one year agreement that was just signed.

Mr. Smiertka assured the Committee that it appeared Ms. Riley did follow the steps, but Council Member Washington again reiterated that Ms. Riley needs to understand the ordinances and their impact and meaning.

Council Member Wood asked Mr. Smiertka to look into the ordinance and if it has not "teeth" then advise the Committee on how they can remedy it.

OTHER

Teamsters 580 Retiree Healthcare Coverage

Council Member Washington opened up the discussion referring the Committee and law to the binders distributed at the last meeting and asked for resolution before year end.

Mr. Smiertka distributed a written document outline his findings. These findings he stated were based on the in last 2 years the courts have spoken on this issue from the US Supreme Court to Circuit Court. The question brought before him was if there was claim of vesting under personnel policies prior to the CBA and if there were grounds for a claim under the CBA of 2004-2007, which he determined there was not. The CBA is a contract, and Law must apply contract principals, and unless they find entitlements, it dies at termination of the CBA. The CBA terminated in 2007 in an actual document. Everything has potential pending the specifics of each contract. The other question Law was asked to address was if a claim is vested under policies if it is before the claimant became part of the agreement. And reasons on page 4 of the documents.

The legal contract principles in light of *Tackett* and its progeny also support the conclusion that the continuing thread of CBA benefits was allowed to be broken by the Union. The 2003-2007 CBA was terminated by the Union and not extended. This resulted in healthcare benefits for retirees being further limited by new CBA provisions.

Council Member Washington admitted that since the letter was just presented the Committee would need to read the letter and digest the information. Copies were supplied to the retirees present. Council Member Washington asked if the laws had changed since Ms. McIntyre was City Attorney, and Mr. Smiertka answered yes and it has been clarified. If a contract is specific then it occurs, if a contract is silent it terminates. The City position is that the retiree is the same as an active today.

Ms. Estee asked the City Attorney to address the complaint which started in 2010, still asked for the 2004 tie-bar date, what the significance of that date was, and why the City pre-dated if for 6 years and in turn split up the group. Mr. Smiertka stated again that the Administration's position is that the retiree follows the active, and this is an administration/labor decision on health care.

Council Member Washington referenced the February 20, 2004 memo from Mr. Colby, a City employee at the time, and why that date was chosen without explanation. Mr. Smiertka noted it was a decision at the time. Ms. Estee stated opinion that it was reflected on the time frame the drug co-pays went up. Council Member Washington noted her frustration that not everyone in the group was affected. Mr. Smiertka answered that there is policy and there is law, his opinion is and is based on law.

Ms. Womboldt provided her opinion that the City interpretation from Ms. McIntyre should have been provided at the time and it would have been in favor of the retirees. Mr. Smiertka clarified that it was Ms. McIntyre's interpretation to the Mayor of her recommendation and interpretation. Since that time there have been cases that were not in existence then. Council Member Washington's opinion was that the Mayor chose not do to anything.

Ms. Estee when on to read from her notes making statements that provided her opinion on what had happened, what was occurring, and where things stood between the Mayor and the City Attorney on this matter.

Ms. Meade asked how a memo that was not negotiated in any way, be the governing language. Mr. Smiertka stated that under case law, since there is no promise in the CBA, it is within the discretion of the administration. He encouraged the Union's now to address this topic in their

CBA for the future retirees. Council Member Wood asked if Law is looking at that topic in the current contracts, and it was stated Mr. Abood with Law is looking at it.

Mr. Smiertka noted to the Committee that since nothing has been done up to this point, it has to be done under current law. Council Member Washington agreed and noted that it should have been done under the law when it occurred in 2007, but can't be and that is not the retiree's fault.

Ms. Brownlee noted in when she was an employee with the City, under the 2001-2003 contract there was an opportunity for members in deferred to buy back their time. At that time each person got a letter and the amount they would be entitled to in health care and retirement benefits.

Council Member Washington apologized to the retirees.

Ms. Estee again provided her opinion on what occurred with a memo written by Ms. McIntyre, former City Attorney and the relationship between the Mayor's office and the City Attorney. ~~She then asked if she could attend the Retirement Board meeting and get a document, at which Council Member Wood informed her that that Board does not deal with health care.~~ Ms. Estee asked Council Member Wood if the ERS Board received actual documents to authorize a deduction from someone's pension. Council Member Wood stated no.

Mr. Smiertka stated to the Committee that he is bound by ethics, and when asked for an opinion and writing the opinion it is directed to the person who requested it. It would be up to the recipient to release the document. Mr. Smiertka confirmed his understanding that the Union cannot represent retirees, but there is nothing stopping them from putting language in their contract to protect future retirees.

Ms. Womboldt asked how many people were affected, and Ms. Estee stated 95-100, and referred to the binder which had her FOIA in its listing those names.

Council Member Wood asked how to make a policy requiring the HR Department and Retirement office to create an exit document outlining their benefits. Mr. Smiertka noted it can be relayed to the department.

Ms. Estee went on to voice her frustration and her opinion she was being discriminated against.

Council Member Washington determined the topic would again be on the agenda August 15th.

Council Member Wood added that the discussion needed to include information on the amount it would cost if the Administration decided to make the retirees whole. Mr. Brewer would continue the research on the number of people and funds.

Ms. Miles spoke in opposition to the process thus far.

ADJOURN

Adjourn at 5:03 p.m.

Submitted by,

Sherrie Boak, Recording Secretary

Lansing City Council

Approved by the Committee as amended on August 15, 2017