JACKSONVILLE POLICE AND FIRE PENSION FUND

SPECIAL MEETING OF THE BOARD OF TRUSTEES

DATE: April 17, 2017

TIME: 1:35 p.m. to 4:00 p.m.

PLACE: Jacksonville Police and Fire Pension Fund
One West Adams Street
Suite 100
Jacksonville, Florida 32202

BOARD MEMBERS PRESENT:

Richard Tuten, III, Board Chair
Richard Patsy, Board Secretary
William Scheu, Trustee
Willard Payne, Trustee
Chris Brown, Trustee

STAFF PRESENT:

Timothy Johnson, Executive Director,
Plan Administrator
Stephen Lundy, Pension Benefits Specialist
Robert Sugarman, Board Counsel (via Webex)
Jeffrey Amrose, Fund Actuary (via Webex)

CITY REPRESENTATIVES PRESENT:

Steve Durden, Office of General Counsel
Lawsikia Hodges, Office of General Counsel
Anna Brosche, City Council Liaison
Joey Greive, Fund Treasurer
Brian Parks, City Auditor's Office

GUEST: Randy Wyse, Jacksonville Association of
Firefighters

Stenographically reported by:
Denice C. Taylor, FPR
AAA Reporters
stenoz@comcast.net
904.354.4789

TABLE OF CONTENTS

SPECIAL MEETING

April 17, 2017 1:35 p.m.

- - -

CHAIRMAN TUTEN: All right. Call the meeting to order.

First we have the public speaking.

MR. SUGARMAN: Can you see me?

DIRECTOR JOHNSON: Yeah, we can see you.

MR. SUGARMAN: Good.

CHAIRMAN TUTEN: Can you see us, Bob?

MR. SUGARMAN: Yes.

MR. SCHEU: Steve, the other day at the meeting, it never appeared as a big --

MR. LUNDY: I played around with it today. I still haven't been able to -- I've got to talk to the city and find out how we make these bigger.

It only picks a random person to put on the big screen.

MR. SCHEU: Okay.

CHAIRMAN TUTEN: All righty. We're called it to order. We have a public speaker. Mr. -- how do you pronounce this, Gassett?

(Laughter)

MR. GASSETT: Thank you for the kind

introduction.

And believe it or not, I was not going to speak until I read, I think, a very fine publication by the Chairman of the Board. And also Bill's comments about whether you thought you had the moral authority or whatever to speak before the City Council on this issue. And I want to say I think you do. You have the gravitas and views fair minded. My only suggestion might be don't go too heavy on the defensive with 2015.

But the three points I wanted to make are quite simple. First of all, for you to respond in a manner that I think will add more sharpness to your blade is that the actuarial table needs to have three more 15 percent pull-backs in the market to make it an honest assessment.

We ran some tough numbers on there, and what we find on the chart on page 7 of 15 where he projected a minus 2.3 billion, we came in at 3 million under because of the failure to put that kind of analysis into the data.

My our own separate analysis, the mayor's possibility of achieving his postponement and half cent sales tax coming in in 2031 is doable, but if and only if the 4.25 percent target is actually hit.

Thirdly, what is missing -- and I've been a big advocate the whole time. What this doesn't show in the analysis is that there's actually a seepage of 45- to $50 million a year make-up that you have to make because with the current retirees, you've got to make 10 percent and you're only averaging 7, 7.1, and that somehow is getting underneath the radar.

So, you know, let's say that you kind of average the 45 million a year you need to bring up, City Council. In ten years that 450 million bucks. That's if you did nothing else.

So those are my three points. Gosh, good luck in this difficulty you're facing.

MR. BROWN: Thanks, Bill.

CHAIRMAN TUTEN: Thank you, Bill. No more speakers.

Director Johnson.

DIRECTOR JOHNSON: Good afternoon, everybody. If you would turn to page 2 of your agenda. This is the document you have in front of you. You know our purpose here today is to comment on the two proposed pension reform ordinances, which is 257 and 259.

Stephen's done a great job of sending these out to you in advance. So they're attached to the agenda and they were also sent out to you in advance.

In the week since we were last together, I've worked with Pete Strong, our actuary, and Bob Sugarman, our attorney, to put together a preliminary draft of a response.

We asked members of the Board to send us directly feedback that they might have so we didn't have to reinvent this thing right here today, that we might be able to incorporate your comments into a document. So I hope you've had time to review it.

And since the final draft of it was done by our attorney, I'm going to ask Bob, if you wouldn't mind, Bob, taking the Board through what's contained in this draft response.

MR. SUGARMAN: Sure. Thank you.

And I'm assuming that you-all have read it, so I'll just highlight what's in each paragraph, and just stop me if you want any revisions.

This is marked a "Draft." It's just a draft. This is our joint work together, so please feel free to change anything that's in here. I was just giving my best shot at what the appropriate tone should be and the appropriate comment. And if you want to tone it up or tone it down, we can do it all.

In the first paragraph, I'm pointing out the requirements that any new pension legislation be submitted to us for our review and comment, and also to recommendations and comments from the State Division of Retirement.

The second paragraph acknowledges that the council is not bound by our comments and recommendations, but nevertheless we've taken this seriously and that this is not just -- I use the words "hard work and good faith." We're just not here trying to pick something apart. We're trying to work together to give our best faith comments that we can.

The third paragraph points out that our comments are focused solely on the effectiveness of our participants and beneficiaries. The entire pension reform package, as you know, requires a balancing of the interests of the workers, the participants and beneficiaries, the unions, the taxpayers, and the city administration.

It's not our job to do that balance. The law tells us that we look solely to the interests of the participants and beneficiaries, and that's the purpose of our comments here.

So now skipping down to the first heading, and that is "The Overall Pension Reform Arrangement."

And the first paragraph says that by doing away with the 2015 Pension Reform Agreement, we are going to lose additional payments of $350 million over the next 30 years, and that we would have been fully funded in 18 years with a gradual decrease in our unfunded liability.

Switching to the next page, the proposed ordinance flips that around. It makes clear that the 2015 anticipated payments and -- will be replaced by a portion of the surtax, but not until 2030.

And so what that does is rather than our unfunded liability going down, it goes up and it goes up every year. Remember, we thought we were going to be 100 percent funded in 2035. Now we're going to have our unfunded liability increase until 2032, or 15 years of increase; and then, according to the actuary, it will begin then to fall rather than under the 2015 arrangement falling immediately, and we will not -- we will reach 100 percent funding in 2060.

This is a 25-year postponement of full funding. Under 2015, we would be full funded 18 years from. Now it will be 43 years from now.

The next paragraph is -- you know, you can pay me now or pay me later, recognizing that the 2015 agreement would have fully funded -- if the plan was closed now but we stuck with the 2015 income, we would be fully funded by the time most of our members had retired.

Now, by pushing it out 25 more years, we will be not fully funded until all of our members have been retired probably for years. And, of course, the longer that you push out the fully funding, as I put in the last sentence, the increased uncertainty and risk of achieving a fully funded plan by then, obviously the longer we go out the higher the risk.

And, remember, our purpose here is one of warning and one of advice. We -- the City Council can listen to us or can ignore us, but the idea is that we don't want somebody coming back in future years and saying, you didn't tell me. So that's the idea. It's disclosure.

The next paragraph, third paragraph, we acknowledge that the pension reform brings higher benefits to a substantial number of our participants, those who are in Group II.

And, of course, had that been done, that would have added more liability anyway, more liability than was anticipated in the 2015 agreement.

And then I said, while the current pension reform proposal may take longer to pay off those liabilities than we'd prefer, we recognize that the city has given us a plan and a revenue stream to pay our debts to our members and our retirees.

Then there's also a mention here, next paragraph, about acknowledging the closure of our defined benefit plan.

As your actuary warned you, we will have to become more conservative in our investment assumptions as the years progress, as we move towards the fact that we have no new members.

When our assumed -- when our risk level goes down, because the time will come that we will be able to see the end of our plan and we will see that we will not be able to rise and fall during market cycles because we will not have time to get more money or to make up what we lose, we'll become more conservative.

And this sounds very familiar to whose of you who are at the table who are in this same age group that myself and some others are, because when you got closer to retirement or you get older, you become more conservative in your investments.

Well, that's going to happen to us. And when our assumed rate of investment return goes down, or even when our mix of assets, we lower our risk of achieving that amount so that we can increase the certainty that we're going to get to and lower our risk of loss, the cost to the city is going to go up. You know that from what your consultant and actuary have taught you.

So, again, I wanted to have that on record because the actuary told us last week that there had been no acknowledgment in any of the calculations that have been presented either by him or by the city of the fact that our risk tolerance is going to go down, our investment return's going to go down, and additional city contributions will be required. This is not unique to you. Happens to every closed pension plan.

And then, finally, I'm telling them that we're ready, willing and able to administer this plan, both the trustees and your professionals, that we're no longer in the pension benefits design business. Whatever they enact, we're going to administer, but we would like their help in making some changes to the program.

So before we go into the individual ordinances, is there anything more you wanted to do there?

Because, Bill, I know you had written to me about some calculation of the added costs. Remember, over all, this is going to cost more because as the unfunded liability goes up, that is being carried at interest.

Okay. I'm done.

CHAIRMAN TUTEN: Hey, Bob, can you see my hand?

MR. SUGARMAN: Yeah.

CHAIRMAN TUTEN: I'm sorry, buddy. Bill, you had a comment?

MR. SCHEU: Yeah.

Bob, in that last paragraph -- by the way, you did an excellent job on this letter.

MR. BROWN: Yes.

MR. SCHEU: And it's just very thorough, and the tone that you were striving for, you just did a great job.

MR. SUGARMAN: Thank you.

MR. SCHEU: A question though. I don't remember reading anywhere as to who is going to manage the 401(k)s. Do we know that? Does that come to us or is that some new -- how does that --

MR. BROWN: We will have nothing to do with those. It's a whole new retirement plan. It will not be under the purview of our administration.

MR. SCHEU: So that the 175, 185 don't come into play here?

CHAIRMAN TUTEN: That's going to be under the unions.

MR. WYSE: Absolutely.

MR. SCHEU: So the 401(k)s, you-all would administer?

MR. WYSE: 401(a). No. There's an RFP right now for -- to do it separately.

MR. SCHEU: So we don't --

MR. WYSE: It's a 401(a), for the record. 401(a).

MR. SCHEU: Yeah, whatever. Right. Okay. Thanks.

MR. SUGARMAN: So any changes we want to do here, because Bill had mentioned, what are the overall costs? And I wrote to Pete this morning, but he's at another meeting. You know, how would you compare the overall costs to the taxpayers of the 2015 pension reform to this one?

Because we know that in the short term -- well, as our unfunded liability rises, it's going to be added interest costs that we wouldn't have had otherwise.

MR. SCHEU: What we might want to say since we don't have the number, we ought to maybe just call it to the attention of council, because they're aware of it too, that there are significant increases in costs.

CHAIRMAN TUTEN: Has the council auditor -- are they done with their report or are they still figuring it out?

MS. BROSCHE: I think they're still in the process of questions and answers. We should hear from them on Wednesday, I believe.

MR. SCHEU: Joey probably knows the additional costs, but he's not going to tell us.

(Laughter)

DIRECTOR JOHNSON: He's here, by the way. I don't know if you noticed.

MR. SCHEU: So, Bob, maybe a sentence that just says, we also call to your attention that it's been reported that -- and you should be aware of this substantially increased costs that will arise under this program.

MR. SUGARMAN: We don't have that --

MR. PATSY: Or something to the effect that the current numbers that are being projected may understate the ultimate costs.

MR. SCHEU: That's the way to put it. Yeah.

MR. SUGARMAN: Bill, the problem is that we don't have the backup for that yet because there are some savings being realized by putting the people into the DC plan, I would assume. I don't know that, because I asked the actuary what the normal cost is.

MR. SCHEU: Well, couldn't we say, though, it's been reported in the press, because I thought Bauerlein's article talked about the increased costs. So we don't necessarily have to rely on the actuary.

We could just say, we call to your attention that the press has reported that there may be a significant understatement of the costs to the city arising from the plan.

MR. SUGARMAN: Maybe I'll put, the council should also be aware of the added long-term costs in delaying -- in increasing our unfunded liability and delaying our fully funded target. How's that?

MR. SCHEU: Sure.

MR. AMROSE: Bob, this is Jeff.

I think that's safe to say just, you know, in general, we're extending the period that we're going to pay the unfunded off over. So it's fine to say that there will be more interest payments on the unfunded accrued liability than there would have been if we stayed with the 2015 plan.

MR. SUGARMAN: Okay. "Council should also be aware of added long-term costs increase our unfunded liability and extending our date of full funding by 25 years."

Is that good?

MR. SCHEU: Sure. It's really not our

purpose to get into the increased employee payroll costs and the 25 percent contributions and all that.

MR. SUGARMAN: Right. Next --

MR. SCHEU: Anna, the Chairwoman of the Financial Committee knows that.

DIRECTOR JOHNSON: Hey, Bob, could I ask you a question before you move on?

MR. SUGARMAN: Sure.

CHAIRMAN TUTEN: To kind of piggyback on what we talked about earlier today, and Jeff you're on the line as well, my recollection is that Pete performed a 30-year projection on two of the assumption scenarios that were put forth, but the final one that he ended up doing the Saturday before the Board met, he wasn't able to do a 30-year projection on that. Is that right, Jeff?

MR. AMROSE: That's right, Tim. Yeah, the 4.25 and 1.25 percent, we haven't. I think it's on our plate to do, but we haven't yet done it.

DIRECTOR JOHNSON: So recognizing that, I'm going from recollection that the 30-year projection associated with the 4.25 and 1.5 assumptions had the solvency of the plan reducing down to 40 percent over that 30-year period.

So in other words, we drop from about 43 percent, where we are now. It's projected to go as low as 40.

CHAIRMAN TUTEN: Tim, is this a copy --

DIRECTOR JOHNSON: Is this it here? That's right. So it's projected to go as low as 40 in 2032.

So my question, Jeff, is whether or not we can add a recommendation to this initial comment related to sustaining that minimum solvency.

In other words, we don't know what's going to happen over the next 30 years. And it's possible that the solvency of the plan could become less than 40 percent if conditions change. We're hoping it's not going to get any worse --

(Simultaneous speech.)

MR. AMROSE: -- have to wait and see with our stress test --

DIRECTOR JOHNSON: I beg your pardon?

MR. BROWN: Yeah. The stress test, I think, indicated that.

MR. AMROSE: Yeah. You can see that in our stress test on the next page. I think you're probably on 6 of 15. If you go to 7 of 15, you'll see, you know, just from that one year of minus -- I forgot what we did, minus 15 percent.

We have one really bad investment here, and you can see now the lowest funded ratio is in the low 30 percent range.

DIRECTOR JOHNSON: I'm with you. I am with you.

MR. AMROSE: So certainly, Tim, you can add another level, you know, between the liquidity ratio, the $110 million minimum contribution. You can add another one of funded ratio, and we'd certainly support that.

DIRECTOR JOHNSON: Is there -- is there a recommendation you could give us relative to solvency that we could add to this letter so that they're --

MR. SUGARMAN: I think we should add it on page 4 when we get to minimum payment.

DIRECTOR JOHNSON: All right.

MR. SUGARMAN: And we'll let Jeff think about it between now and then.

DIRECTOR JOHNSON: All right. I'm fine with that.

MR. AMROSE: Sounds good.

MR. SUGARMAN: Okay. "Pension Surtax." So now we'll get -- there's two ordinances. One is the surtax ordinance.

Jeff, are we amortizing the present value of the surtax over 30 years too?

MR. AMROSE: Correct.

MR. SUGARMAN: Okay. Good.

So at the bottom of the page it talks about the surtax and how it permits the city to reduce its annual contribution. Now we're on -- at least as I printed out the next page.

So we explain that we accepted the determination that the surtax would revenue -- revenue would grow by 4.25 percent, and that you did that based upon the opinion of the general counsel, that you're obligated to accept and apply the city's determination of the surtax growth rate.

Then I show that when we determined it, we used Dr. Pertner, and he came in 3.34. But based on the general counsel's opinion, the Board chose to accept the city's projection of 4.25.

Next paragraph. We were uncomfortable with the difference between Dr. Pertner and the city's projections, but I remember you taking comfort in the assurances from both the finance director and the general counsel that the city's projection would be reviewed annually.

Now, the ordinance as it's written now permits an annual review but does not require it. And so the recommendation would be to require an annual review.

The second thing is, it doesn't say what method they're going to use to determine it. Is it what it was the last seven years, the last three years, last year?

So what I did is I just picked ten years. And I picked ten years because when we look back at payroll growth, the state statute says we look at ten years. I figured, well, if it's good enough to payroll growth, it's good enough for this. I just borrowed it from the state statute.

If anybody has a better number or a better reason for using that number -- but there should be a number. It should be based on something.

And then, secondly, I took a look at our city charter that governs us, and we're required to use consistency in methods. You know, our actuarial evaluation has to use the same method every year. We can't shuffle the numbers or methods every year. And I thought that the city should be bound by the same thing.

Whatever the method is, it should be used on an annual -- the same thing should be used every year. So I recommended adding, as you'll see the underlying language there, that -- see, before, without the language I crossed out, that's 4.25 unless the City Council modifies. So somebody on the City Council has to bring it up. Somebody has to make a motion to modify. If that doesn't pass, you're just stuck with 4.25, whether that's the right number or not.

So here what I did is what the finance director said they were going to do, that somebody was going to look at it each year. And I suggested it be reviewed and set by City Council each year, an affirmative act of following consistent methods, whatever method they chose. We can't tell them the method.

But, Tim, you may want to talk about suggesting an appropriate method and basing it on the past ten years.

And if it's not ten years and it's seven or if it's five, whatever the number is should be consistent. The same average should be used each year.

So those are my ideas. And then I pointed out that the proposed change doesn't require the council to change the projection, only to review it. So they've got to take some affirmative action each year to look at it, where previously the language just said they could change it if they wanted to.

So I guess the question is -- there's several questions. Do you agree that they should be mandated to review it each -- and set it each year?

Is there -- do we want to just say, use a consistent method, or do we want to propose a method? And what number do you like for growth and surtax? Ten years, seven, anything you like.

MR. SCHEU: I thought you did it well, and they're taking our advice. It's our advice that they are required to -- Mike and Sam have said repeatedly that they're going to do it. So why not put some teeth with it?

Anna, you-all are going to consider it, and that might be something to take back to Sam.

CHAIRMAN TUTEN: And Stephen is at the stand.

DIRECTOR JOHNSON: So how will that work, Bill? Is it that the council has to propose a change in the rate, or is it the city that suggests or recommends a change in the rate?

MR. SCHEU: Well, remember, that came up and Mike said that that didn't come from the administration, that that was going to go to the council auditor, that council was going to have the duty to look at it each year.

I'm sure the mayor -- the administration would get involved, but the way I remember Mike stating it on the -- whenever our meeting was, was that that was something within the bosom of the council.

MR. BROWN: And it wouldn't -- yeah, that's right. He said specifically that the City Council auditor would be responsible for that every year, as they do reviews of everything that they have to look into --

MR. SCHEU: That's exactly right.

MR. BROWN: And that the mayor's staff wouldn't play a role. They could be consulted with or provide input.

DIRECTOR JOHNSON: That the council auditor would review the rate and then make a recommendation to council?

MR. BROWN: He used very broad language, saying, the City Council auditor, in the course of doing their job, this would be one of those things that they would look at because it obviously would influence, you know, costs and things such as that.

I think by including a specific provision that requires them to at least just look at it every year and making sure that it is something that is written in on a checklist that he has to do every year, as opposed to just being something that would be in the, you know, general scope of his duties.

MR. SCHEU: Right, right.

DIRECTOR JOHNSON: Brian Parks is here. He's from the council auditor's office, and Stephen Durden is here and he's at the podium.

You've got something to add?

MR. DURDEN: Yes, sir.

Just to clarify, this sort of thing would be, at best, even for the council, aspirational. As you may guess, just as if you had created a rule for the Board to say every year we're going to do A, B or C, the next Board could change the Board rules anytime. You could waive a rule, which you sometimes do.

City Council cannot be -- cannot force another City Council to adopt legislation or enact legislation or even review legislation. It doesn't -- nothing wrong with the aspirational part of this. I don't mean it that way.

But another sort of more practical side of it is, suppose based on this language the City Council does say, shall review and set this new year -- this amount every year. Suppose the City Council didn't review and didn't set. You then would have to come up with what happens then.

Does the same rate stay in place? And if that's the answer, then you see you haven't done anything, would you say, then, the tax is void? I don't think so. I mean, I'm just -- I'm trying to get a practical side.

Suppose the City Council doesn't do what you tell them that they tell themselves they have to do?

MR. BROWN: Then let me ask another question.

MR. DURDEN: Yes.

MR. BROWN: And perhaps the representative of the City Council auditor could answer this.

Is this, in fact, something that would automatically come up in their annual duties? I mean, is this something that would be so obvious that it would be visited every year and it would be looked at?

MR. DURDEN: I -- I -- I don't know enough about what the office does -- what the council auditor does on a regular basis, but certainly not only -- yes. I mean, I don't even know if we can get an answer to that.

They do review everything. I mean, there's no telling what the council auditor might review on a particular case, what the council auditor might say, hey, by the way, did you see this?

I mean, they -- they review an incredible number of things. They make recommendations on a regular basis. It would be -- let's suppose to switch something around, my guess is, if this Board, let's say, in -- something dramatic happened one way or the other with sales taxes.

The Board might say, hey, we're going to do a resolution to the council auditor, to the city, to please review the sales tax because it's gone up so high. Almost certainly something -- I mean, I can't make people do stuff. You guys can't make people do stuff.

But my guess is if you raised a serious question -- this happens with the council auditor. I think it's fair to say, if someone in the city raises serious and significant questions of finance, the auditor is likely to take a look at it. They may dismiss it because it doesn't look like there's any merit to it, or if they think there's merit to it, they're likely to bring it to the council president or whoever else is appropriate.

But I think any financials belong within the bailiwick of the council auditors. They regularly review stuff, both continuing expenses, continuing taxes. They -- they might second guess a variety -- they do second guess a variety of different things.

CHAIRMAN TUTEN: Whoever, jump in.

DIRECTOR JOHNSON: I don't mind deferring to Rick.

MR. PATSY: I think you make a good point, Steve, but the key that's going to make this plan work is continued actuarial soundness of the plan.

MR. DURDEN: Sure.

MR. PATSY: And the sales tax revenue projection as well as the actual sales tax revenue when it comes in is probably the most important aspect of keeping this -- excuse me -- this train on the tracks. Okay?

MR. GASSETT: For 80 million bucks, it better stay on track.

MR. PATSY: Sorry. Couldn't help it.

So being disciplined, whether it's the current City Council or future City Councils, is probably going to be the most important aspect of this. Whether they're going to adhere to this or not, that's important to the soundness of our plan.

MR. DURDEN: I certainly understand that.

MR. PATSY: So by putting this in here, they don't have to adopt it if they don't want to --

MR. BROWN: It makes a big statement.

MR. PATSY: -- but at least we're putting it on record that, hey, this is an important issue and it's important to the soundness -- long-term soundness of the plan.

MR. DURDEN: Yes, sir. And I -- from what I understand, this is a message to the council of what is important to you, and I can't fault that by any stretch of the imagination.

That is what you're supposed to be doing, say, this is what matters to us. And I'm not saying you shouldn't say these things. I'm just telling you what the legal effect would be even if adopted of this language.

MR. SCHEU: I think Steve had a great idea. Could we add a sentence that says, we recommend that the job responsibilities of the council auditor be -- that this responsibility, annual responsibility, be added to the duties of the council auditor as a place for the initiation of the review.

And that way you're getting it lodged in a place and you're keeping it in the council and you're not having to bind future council, although they can change the job description. I understand that. But we're saying where that should go, and that's from a process perspective.

MR. PARKS: Brian Parks, council auditor's office --

MR. SUGARMAN: So if you take a look at the underlying language, to implement what Bill talked about, it shall be reviewed by the council auditor and set by council.

So that -- you know, I understand Steve's saying they may not want to bind a future council and maybe they're not bound by it, but I do agree, it's aspirational. If all it is is aspirational, this is a worthwhile aspiration.

DIRECTOR JOHNSON: Hey, Bob, we've got Brian Parks here. I don't know if you can see him, but he's at the podium. I think he's got a comment as representative of the council auditor.

MR. SUGARMAN: Okay.

MR. PARKS: From our office, we would always have to be very careful. What you're kind of creating is a job requirement --

MR. SUGARMAN: Could you get near the podium or closer to the mic, or put Brian at the table.

DIRECTOR JOHNSON: Speak up, Brian, so he can hear you.

MR. PARKS: I'm sorry.

So the issue is that we have is we have -- our main function throughout the city is performing audits. And to do those we have to have independence and stuff of that nature. We are typically a review function.

Like a bill, this bill in particular, once it's filed, our office reviews and provides many comments and everything else like that.

But to state that we're going to be the initiator of this and everything else would create a problem most likely from a standard that we wouldn't be independent, and it might impair us from doing certain audits in the future. We always would have to be very, very, very careful of that.

MR. SCHEU: So that's exactly opposite of what Mike said.

MR. PARKS: I think what Mike -- and I'm not -- you know, I was listening that day as well. I think it could be initiated by everybody.

Whether or not it's this Board, you know, did a resolution that requested the council do something, whether or not it's the council auditor during the budget process where we provide feedback and say, hey, this appears to be lower, you know what I mean, than maybe this upcoming year, or whether or not it's the administration going through its normal process, I think it could be all of those because it would be a piece of legislation that at the end of the day would be approved by council.

MR. SCHEU: Well, I'm just thrashing about here, trying to get it started somewhere, because now we've got a despaired view.

And knowing you can't bind council -- and, Anna, probably this would go -- would it be appropriate to suggest -- we're not -- to suggest that the City Council Finance Committee, as part of its responsibilities, consider the annual -- review it annually so that the process can get started? I mean, how -- those are the rules of the council. How does that work?

MS. BROSCHE: I think the suggestion that's here in terms of "shall be reviewed" is fine and saying the council is fine because financial matters get referred to the Finance Committee --

MR. SCHEU: Okay.

MS. BROSCHE: -- and the council auditor's office, through the budget process, reviews all of the ordinances that are, you know, applicable and make sure that they're covering all the different pieces that they need to.

And so I think what you have here is fine in terms of referring it to the council. And I see that you're strengthening it from the way that it's written now, that it shall be 4.25 unless it's changed. You're suggesting that it shall be, and then the council can take that up in its work going forward.

DIRECTOR JOHNSON: So there were two other parts of the matter that Bob brought up. One was the method, and I think for some of the members of the Board there's a concern around solvency, that this rate, as the basis for determining the present value of this asset, as it rises, it will indirectly reduce the solvency of the plan.

In other words, the higher this surtax percentage is, the less money the city has to put into the plan today that affects solvency. So there's an awkward consequence of putting this into the hands of council. I say it with respect.

But if council's budget isn't balanced and they need to come up with $2 million, one way to do that is just notching up this rate a little bit because it will create savings from what they have to put into the pension fund. It's a way of generating revenue without raising taxes.

So in other words, without a method, it's kind of left up to the discretion of the individuals and the circumstances at the time, and ultimately it's the solvency of the plan that suffers.

So maybe there's a way that we can introduce a method so that there isn't this rate creep as a way to generate revenue.

CHAIRMAN TUTEN: And I know it was just a week ago and it's shocking (indiscernible).

Joey or anybody, remind me, what is the trigger -- what's the city's ability to change that assumption from the 4.25?

DIRECTOR JOHNSON: My read of it is that council has the discretion, but I'm no attorney.

Stephen, what's -- who has the right to change the 4.25?

MR. SUGARMAN: The answer is the council.

MR. DURDEN: It's the city, the council being the legislative body, but the city has the right to do that. It's the city is the one who determines the rate in order to determine the value for all three funds.

CHAIRMAN TUTEN: So they have -- Steve, so there's nothing to stop them fiscal October 1 of 2019 to say, the last year the first -- you know, last year, the Better Jacksonville Plan, we made 7 percent over the last three years. Let's just go ahead and raise that assumption to 7 percent? Is that what I'm hearing?

MR. DURDEN: Okay. Perhaps. I don't know enough about -- let me put it in these terms.

There is a range of reasonable. To use the absurd to help understand the statute, if the council -- the Florida Statute requires this fair market -- this market value, whatever the exact words are, that can't be completely made up, as in the council can't say, you know, we've been going up in our pension sales tax 700 percent every year and, therefore, we're going to value this at $40 billion tomorrow, or something like that.

There's -- there's a range, and you can't go down to, like, oh, no, we think based on -- we've decided because we want to do this, that or the other, we're going to reduce it to 20 percent loss on an average.

In other words, there's a certain range of reasonableness. Like any agency, they have the right to affect the council. The city is effectively an agency interpreting the statute. As you often interpret the ordinance code as you apply it, there will be a range of reasonable. I can't give you a top and a bottom. I realize that.

But you can't -- it's not -- pulling a number out of a hat won't be sufficient. There will always have to be a study of some sort. But don't get me wrong. I understand, based on watching two different people value the tax, that there are assumptions that are made one way or the other and I understand that. But all of that goes into the reasonable -- reasonable standards. Like so many areas of law are, is it reasonable?

So it's not anything, but I understand your concern that it may look like, well, we're just going to do this. And I don't know, for example, if anybody -- I wouldn't know this for certain, but if the city had said, you know, we're going to make this an 8 percent assumed growth, I think that based on what I've seen from all of the experts, your expert and the city's expert, that someone might say, well, you know, that's just out of control. You can't possibly make that assumption.

MR. PATSY: Steve, there's no question if they selected a rate that was unreasonable or appeared to be unreasonable that there would be decent amount of outcry.

But my experience in another pension fund that I sat on the board on, they -- they take a fixed number of years, and take the average of those years to get their rate.

And that's -- I don't remember what number of years Mike used to come up with the 4.25, whether it was seven or nine or whatever, but fixing the number of years to come up with your average is a disciplined approach because you're taking hard numbers, you're averaging those hard numbers over a predetermined time period, and you're living with the consequences.

So just supposing, you know, using Rich's example, one year it pops up to 7 percent, and a future City Council, not the current City Council, but a future City Council determines arbitrarily that, hey, that's a sweet rate, we want that --

MR. DURDEN: Sure.

MR. PATSY: -- you know, there's nothing in the law that says they can't do that.

MR. DURDEN: Correct. As far as I can tell, I mean, not in the literal sense. No.

MR. PATSY: And the ultimate, you know,

soundness of the plan for one year may be fine, but, you know, it may not be fine after that.

But picking a fixed number of years -- and I'm suggesting that because I don't know if we have the wherewithal to do that.

MR. DURDEN: And I don't -- just real quick, I just -- I want to answer this, but I forget to mention, there's likely to be a tweak in the language in this ordinance regarding this specific requirement. We're trying to -- this is where we work with the auditors and other people to make sure that the language says what the contract says.

I wanted to let you know so that you're not surprised. It's intended to do what you guys think this is doing, and people were a little bit afraid of the way it was written. But I know -- I'm working on it, and I know the absolute purpose is to do what you guys think it's doing. And I didn't want you to be surprised by it.

It wouldn't change your concerns. It wouldn't change your advice. It doesn't change your aspirational or whatever else you want to say, but I just wanted to let you know there might be some -- you'll notice some small amount of change in the language to get it to do what you guys think it's doing. And I just didn't want you guys to be surprised by that.

DIRECTOR JOHNSON: So we have a method on the table. Bill's recommended -- I'm sorry. Bob's recommended a ten-year average based on the compound average growth rate method that Pertner used.

I don't think you said that specifically, Bob, but Pertner did use a compound average growth rate to calculate the 3.34.

I think that's reasonable that the rate be 4.25 and the only way to raise it would be if the ten-year average growth rate justified making it higher.

MR. SCHEU: I don't think we're going to be able to mandate to City Council. I think we just -- as I listen to this, I don't think so.

So I'm running the risk of sounding like a transactional lawyer trying to negotiate a lease and trying to get the language where it's liveable by both parties.

So what if -- picking up on what Rick said, what if we just said, using disciplined, reasonable and consistent methods? I mean, that's about all we're going -- and the ten-years would be fine. But I don't -- I'm not sure that we can --

CHAIRMAN TUTEN: We can't, Bill. If that was the intent of the mayor to put those safeguards in here, Mr. Mousa and Mr. Weinstein are plenty smart enough to put that in here.

In other words, I'll argue a point. I'll argue for leaving it as it is. And this is going to be a strange one. For this -- for that very reason we've been talking about.

The 4.25 at least put sort of a cap on the craziness from what Tim was saying, because if anyone does not think that a future mayor or council, not Ms. Anna, of course, is not going to exploit this right here in order to save money to contribute to the pension fund, but here's the problem, like you said.

They've got a 13-year window before anything really hit -- before they have to count that money. So in the next 13 years, three years from now they go, hey, we've averaged, you know, 6 1/2, 7, 8 percent, guys. I mean, it's not unreasonable. That word "unreasonable" is starting to go with unsustainable. It's starting to get on my nerves, because reasonable to you, hey, man --

MR. SCHEU: But that's in the statute, though.

Bob, isn't that in the statute that the -- that these assumptions, the state, whatever committee that is, has to -- it has to be reasonable?

MR. SUGARMAN: Well, as Steve was saying, everything has to be reasonable. But the courts will give deference to the City Council's view of reasonableness.

I would prefer to say -- I don't want to hold them to anything more than we're held to. So we're held to using a ten-year average when we figure out pay increases. So that's why I borrowed the ten years.

If they come back and say it's seven years, eight years, five years, that's okay, as long as they don't keep changing it from year to year. That's the same reason for using consistent methods --

CHAIRMAN TUTEN: I mean, we're spinning our wheels here because how are we going to enforce them with it? How are we going to --

MR. SCHEU: Every year we'll write them a letter if they don't do it.

CHAIRMAN TUTEN: The mayor has already -- I don't mind putting this in and we can send it to them. But, honestly, fellas, if anybody is holding their breath that they think the council and future mayor are going to stick by this, it's -- it's --

MR. BROWN: Doesn't matter. This is reasonable. It doesn't matter what we think the future council and mayor are going to do.

This is reasonable. And every year it is our job as a Board of Trustees, if we feel that there is something happening, that we can notify the City Council they need to look at this and explore revising it because of a change in the sales tax growth, honestly. That's our job, is to bring attention to matters that affect our membership.

But I think, like you said, there's so many limitations as to what City Council in the future can be bound by, this is a very reasonable statement, and I think that that's the best case.

DIRECTOR JOHNSON: All right. So, Bob, before we move off this, where are we at?

MR. SUGARMAN: I think we're where we are now unless you want to add the words where you said growth and "surtax compound average" before the word "growth."

"Compound average growth and surtax." That's what had you suggested, Tim.

DIRECTOR JOHNSON: That's what I suggested.

CHAIRMAN TUTEN: Yeah. I like that. At least there's some parameter.

MR. SCHEU: Can I ask a question before we leave this?

DIRECTOR JOHNSON: Yes, sir.

MR. SCHEU: This is an accounting question and I just don't know the answer. So at the bottom of page 2, it says that the city will reduce its annual contribution to the pension by a 30-year amortization of the present value of the surtax.

So help me understand. That means that every year, to simplify it, 1/30th of the present value goes on the books as the asset, or whatever we call it. Is that what that means?

MR. AMROSE: I think eventually right now we would take the present value of the pension liability surtax, using the 4.25 percent growth rate, present value that, and reduce the unfunded by that amount.

Right now the unfunded is going to be paid off over 30 years. So that's how the calculation mathematically would work.

MR. SCHEU: Well, is this correct, though? Because we're not going to have a 30-year amortization of the present valve of the surtax. What you just said, I think, was that it will be reduced by the present value of the surtax.

MR. SUGARMAN: Yeah, I left those words out by somebody added them. Are those -- are we amortizing the surtax by 30 years?

MR. AMROSE: Essentially, yes.

MR. SUGARMAN: I thought we were just amortizing the added liability.

MR. AMROSE: No. You're reducing the unfunded by the present value of the surtax, and then you're amortizing the net amount over 30 year. So it's essentially the same thing as amortizing the present value of the pension liability surtax over 30 years.

MR. SCHEU: Okay. I get that. That's the -- because it's a -- that's an algebraic formula. Okay.

MR. AMROSE: Yeah.

MR. SCHEU: So what happens when you get to 2035? So you've got on your balance sheet whatever this is. But now you've started getting the cash in.

MR. AMROSE: Yes.

MR. SCHEU: How do you account -- what is the accounting treatment of the cash you're receiving? Do you still show on your books that reduction by the present value, or do you then switch to a cash basis? And I don't know the answer. That's an accounting question. How would you treat that?

DIRECTOR JOHNSON: You want to talk about it?

MR. GREIVE: Well, you've got Jeff on the phone.

DIRECTOR JOHNSON: But it's an accounting treatment.

MR. GREIVE: No. Jeff will answer that. He's an actuary.

MR. SUGARMAN: But, Jeff, how are you going to treat it? Once the money starts rolling in, are you going to use that dollar for dollar to offset the city's contribution, or are you still going to be doing a projected value based on the future growth? I think that's the question you're asking.

MR. PATSY: Yeah.

MR. SCHEU: Right.

MR. SUGARMAN: Once the dollar starts coming is, that's today's dollars. Is that the offset?

(Simultaneous speech.)

DIRECTOR JOHNSON: Slow down, guys. We have a reporter here.

MR. SUGARMAN: Okay. Let me ask the question again.

The money now starts coming in. I'll just make up the number. Let's say it's 10 million. And -- but we see that the projected average in the future is 11 million. So do we give the city credit for the ten that we're really going to get, or do we give it for the 11?

CHAIRMAN TUTEN: I've talked to Tim about this and I won't keep on. But explain to me real quick -- and maybe, Anna, you know -- how the city is -- because I'm worried the most about liquidity rates. That's what's gotten me the most jittery, is that fact that we're not going to have enough money. Okay.

Besides all the fancy accounting tricks, will someone please explain to me -- and maybe, Jeff, on the line, you could do it.

They're taking the present value of that future money. Okay. I understand that part of it, and they're knocking the bill down. It lowers their annual payment, et cetera.

MR. AMROSE: Right.

CHAIRMAN TUTEN: Now, when they start collecting that actual real dollar, they're counting that dollar too towards the bill at that time, or are they saying, we've already spent this dollar 20, 30 years early and we're just going to give it to the pension fund?

MR. SCHEU: That's exactly the question. Are you getting to count it twice? What happens with it -- I mean, like --

CHAIRMAN TUTEN: Are they double -- are they counting it twice, is what I'm trying to get at.

MR. SCHEU: I mean, we appreciate the building over time, and then they get the cash in and --

MR. BROWN: Bill, they reduce that future amount to a present day value. Once we get to the day that we're actually receiving it, it is now the -- the value of that asset is the money that's coming in.

MR. AMROSE: That's right. So -- at least in my opinion, it would be the actual amount that's coming in. And as much as that deviates from the amount that was expected to be coming in, that will generate a gain or a loss.

So, you know, the numbers in 2030 may be -- but we're expecting $100 million to come in. Now, this is where the rubber hits the road, because if those assumptions were too aggressive, i.e., the 4.25 percent, and the fund only gets $60 million coming in, well, there's a $40 million shortfall and that will create an actuarial loss.

MR. SUGARMAN: And it could be amortized or it has to be paid that year?

MR. SCHEU: And so that would be charged to the city? Is that --

(Simultaneous speech.)

MR. AMROSE: The loss will be amortized over a period of time not to exceed 30 years.

MR. SCHEU: Okay. All right.

CHAIRMAN TUTEN: Jeff, can I ask another question real quick?

MR. AMROSE: Sure.

CHAIRMAN TUTEN: Would that $40 million hypothetical loss, because you've injected that expected income over the last whatever years before you actually received it, and once it turns out to be a loss, whatever it may be, how much does that impact the pension fund?

In other words, is it a one-to-one or is that, because you counted not just the one year as an actual loss, but now you've had that money for 20 years as an actual loss, does that skew it or does it make it worse or doesn't really matter?

Do you understand what I'm trying to ask you?

MR. AMROSE: I think so. But, I mean, essentially what's going to happen is when that money starts coming in annually, we're going to -- you know, there's going to be gains or losses. It can go either way obviously depending on that actual amount that came in versus the projected amounts.

And it's not going to start until -- I think it's 2030 or '31, whenever that money actually comes in, and that's why the assumption of the

4.25 percent is extremely important, because if we were never going to reflect the actual amount that came in, then it really doesn't matter what assumption you use.

So it is a very important assumption and that's going to start mattering when that money actually comes in and seeing the difference between that and the expectation.

MR. BROWN: Which is why it's important to convey this to the council why every year it's important to revisit that and make sure it's not too optimistic --

MR. AMROSE: Right.

MR. BROWN: -- so that we don't get so surprised in 2031.

MR. SCHEU: So, again, I'm just trying to -- accounting is not my -- so should we add a sentence maybe in that same paragraph beginning at the bottom of 2, that says the 30-year amortization -- until the actual receipts are made, in which possible -- potential gains and losses will adjust? I don't know how to say it --

MR. BROWN: I don't think we need to add it because I think that goes without saying.

MR. PATSY: But, see, that's part of the actuarial process.

MR. SCHEU: Okay. All right.

MR. PATSY: And, Jeff, correct me if I'm wrong, this is a rolling 30-year amortization. So we get to 2031, we're going to calculate it. We're going to calculate our funded status. We're going to calculate what the city owes us. 2030 -- what did I say, 2031? In 2032 we do it all over again.

MR. AMROSE: Yeah. Each year you're going to generate gains or losses for this which is paid off over a period of time up to 30 years. So, yes, it's rolling. The first year would be paid off over 30.

You'll still have that first payment or credit, depending on if it's a gain or loss in the second year, but you'll generate a new payment or credit.

MR. SCHEU: So you won't adjust it -- like let's say that there's a $1 million loss, that the proceeds were $1 million less.

MR. AMROSE: Okay.

MR. SCHEU: So that year, does that increase the city's contribution by a year, or does 1/30th of that million dollars --

MR. AMROSE: It will be a 30-year amortization of the million dollars. That's how much the -- the increase in the required city contribution would be --

MR. SUGARMAN: In a closed plan?

MR. AMROSE: -- and the following year -- I'm sorry.

MR. SUGARMAN: In a closed plan?

CHAIRMAN TUTEN: Okay. Jeff, I think I've got a way to explain it.

In other words, what you just said, what Bill just said, it's kind of like the money supply with the multiplier effect.

In other words, is there a negative effect, because we've said for the last 30 years we've counted this dollar as a dollar. Now we get to the year where it actually comes in and, oh, crap, it's worth 60 cents.

Do we have to go back and adjust all our calculations in the past to account for that?

MR. AMROSE: No. No. You don't go back to adjust anything. It's done at that time when the money is coming in.

To Bob's question, in a closed plan you

would do that. No, I mean, that's why I'm saying, over a period of time not to exceed 30 years. Our recommendation would certainly be to pay that off sooner than 30 years, but that's why I was careful with my words, you know, that it would be paid off over a period of time not to exceed 30 years.

MR. SCHEU: All right. Well, let's say there's a loss -- let's say it's 4.25, and let's say there's a million-dollar loss that gets spread over a 30-year amortization starting in 2031.

That loss keeps getting out. So in 2060, the sales tax runs out and you've still got a portion of that amortization still hanging out there.

MR. AMROSE: Sure.

MR. SCHEU: Am I missing something? So you're not --

MR. AMROSE: No --

CHAIRMAN TUTEN: So you never pay it off.

MR. SCHEU: You never pay it off, assuming that.

MR. PATSY: Well, at some juncture, because it's a closed plan, the fund will continue to be depleted because participants will retire and retirees will pass. So the population pool will continue to shrink.

MR. SCHEU: Right.

MR. PATSY: So the assets needed to pay the benefits will go down. So the city's contribution could still stay large and could conceivably get larger depending on if our assets shrink at a much higher rate than the retiree population pool shrinks. So it's -- there's a lot -- there's a lot of ways this thing can go awry.

CHAIRMAN TUTEN: Well, you're right. You have -- normal circumstances, you'd have -- biggest concern is market returns.

Now, you not only compound that, but you've got returns with an unknown, which is the surtax rate, because if that doesn't come even close, you know -- and in fairness to the city, 4.25, well, that's not -- you know, 3.34, margin of error. Let's just call it that.

Anything higher than that and we start getting wonky, not because if they're right, but because if they're wrong.

MR. SCHEU: Right.

CHAIRMAN TUTEN: And now we've got two sets of things we've got to keep an eye on to make sure.

And I was going to ask Jeff, at what year, if you could tell me, or spit-ball it, what year do we start -- or stop using that 30-year amortization?

In other words, is it going to be, you know, when we've got -- everybody on the job's got 15 years or more? I mean, 2042? How does that work?

MR. AMROSE: Yeah. I mean, certainly we will be having conversations with the Board about, you know, reducing that amortization period.

In other words, the initial unfunded accrued liability must be paid off over 30 years. But any new basis, any gains or losses or assumption changes, anything that we create in the future in a closed plan, to Bob's point, we would certainly recommend paying that off over a period less than 30 years.

MR. SCHEU: But do we have the discretion to do that with the statutory change, Bob? Because that requires a 30-year amortization.

MR. SUGARMAN: Of the projected current tax, not of actuarial shortages.

MR. AMROSE: Right.

MR. SUGARMAN: He's talking about an actuarial loss that would arise if the actual dollars didn't meet the surtax projections.

MR. BROWN: And in that case, use the standard increase in the city's payment because it's an actuarial loss. It's outside of this, this special treatment of the surtax.

(Simultaneous speech.)

MR. SUGARMAN: It could be paid off that year or it could be amortized, but Jeff said not more than 30 years in a closed plan. It's his expertise, but we probably would find it a lower number.

CHAIRMAN TUTEN: All right. Where we at? Tim, you got anything further?

DIRECTOR JOHNSON: I have nothing more to add. Just remember, we've got a stenographer who is taking notes, so let's not talk over one another.

MR. SUGARMAN: The conclusion was to add the words "compound average" before the word "growth" upon the recommendation of our executive director.

DIRECTOR JOHNSON: That's right. So we're moving -- Bob, I was just going to say, we're moving on to your next topic, which is the "Actuarial Disclosures."

MR. SUGARMAN: Yes, sir.

And when I got this multi-page actuarial impact statement, I'd never seen one like that before. And when I talked to Jeff and Pete, they said that's because of all the disclosures that we have to make.

So I want to make clear to the council that there are a lot of disclosures here that normally do not apply that -- our actuary is the largest governmental actuarial firm in the country, is putting them in there, and that the reason that we can accept this actuarial -- accept this actuarial impact statement even with those disclosures is because, according to the general counsel, each one of those is required by a provision of state law.

And, therefore, the state law which says -- and the city charter in that last paragraph say, the plan has to be maintained on a sound actuarial basis. And Steve and I have had these discussions, and it's his position that it's sound actuarial practice to follow the state law. And, of course, the city charter, which prescribes certain actuarial practices and assumptions.

But I think we're just disclosing the reason for these comments and the reason for these disclosures by your actuary, and that they're justified by the laws that are -- that mandate them.

So then on the top of the next page I just wanted to make clear that when they see the numbers in the valuation and they see that -- in the actuarial impact statement and our valuations, that those will be probably different than GASB disclosures and their CAFR because there's different standards involved and different laws involved, and we were told that last week when we met very specifically.

So that ends the -- and, again, these are just disclosures. You know, we're the experts in the field and we want the council to know what's coming.

I would propose since we've been at this over an hour a short break before we go on to the next ordinance.

MR. SCHEU: Since the Chairman has already broken.

MR. SUGARMAN: Oh. I'm about to also. I'll be back in a couple of minutes.

(A break was taken; thereafter, the meeting continued as follows:)

MR. SUGARMAN: Okay. Mr. Chairman, are we ready to go on to page -- to the next ordinance, Number 259?

DIRECTOR JOHNSON: I think we are.

MR. BROWN: Just one minor note, Bob. The headings -- and obviously this is a draft. If you could just bold the actual headings for the ordinances to make it a little clearer for the members of City Counsel to see it. I don't know if you noticed it, but the first heading wasn't bolded on what we have. Yours may be.

MR. SCHEU: It's just not consistent. Right.

MR. SUGARMAN: Yeah. Actually, this is going to wind up on your letterhead. Oh, I see. The one that says "Overall," put that in bold. I got it.

MR. SCHEU: Well, it's just that the

hearings need to be consistently bolded or not bolded. Some of them are bolded and some of them are not.

MR. SUGARMAN: Yeah. That's because the headings on the three different topics, the form. Overall, the two ordinances and the conclusion, those are in bold. And then these are like subheadings, the ones that are not in bold.

MR. SCHEU: "Overall" is not in bold.

MR. SUGARMAN: Anything we can -- yes, "Overall" needs to be put in bold. Yes. I wrote that down on page 1. Okay.

We're on page 4, Ordinance 259. It just again reflects what happens. And so now going to the details, the "Liquidity Payment." And this points out that our assets and funding level are going to decrease while the payments to retirees will increase.

This is what happens when you close the plan. They've cut off our new money, and so we're going to have more money going out because we don't have new workers to replace the source of income for those who are coming in. And then -- so that's one stress on our liquidity.

The second stress could be adverse market events as shown by the stress test. And if you remember, last week we were having a discussion about how there could even be, you know, three-figure numbers, in the millions, which I guess would be nine-figure numbers, a hundred million or more, to maintain our liquidity.

And we received a warning that over the next 43 years, it's anticipated it will be full-funded, that there will be recessions and market downturns.

So there is a proposal in the ordinance that says there will be a liquidity ratio and that -- the copy I was given didn't have a number in it, but what I'm proposing is that we define what that means. And that is the net market value of assets in the pension fund -- does the DROP -- actually, I believe this was proposed by executive director or by Pete -- net of the accounts other than reserve accounts divided by the total benefit payments.

So we all have to know what liquidity means. Now the question -- and I turn this over to Tim -- is, what is the appropriate liquidity ratio? This has to do with operating our pension plan day-to-day, year-to-year, just as the chairman was talking about. Are we going to have the cash we need each and every year?

Let me just tell you the consequences of what happens if we don't have the cash. If we miss a pension payment because we don't have the money, or if the city doesn't give us a pension payment that they owe us, not to suggest that they ever have, that is grounds for the state taking over the control of city finances. We know all about that down here in Miami. It's happened a couple of times. So this is serious stuff for everybody.

So I'm going to turn this over to Tim. This is pure operational. He's got to have money in the bank to pay our bills.

DIRECTOR JOHNSON: Yeah, Bob, you're right.

So when you look at the last actuarial report, you'll see that -- and it was also included in the actuarial impact statement, we had benefit payments of about $153 million.

So, in theory, five times liquidity is five times the $150 million. I'm not sure based on this formula when our liquidity ratio falls below that how the money will actually be placed back into the fund, whether the city is actually just going to write us a check, it gets us to where we need to be, or whether there's going to be some procedure or formula or mechanism to get that accomplished.

So that's the first reason why I'm nervous about the five, because I don't know how the money is going to get paid in if we drop below five.

Joey, I hate to put you on the spot, but give me a little understanding of how you think the city is going to pay the additional contributions to get our solvency up to that five times ratio.

MR. GREIVE: I'll have to defer to Counselor Durden as to what the language says.

What does the language require?

MR. SUGARMAN: Could Joey get closer to the mic?

MR. GREIVE: Sure. I'm kicking it over to Counselor Durden to explain how the language reads.

MR. DURDEN: As you noted in your memo, it's in Section 121.113(b), which is the city's contribution -- annual contribution section.

So as -- because it is within here, I would suggest that it's -- that we now call it, I guess, ADEC versus ARC, but anyway, the ARC payment, the ADEC payment, is determined and then shall also contribute. And then so my assuming that -- I don't know the finances of who writes the check for the ARC payment or the ADEC payment when it's made. But assumably, if this is followed, it would be part of that payment in that sense. It would be there.

MR. BROWN: So it's not financed or anything like that?

MR. DURDEN: It's -- it's part -- it would be part of the budget, if that's what you mean. Wherever the city decides to take the money from, they would have the lawful authority, I mean, assuming there's some lawful authority, to take it from that general fund, wherever the city gets money from.

MR. SUGARMAN: Jeff?

DIRECTOR JOHNSON: So hold on, Bob. I want to make sure we're all clear on what Stephen said.

MR. SUGARMAN: Yeah. Could you repeat it?

DIRECTOR JOHNSON: So what you're saying is that the next payment of the actuarially

determined contribution would be sufficient to
bring that ratio in compliance?
MR. DURDEN: No, no, no, no. I'm saying if
there's a need to bring it up, it would be the
ADEC plus whatever else is necessary.
DIRECTOR JOHNSON: All right. But I'm
asking you when it's going to get paid.
MR. DURDEN: Well, whenever the ADEC is
paid.
DIRECTOR JOHNSON: All right. That's what I
said.
MR. DURDEN: I'm sorry. I misunderstood.
DIRECTOR JOHNSON: All right. So it would
be paid with the ADEC?
MR. DURDEN: With the ADEC, yes.
DIRECTOR JOHNSON: Gotcha.
Bob, do you want to jump in now?
MR. SUGARMAN: Yeah. My question is for
Jeff.
Jeff, whatever this number is, 5 or 7 or any
other number, are you going to be able to test
that in each year's valuation so the city knows
it's coming?
MR. AMROSE: Sure, sure. We can include
that in the valuation report, say what this ratio

is and they can -- you know, I think now it's about 7.8. So they could see when they're getting closer to the threshold. That wouldn't be a problem.

MR. SUGARMAN: That matches what Steve just said, because the actuarial valuation is going to determine the ADEC. So if this additional liquidity payment was required, we would be doing our own calculations through our actuary, which we do a year in advance, right, Steve? The October 1, 2016 valuation determines contribution for 10/1/17; is that right?

MR. DURDEN: I -- I believe so.

MR. SUGARMAN: I mean, not Steve. I mean Jeff.

MR. AMROSE: Yeah. That's correct.

MR. SUGARMAN: Okay. So, yeah. So the city will have fair warning. We're just not going to have to say, hey, we need some money, give it to us.

MR. AMROSE: Exactly.

MR. SUGARMAN: So the answer to your question, Tim, is it would be like any other money the city owes us. Now the question is, what's the number?

MR. AMROSE: Right. So we would show what the ADEC is, and then we'd have beneath that -- if the ratio, for example, went to 4.9 and we had to get to 5, we would show now there's an additional $10 million or whatever the number is due. So we would add those two numbers, show what the required contribution is on the first of the next October.

MR. SUGARMAN: So who has recommendations as to numbers?

DIRECTOR JOHNSON: Well, I do. I've got a recommendation. I wanted to ask one more question, though, before I got to that recommendation because the answer affects my recommendation.

Stephen, with regard to the language that says -- I believe it's in the ordinance that says that it's subject to the city's ability to pay, is the ADEC subject to the city's ability to pay, or is that language in the ordinance that puts the condition that the city has to have the money in order to pay it?

MR. DURDEN: The city is required to pay the ADEC, period.

DIRECTOR JOHNSON: Okay. So in this

language it says it's subject to the ability to pay.

MR. DURDEN: Subject to annual appropriation. Yes.

DIRECTOR JOHNSON: What does that mean?

MR. DURDEN: Well, it means that this is -- if the city chooses to make the payment, it makes the payment. This is where you can't bind future councils.

It's subject to annual appropriation is the minimum, if you have the minimum four of the five times, whatever, or the 110 or whatever those numbers are --

DIRECTOR JOHNSON: Right.

MR. DURDEN: -- that the council will see that as part of the ordinance and choose whether or not to appropriate the money.

DIRECTOR JOHNSON: Councilman Brosche?

MS. BROSCHE: I was just going to say, I interpret that to me that the council needs to approve it so . . .

MR. DURDEN: Essentially annually -- what it's getting at is, if this happens in the year 2022, that council does get to have the opportunity to make its financial judgment on whether to make that payment.

DIRECTOR JOHNSON: So the payment sounds discretionary.

MR. DURDEN: It is. I mean, it's mandatory, but, I mean, it's -- I mean, it's subject to annual appropriation.

This is, as I told you in the 2015 agreement, the $32 million a year is subject to annual appropriation. We've made it clear that you can't make the council -- bind a future council on just a mere -- on a payment.

It doesn't mean it's not going to be made, but it is subject to annual appropriation.

DIRECTOR JOHNSON: So I want to make sure my take-away is clear. The ADEC is not discretionary.

MR. DURDEN: No.

DIRECTOR JOHNSON: But this promise is discretionary.

MR. DURDEN: You can call it that if you'd like.

MR. SCHEU: Is the ADEC also subject to annual appropriation?

DIRECTOR JOHNSON: Not by what Stephen just said.

MR. SCHEU: I thought that's what he said.
MR. BROWN: No.
MR. DURDEN: No, I did not say that.
MR. SCHEU: The ADEC is not. Okay. All right.
MR. BROWN: That's required by law.
MR. DURDEN: That's required by law. I mean, let's put it this way.
A council could refuse to make any -- to make any payment and they'd be sued for it. But, I mean --
MR. SCHEU: That's when as somebody said, Bob said, that's when they come in and take over the city's finances.
MR. DURDEN: Sure. I mean --
MR. SCHEU: But it's still subject to annual appropriation.
MR. DURDEN: Anything -- yes. In theory, anything is subject to annual appropriations, but some people have -- some things are by statute or constitution or otherwise.
I mean, the Supreme Court recently discussed the contractual rights of people as well as saying, you know, the right to contract is a very important right, even for government employees,

and the government just can't renege on contracts.

I mean, there's no -- there's no question that so far as I understand, every dollar promised to every pensioner, every retiree, the City Council is responsible for. One day or another, whether there's a sale tax or anything else, it's a contract. It's a collective bargaining agreement. There's -- if it's required -- whatever it might require, they're bound by it. Those are promises made, like paying for a building.

DIRECTOR JOHNSON: I'm sorry, Chairman. The council member wants to speak.

MR. SUGARMAN: Mr. Chairman?

DIRECTOR JOHNSON: Hold on, Bob. We've got another question here.

MS. BROSCHE: Does the council appropriate the ADEC?

MR. DURDEN: Yes.

MS. BROSCHE: Okay. Thank you.

MR. SUGARMAN: All right. If I might.

Steve's comments kind of combined a liquidity payment and the minimum payment and the subject to annual appropriation. We still have to come back with the right number.

DIRECTOR JOHNSON: Well, Bob, I think the right number is seven, based on the two answers to the questions that I asked.

My concern is that we're at seven times annual payout now, which is a ratio I think we should maintain. Under this scenario, the city would pump more money in if it drops below five.

It would be discretionary as to whether the city would actually do it, and I'm concerned that the cause of it would be that the economy is not good. So we're in a position where the city is having trouble making revenues at a time where they need to put more money into the plan.

Maybe the way to protect that is to require a bigger multiple so that they're putting money in earlier, not when things get desperate in the future.

So that's my reasoning. Why have the multiple any lower than it is right now, which is already woefully low, and why put the city in a position where, at a time when it's challenged to put money in, it may not be able to in part due to because it doesn't have it and also because it has discretion? It doesn't have to do it.

MR. PATSY: But inherently you're suggesting a range, because if you keep it at 7, you know, and we get additional funds into the plan and the economy goes through a downturn and we go through the same scenario you just outlined --

DIRECTOR JOHNSON: Yeah.

MR. PATSY: -- the city would still be in a position where they would have to come up with additional dollars because we would fall before floor. So there's just a function of how high do you want to make that floor and how onerous do you want to make the situation for the City Council or the city if we get into a downturn?

DIRECTOR JOHNSON: I'm thinking that it would be easier to maintain the higher multiple than it would be to fix it after it got bad.

MR. PATSY: Right. But it does give them a discretion -- if you word it appropriately, it gives them the discretion to go below that, but no lower than some level.

DIRECTOR JOHNSON: Yes. I'm with you.

CHAIRMAN TUTEN: Well, which set of books are we talking about, Tim? The real books or the -- I'm trying to be nice -- surtax books? Because one is going to show that we're 65 percent funded overnight. It's a miracle.

The other one is going to be reality, which is 43 percent. Well, which -- who --

DIRECTOR JOHNSON: Well, in this case they're using the actual market value of assets and the actual benefit payment number.

CHAIRMAN TUTEN: So that's the real book.

DIRECTOR JOHNSON: So it's the real book. These are real numbers.

MR. SCHEU: So are you saying that we ought to change the 5 to 7?

DIRECTOR JOHNSON: I'm saying we change the 5 to 7.

MR. SCHEU: If we did that, then Bob would need to, it seems to me, lay a case for that. We need to say, this is what we're doing now and these are the reasons why we think that's appropriate.

But that's -- I'm willing to rely on whatever the executive director says.

DIRECTOR JOHNSON: Well, at this point it's not costing the city any more.

MR. SCHEU: Right.

DIRECTOR JOHNSON: At this point. So I'm not sure why not at least maintain the liquidity that we have now, which already is not good liquidity.

CHAIRMAN TUTEN: We're at what now, 7?

DIRECTOR JOHNSON: We're at 7.

CHAIRMAN TUTEN: And we're 43 percent funded?

DIRECTOR JOHNSON: Yeah, right.

CHAIRMAN TUTEN: So, I mean, if we get any lower, if we get down to 5, what are we going to be, like 30-something percent funded? That's going to cost the city more every year just in their annual contribution, unless, of course, they offset that with the surtax.

MR. SCHEU: So where does the 5 come from? Is that coming from the administration?

DIRECTOR JOHNSON: I don't know. It came from the administration. Where did the 5 come from, Joey?

MR. GREIVE: The administration.

MR. SCHEU: And did they have a reason for that or did they just picked the number out of the air?

DIRECTOR JOHNSON: Give me something.

MR. SCHEU: Joey, you sat in those meetings. You can tell us. You're our treasurer.

MR. GREIVE: Mike and Sam, I think Mike commented on it. You know, we can look at the minutes from last meeting.

DIRECTOR JOHNSON: Right.

MR. GREIVE: As to what he said.

DIRECTOR JOHNSON: Do you agree at this point it doesn't cost the city any more to promise to keep us at 7 than it would to take us to 5?

MR. BROWN: He's not going to be able to answer that.

DIRECTOR JOHNSON: Well, he doesn't -- you don't have to put any more money in. It's just a -- it's a promise.

MR. GREIVE: The question that I have for you on this is regarding the net of DROP accounts. Is your 7 net or gross?

DIRECTOR JOHNSON: It's the -- yeah --

MR. GREIVE: Where are you seeing the 7 that you're at now?

DIRECTOR JOHNSON: Oh, you mean in terms of where we go forward or where we are now?

MR. GREIVE: Which report are you referring to when you're referencing the 7 that you're at now?

DIRECTOR JOHNSON: And, I'm sorry. So --

MR. GREIVE: I haven't looked at that.

DIRECTOR JOHNSON: Is that Jeff?

MR. AMROSE: Yeah. I may be able to help with that, if I can.

DIRECTOR JOHNSON: Yeah. It's in the impact statement, I believe.

MR. GREIVE: Okay.

MR. AMROSE: Yes. Well, the liquidity ratio is in the projections on page 6 of the projection, if everyone has that, and the net asset value after taking out around 300 million for drop-outs is $1.2 billion.

The benefit payments are about 153 million, so the liquidity ratio is 7.84, as of October 1, 2016, and you'll see that in the third column from the right on page 6.

MR. GREIVE: In which scenario, the one you haven't given to the Board yet?

MR. AMROSE: I'm sorry. Scenario two.

MR. SCHEU: It's on page 6?

MR. GREIVE: Okay. Scenario two is not the one the Board adopted, correct?

MS. BROSCHE: Right.

MR. AMROSE: Right. We don't have that one run as a projection, but liquidity ratio won't change depending on a payroll growth assumption or a surtax amount, because, again, someone asked before, is this the real assets or reflecting the pension liability surtax, and this is real assets.

So if you look at any of the exhibits, in fact, you'll see a liquidity ratio of 7.84 because it reflects the real assets in the fund, net of DROP accounts, and the benefit payments of about 153 million.

MR. GREIVE: You're saying it won't impact the first year, but it will impact the projections, correct? Using a 1.25 instead of a 1.5?

MR. AMROSE: The projection, yes. Those will be impacted, yes.

MR. GREIVE: So I look forward to receiving the 4.25 and 1.25 --

MR. AMROSE: If you used a 5 instead of a 7, yes, on a projected basis, you're projected to go below 7, but not really projected to go below 5.

So maybe that was your point, that on a projected basis, that threshold would come into play, or could come into play, I should say.

DIRECTOR JOHNSON: So your point is you want to see the 30-year projection on the 1.25 --

MR. GREIVE: Yes. Because all of these numbers will change --

DIRECTOR JOHNSON: -- and then see the impact that it's going to have on liquidity?

MR. GREIVE: Yes. Liquidity, contributions, the assets in the plan, all of these numbers are going to change. And the purpose of this liquidity ratio --

MR. SUGARMAN: And we need to come up with a comment today, and the person who best knows about our internal finances is our executive director. He's the one who has to come up with the money to pay the bills.

DIRECTOR JOHNSON: All right. So that's fair. And I'm sure -- Jeff, how quickly can you do one of those for us?

MR. AMROSE: So just the projection with the 1.25 percent payroll growth and 4.25 surtax growth?

DIRECTOR JOHNSON: That's right.

MR. AMROSE: Definitely in the next couple days, but I don't want to speak for Pete because he's really immersed in this, but I know that he will obviously make this a very high priority. He's away at a meeting today, but I think we can get it done tomorrow, but it may be the following day, worst case scenario.

DIRECTOR JOHNSON: Let's shoot for tomorrow, if we can. We've got a deadline with council.

MR. AMROSE: Sure. Yes.

MR. SUGARMAN: So at the moment, is the consensus to go with 7, as recommended by Tim?

DIRECTOR JOHNSON: Well, I -- I'm no actuary and I can't speak to how that ratio is going to be affected by the new projection.

Maybe -- Jeff, if you could give a little color on that, it might help for the Board members to make a decision whether to go to 7.

MR. AMROSE: Yeah. Essentially, when we're using the 1.25 -- so if you're looking at page 6, everything is going to stay the same as that except we're going to use the 1.25 percent payroll growth assumption.

So more -- a little bit -- it's not going to be a huge difference, but the contributions are going to be a little bit higher, so the assets will go up a little bit more, and thus the liquidity ratio will increase.

They're not going to be huge changes from what you're seeing on page 6. So you can see that liquidity ratio starts at 7.84 and goes down to -- you know, in the fives, the general pattern is not going to change. It's not like we're going to go -- you know, we won't dip below 7 now. It's going to be a modest change, if that.

MR. SUGARMAN: A modest change to the good. It will be a little higher, Jeff?

MR. AMROSE: It will be higher, yeah, Bob.

MR. SUGARMAN: Okay. So it will be a change to the good.

MR. PATSY: Tim, this has to go before Wednesday?

DIRECTOR JOHNSON: Correct.

MR. PATSY: Okay.

DIRECTOR JOHNSON: That's why I'm asking him to get it to us quicker.

All right, Bob. Well, it's on the table. I've recommended 7. The Board members, I don't know whether anybody supports it or whether they want to leave it where it is or somewhere in the middle.

CHAIRMAN TUTEN: I support it. I think it ought to be at least close to where we're at now, we have been. Let's face it, we've been 40 percent funded now for how long? Ten years, it seems like. So we're kind of stuck at that level until there's a huge influx of cash, which there's not going to be. So, yeah, that's where we're at, where we've been at, why not stay there?

I mean, it's only a recommendation, you know. That's all it is.

MR. SUGARMAN: Okay.

The next two are "Minimum Payment" and the "Subject to Annual Appropriation," because Steve just spoke to those. Let me talk about those.

I respect and understand what Steve said, that we -- this council can't bind a future council. But what we've done, the pension reform depends on all of its pieces, because we're stretching out -- because we're going to be increasing our unfunded liability, we have a concern about liquidity. Because we're giving up an anticipated flow of revenue under the 2015 agreement, albeit, a contingent one, a minimum payment has been offered to us.

And so the words "subject to annual appropriation," again just indicates that this is aspirational and can't bind future council.

So my recommendation is that we leave out the words "subject to annual appropriation," knowing that it may not bind the future council, but maybe the future council will be more compelled to make this contribution, make these two contributions, because they understand that the entire deal -- if you pull any one part of this deal, the whole thing falls apart, and that they'll understand that this "subject to annual appropriation" is an important part of the deal, and if they can find a way legally not to do it, that's their risk and, I guess, their right.

But I think it should be, if we're commenting on this and putting out our full funding by a quarter of a century and want to make sure that we have our money to pay our bills, that should be more than optional or aspirational.

And that's also why I've later on recommended that the 2015 contract between our Board and the city be amended to provide for this, and I'll get to that, so that maybe we can enforce it under the right to contract.

But, anyway, that's -- if this was an

important part of the deal, and we're giving up a lot as part of this deal, I know you're -- a lot of comfort by the trustees and a lot of personal liability by the trustees, then we should at least cement as much of this as we can.

So now we're at the minimum payment, and this minimum payment is to improve our funding and partially offset the last, and to make sure that the -- our payment will not go down below a certain amount.

So the number recommended was 110 million. It's good that the city is offering us an additional payment. The question is, what's the number that you want?

I believe the city proposal is 110. I have no comment on what it should be. Again, we look to the actuary and the executive director.

MR. SCHEU: You know, he makes a good point. From our recommendations, we ought to take that out. And the general counsel is probably going to say it's subject to annual appropriation, but from our perspective, we should at least go on record that we think it should be absolute.

Then when it doesn't work 25 years from now when everybody is pointing fingers at each other, we've said what it should be.

MR. BROWN: Yeah. And that speaks to the whole purpose of this thing in general anyway.

MR. SCHEU: Yeah.

MR. BROWN: Regardless of what the changes are going to be, realize, we're making a comment and giving warning.

MR. SCHEU: So I move that from our perspective we take out "subject to annual appropriation" wherever it appears, knowing that the general counsel will probably say that that needs to go in there.

But at least then Jason -- when David Bauerlein, just before he retires, writes the article on what went wrong, that's one of the things that gets pointed to.

DIRECTOR JOHNSON: I agree.

MR. BROWN: I agree.

MR. SCHEU: So I'd move that we take that out wherever it appears.

CHAIRMAN TUTEN: I agree.

MR. SUGARMAN: I mean, the words I used in there are that these payments are vital and crucial to our continuing operation and soundness. And unless somebody can tell us that they're not, then we should at least try to make them mandatory or aspirational.

But what should the minimum payment be?

DIRECTOR JOHNSON: Stephen, I've got a couple of questions for you. I appreciate you being here.

MR. DURDEN: Sure.

DIRECTOR JOHNSON: I've heard the minimum payment described as a safety net, and I've also heard that the actuarially determined contribution is mandated. It's not discretionary, that the city's got to make it.

And so I don't know whether or not when the -- when this minimum is described, it's described as on top of the ARC, the actuarially determined contribution, or whether it replaces it, whether the city is saying, no matter how bad things get, you can depend on 110 million.

So is it the ADC plus 110, or could the 110 become the payment?

MR. DURDEN: The way I understand it is, to use an example, I don't know if this is -- the current one uses 110, but if the 110 were in there, if the ADEC for that year was 100, the city would pay 110, not 210.

MR. SUGARMAN: Oh, okay. I read it differently, but that's okay. We need to correct it.

MR. PATSY: That's a highly unlikely scenario.

MR. SCHEU: That's the way I understood it when they explained it earlier in the week. It's not 110 plus the ADEC. It's the higher of the ADEC or the 110.

DIRECTOR JOHNSON: So out of respect for Joey, you know, we don't have a 30-year projection. But if we did have a 30-year projection, it would show that the required city contribution never drops to 110 million, because under this scenario, the city -- under our next scenario, the city would be putting more in. So it would never get this low. The lowest it gets here is $125 million.

MR. GREIVE: Yes. So to Rick's point, this is a protection on the good side.

DIRECTOR JOHNSON: Right.

MR. GREIVE: If things go very well.

DIRECTOR JOHNSON: So why wouldn't the protection on the good side be at least as much as the minimum?

MR. GREIVE: Say that again.

DIRECTOR JOHNSON: In other words, if it's never going to get worse than 125 million, then why not guarantee 125 million? It's just like the five times liquidity. Why not go with the projection --

MR. GREIVE: You're free to make your comments to City Council. This is your comment session.

DIRECTOR JOHNSON: I realize that.

MR. BROWN: So, Tim, whenever we get the amended chart with 1.25 and 4.25, what about making this minimal annual payment the lowest projected amount, whatever that is?

DIRECTOR JOHNSON: Whatever that is. It's going to be somewhere north of 125 million. It ain't going to be a lot bigger than that, but it's going to be somewhere north of it.

MR. SCHEU: Well, I'm losing something here, because isn't the city -- aren't they required to do this anyway? Isn't that the ADEC?

DIRECTOR JOHNSON: This is the ADEC.

MR. SUGARMAN: But the question is, what if the ADEC goes below that?

DIRECTOR JOHNSON: Right.

MR. SCHEU: Right.

MR. BROWN: If things go south and it drops below that, then if that minimum payment were required, then they would make up that difference.

MR. PATSY: Then 110 million, though, in the unlikely scenario where we get five or seven years at 20 percent returns out of the fund and tax revenue comes in at 10 percent, when we're actually collecting funds, you could see the revised numbers go below that 110 figure.

So if it's 125 or -- the 110 would accelerate the pay-down of the unfunded liability. So if our ARC fell to 50, they would be obligated to pay 110 or 125.

MR. SCHEU: I don't have a strong feeling about this.

MS. BROSCHE: But that would be because -- that would be because things were going really well.

MR. PATSY: Right.

MR. SCHEU: Right.

MR. PATSY: That's not how we're forecasting.

MS. BROSCHE: So -- but I'm just saying if the ARC goes below --

MR. PATSY: That's not a bad thing. That's not a bad thing, but it's just, you know --

CHAIRMAN TUTEN: You plan on a lot of people dying between now and then, Rick?

MR. PATSY: Well, you've got a floor that you would never, ever, ever probably need. Feel good, but useless.

DIRECTOR JOHNSON: I'll tell you what, we've got to got on track.

So one of the issues, guys, I guess where I'm coming from, is that over the next 30 years a lot of things are going to happen, and there's nothing in the ordinance that kind of looks at it in the whole to make sure that the wheels aren't falling off. Do you follow me?

We're marking repairs to liquidity and we're making repairs to the unfunded level and we're making repairs to the minimum.

But Mike made the point many times, you know, that this ordinance is kind of, you know, interconnected in a way that if you change any one thing, it changes everything else.

Well, that's going to happen over 30 years. There's going to be changes over 30 years. And

I'm not confident that I understand five years from now or ten years from now whether this fund is as secure as it was intended to be when the ordinance was passed.

Follow me?

MR. BROWN: Uh-huh.

DIRECTOR JOHNSON: It's this effect you were talking about a minute ago. You just don't know unless there's some annual review of this deal to make sure that we're no worse off than we were before.

The only other recourse we have is commenting on parts of it and hopeful that, by commenting on parts of it, that we'll be able to shore up any threat or risk or weakness that's in it.

But that's my big worry, that down the road there's going to be unintended consequences that are going to jeopardize the plan. And at this point the only thing we have is the ability to comment on the law.

I'd be much pleased -- more pleased if council could devise a way of looking at this thing on an annual basis to ensure that it continues to do what it was intended to do.

CHAIRMAN TUTEN: Well, like I said before, Tim, they have an automatic out for the next 13, 14 years. Until the sales tax revenue kicks in and that starts counting, those discounts are built in. The mayor showed it, even with the gigantic raises, and I'm not against those by a stretch, but they've got a cushion built in for the next 13 years.

We all know none of these people that are involved in this process today, including probably most of us at this table, are not going to be here in 13 years to deal with the fallout.

The problem is, what if it's worse than expected? Then what? You cooked the books for 13 years. You don't have a real number, and then all of a sudden, oh, oh, we've got to come back. And liquidity ratios, nothing in the mayor's proposal puts any sort of back-stop, safety net, anything, or even a compulsion for future councils to act or do anything other than what it says, what it says on paper, and I can probably defer to our lawyer here. If it don't say it on there, it ain't in the contract, period. Verbal agreements don't mean much.

So if they can assure us today -- but may I remind everybody, I mean, I'm all for this. Don't get me wrong. And if I seem a little subdued, probably because maybe I've just beat my head against the wall enough for one lifetime. But trust me, fellas, they're not going to keep their word about anything of this.

They didn't -- it's been two short years. And the next council, the next mayor that doesn't like Mr. Curry's plan or doesn't like those assumptions or doesn't like that five times liquidity ratio, whatever it may be, to get them out of whatever situation they're in, they're going to do it. And there's nothing in any of this that stops them, that holds their feet to the fire. There's not. That's the way politicians work.

DIRECTOR JOHNSON: Well, I'm -- all right. I'm back to where I was.

And, Chris, you stated it. I would say we redo the projections and we propose a minimum that doesn't fall below whatever.

MR. SCHEU: Whatever that minimum is.

DIRECTOR JOHNSON: Whatever that minimum is.

MR. SCHEU: I'm happy with that.

MR. BROWN: Sure.

DIRECTOR JOHNSON: All right.

MR. SUGARMAN: What's the number --

MR. SCHEU: But saying -- but get a framework for that, too, that that's been our course of conduct and what the projection is.

DIRECTOR JOHNSON: That's right. And I think it's 125 million. Just follow in your own minds that before the ordinance, the city owed us $205 million. After the ordinance, that number went down to $137 million.

You follow where I'm going?

MR. BROWN: And we're just asking for protection in the form of 125 million.

DIRECTOR JOHNSON: Right. Our costs are at 153. I'm just saying, promise me something that's a little closer to reality.

MR. BROWN: Right. Sure.

DIRECTOR JOHNSON: 110, relative to those other three numbers, that's not realistic.

MR. BROWN: Sure. Sure.

MR. SCHEU: And Anna's going to be able to articulate this to her fellow council people.

DIRECTOR JOHNSON: Oh, yeah.

MR. SCHEU: Bob, you did get it that we wanted to strike out "subject to annual appropriation," whatever that is.

MR. SUGARMAN: Oh, yeah, that's coming.

But the second sentence that I wrote here is wrong. So here's what I propose. And, Jeff, could you listen to this.

MR. AMROSE: Sure.

MR. SUGARMAN: Remember, minimum payment is only going to kick in -- mostly is going to kick in during good times. Is that right, Jeff, when we have actuarial gains?

MR. AMROSE: Not only just good times. After the 30 years is over, that's when it's more likely to kick in because you're going to have that unfunded accrued liability that's established now being paid off in 30 years from now.

So after the 30-year period is over, you'll see a reduction in that ADEC, which, you know, depending on what's going on at the time, could very well be below 110 or 125, certainly.

MR. SCHEU: Which does mean why you have to have a minimum payment, because at the end of the 30 years, there's no sales tax and you've still got liabilities. So you've got to fund that, is what I'm saying.

DIRECTOR JOHNSON: But, Jeff, through actuarial changes, this number could be manipulated. If it can be manipulated to 137 million from 205, it can be manipulated lower today.

MR. AMROSE: Certainly. Yes, that's right.

DIRECTOR JOHNSON: See, that's my point.

MR. SCHEU: Sure.

MR. AMROSE: Agreed.

DIRECTOR JOHNSON: Okay.

Bob, it's back to you.

MR. SUGARMAN: How does this sentence sound as a replacement for an incorrect second sentence, "Minimum Payment."

"This minimum payment will use extraordinary actuarial gains to accelerate the payment of our unfunded liability as well as to provide minimum income when the surtax expires."

Jeff, is that correct? It "will use extraordinary actuarial gains" -- in other words, it's got to be pretty good times to bring it all the way down below 125.

" -- to accelerate the payment of our unfunded liability as well as to provide minimum income when the surtax expires." Or "after the surtax expires."

MR. AMROSE: Yes.

MR. SCHEU: You might just add the words "if necessary" in that latter part.

MR. SUGARMAN: "As well as to provide minimum income, if needed, after the surtax expires."

MR. SCHEU: Yeah. That's a little kinder, I think.

MR. SUGARMAN: Yeah. Okay. Got it.

And then we're going to keep the sentence, "Any amounts paid by the city to maintain liquidity will be credited towards this payment."

All right. Now we're down to "Subject to Annual Appropriation," which we've already discussed. We're recommending deleting that wherever it appears.

And now we're down to the middle of page 5, "Determination of Use of State Premium Tax Rebate Income for Additional Benefits."

So what happened here is the union and the city have taken control of the 175 and 185 money that we have, a certain amount of it that we have in reserve and the amount that's going to come in. And that's good because that's what the state law says is going to happen, should happen. It should be decided upon by mutual consent.

But what they said is it will be made for the legal use to the firefighter and police officer members as determined by their unions.

And my job is to make your job easy. And we don't want to get involved in reviewing what the union picks because we're now out of the plan design business and we're out of collective bargaining.

So what I've said -- so rather than the union coming up with a plan, giving it to us, and then us somehow approving it or disapproving it or enacting it, what I propose is the unions come up with their plan, they come to us and we'll tell them how much money is available for their plan and what their proposals are going to cost and whether we can administer it, and put a word here, a word there to make it easier, and then they take that plan to the City Council and the City Council adopts an ordinance, and then we follow the ordinance, because that's what we do now and we've been doing that since 2015.

The City Council gives us an ordinance and we administer it. We don't get involved in designing plan benefits anymore.

So that's my recommendation, and that would be adding certain minutes in line with what was agreed to in 2015, and all we're adding is, after the words "as determined by legally recognized bargaining unit and thereafter adopted by ordinance by the City Council."

I don't want us to have to look into a system. By the way, what will happen if we get involved in this, anytime you talk about the use of 175, 185 money, you have to drew a line as to who gets it and who gets how much, and the people who are on the negative side of that line become unhappy, and they're going to come to you.

I have such a case going on right now where my client made a good faith effort to design a benefit for the use of the share money, and it blew up in their face when there was internal dissension.

We can't pick one participant or beneficiary over another. The unions can. That's the unions job, is to mediate the competing needs of their members and they're subject to their own duty. It's called duty of fair representation.

So that's my recommendation here, that they work out their plan, we'll let them know what it costs and how much money there is, they give it to the council, and council adopts and ordinance and we put it into effect.

CHAIRMAN TUTEN: We have Steve, Bob.

MR. DURDEN: Just a quick point.

The agreement doesn't have the language "thereafter adopted by ordinance by the City Council."

I don't know that we can recommend that the language be different than the collective bargaining agreement or the tentative agreements. That's the language that was negotiated.

I think our recommendation will likely be that if it's in the language of the agreements, that's the language that should be used.

To make it clear, neither the City Council nor you would be -- ever be in the business of setting these benefits. That is up to the unions.

I know Mr. Klausner -- Sugarman, sorry. Mr. Sugarman is concerned about you-all being involved in setting of benefits. That's not your role. That's not what this says. You can't approve or disapprove what the unions come up with. I don't believe the City Council can approve or disapprove what the unions come up with.

MR. SCHEU: Why is that? Because isn't that part of the collective bargaining? Wouldn't they have to do that? And then how -- what would the Board rely on?

As Bob as said, we follow the ordinance. What would be the document that -- upon which we would base our administration of whatever it is that's agreed upon?

MR. DURDEN: The plan, if you want to call it that --

MR. SCHEU: So Randy would give us --

MR. WYSE: The CBA would.

MR. DURDEN: The agreed -- whatever the union comes up with, will come up with a plan of some sort, whatever that is, as long as it's lawful, they bring it to you. You-all may need to do some rules for administration, how it works, just to be -- to clarify. But it's not -- you're not involved in negotiating the benefits. You don't approve, you don't disapprove. They come up with them. They bring them to you.

Now, whether they want to ask us later to approve them -- not approve them but to put them in the ordinance code to make it -- I mean, they could certainly ask. I don't -- and that might make everybody happier. I understand that that gives people more comfort, but at the moment it belongs to the unions for their legal use.

MR. SCHEU: So we -- okay. So would we get an opinion from the union's counsel that that is a legally --

MR. DURDEN: You could certainly ask our office if you thought it was a legal use. We represent you, and if they come up with you and said, hey, we want to rent a cruise to the Caribbean, we'd probably say that's probably not lawful unless they're taking their lawyers with them.

(Laughter)

MR. DURDEN: I mean, your lawyers, not their lawyers.

But in all seriousness, that's what we're here for, and certainly Mr. Sugarman is here. You get legal advice. I don't think the unions -- I mean, they have, as Mr. Sugarman says, they have their own legal requirements, and I'm by no means an expert in union legal requirements.

But they certainly have restrictions on their rights as a union as to the people they represent. Whatever those are, they do exist. They can't do anything they want with that money. There are legal uses --

MR. WYSE: Those restrictions are laid out in Chapter 175, 185. We're talking about chapter monies, and those legal requirements are specified in 175, 185.

MR. SCHEU: So I hate to beat this to death, but it's just like a church dispute. If you've got 40 members of the church that want to do this and 60 members -- does this require the head -- the president or does it require a vote of the union or what --

MR. DURDEN: I -- I don't know enough about the internal --

MR. WYSE: Vote of the membership.

MR. SCHEU: So they would have a vote of the membership every year as to the use of those chapter funds; is that right?

MR. WYSE: I wouldn't say every year. I would say we would have what we're going to do with those chapter funds unless that changes.

MR. SCHEU: Right. I get that part. Sure.

MR. WYSE: Not annually.

MR. DURDEN: For example, if there's a new version of a share plan created, just imagine that. They vote for it. They approve it. The union approves it through their appropriate methodology. It's brought to you. It's set up.

And then it stays in place until the union later says, you know what? We want to do something else. We want to change the way the share plans operates. Or whatever else they may want to say.

MR. SCHEU: So we probably don't need to make that change then.

MR. SUGARMAN: Here's the problem, and this is getting pretty far into the weeds.

But the collective bargaining agreement and the proposed ordinance says that the unions will use this money for the benefit of the police officer and firefighter members as determined by the legally recognized bargaining unit.

The big fight when you talk about dividing up 175 and 185 money is, is any of the money going to go to the retirees? Every time you approve a retirement, that person is a retiree and unions don't represent retirees. They're not in the bargaining unit, nor do they have a duty of fair representation to their retirees.

MR. WYSE: That's not true.

MR. SUGARMAN: So the longer the union waits to divide up the money, the fewer people could get it if you're literally using the term "members." But we may view members as including retirees.

So what will happen -- this happened in Broward County -- is we had the money in a closed plan, and the -- there were several unions and they didn't get involved.

So the police and fire pension plan gets the police officers together, the active and those in the DROP, and we come up with what kind of plan you want, we write it, they approve it.

Then people start popping up, wait a minute, I didn't get to vote on this. Who's the proper vote? Why is any money going to retirees? They're not members.

And this is going on and on for months until my client, based on my advice, threw its hands up and said, we're out of the plan design business. We're not going to mediate this dispute. There's three unions involved here. Unions, city, get in the same room, figure it out, and we'll administer whatever you give us once it's an ordinance.

So the problem that will arise here is that when the union comes up with a plan that cuts the first person out of a benefit, that person is going to show up and say, you're supposed to administer this for the use of our members and I'm a member and the union cut me out.

And we're going to say, well, no, you're not a member because you're a retiree. And they're going to say, but I was a member when the money came in, because the money comes in a year late. So I was the guy who helped bring that money in, because the money for the firefighters is a percentage of salary limitation.

This is something that I want to protect you from. We do not want to get involved in this.

And even the question that Steve us, for us to determine whether the union's plan is legal, because he said, if the plan is legal, or the city -- if the OGC wants to get involved in that. It's just looking for trouble.

If we get an ordinance, we can stand behind an ordinance and say, we administer the ordinance, that's what it says, and if you're not happy with it, go after the people who adopted the ordinance or recommended it. So that's why my advice is we'll wait for an ordinance.

By the way, this is going to happen. All right? I'm telling you, this is going to happen. And if -- if they don't like the way the current union administration divided up the money, maybe they will replace it with another one.

What are they going to do, divide up the money up again? We're going to have a whole different plan? What if the money was used to buy a defined benefit? What do you do then? So, anyhow, my advice is don't get involved.

MR. SCHEU: Well, again, we're given recommendations and so maybe we ought to do what Bob says.

But, again, I would think it would be helpful for the council to understand why that is an issue. As Steve said, you know, maybe they won't do it, but if we can justify the reason, because it will -- in our opinion, it will promote litigation between possible beneficiaries of the plan, something like that, as a foundation for why we would want to recommend that.

CHAIRMAN TUTEN: Well, the retirees up until this point have not really been entitled to any of the chapter money outside of the fact that the Board has voted to give them a Christmas bonus.

Outside of the irony that I'm about to be retired and not get this bonus, from being on the Board for 14 years, it's a little sad.

But the truth of the matter is the Board has always given them a 2 or 3 percent bonus out of that state chapter money. That's really the only thing the retirees have been entitled to. The rest of the time it went to enhanced benefit account, yadda, yadda.

MR. SCHEU: Well, there may be an issue that they're not entitled to it.

CHAIRMAN TUTEN: Well, that's what I'm saying. In other words, they've never really been entitled to it other than the fact that this Board gave it to them as a Christmas gift, essentially.

MR. SUGARMAN: How many years did they get it, Mr. Chairman?

CHAIRMAN TUTEN: Right. So they're not really entitled --

MR. BROWN: Rich, he asked how many years have those bonus been given out?

CHAIRMAN TUTEN: Oh, gosh. As long as I've been on the Board, maybe before.

MR. SUGARMAN: Did they get it last year?

MR. WYSE: Yes. Peyton did it.

MR. BROWN: Yes.

CHAIRMAN TUTEN: Well, we changed them from 3 percent to 2 percent.

MR. SUGARMAN: So if the unions tell us it's over, we want to take the 175 and 185 money, divide it up equally among our active members and the retirees get nothing?

CHAIRMAN TUTEN: Well, that's -- see, Bob, instead of it being the Board, that's going to be the union guys. They'll decide, okay, look, do we continue to give some of that money every year to the retired guys? I don't know that they can --

MR. BROWN: It's their job now, not ours.

CHAIRMAN TUTEN: Yeah. It's not our job at all. We've only given it to the retirees, really, out of the goodness of our hearts because we're sweet people over here on the Board.

Okay. Moving on --

MR. SCHEU: What did we do?

MR. SUGARMAN: Are we going to leave that in there, that we prefer an ordinance? If they don't give us one, we'll figure out what to do then.

MR. SCHEU: Yeah. I'm happy with that if you put that explanatory language in there.

MR. SUGARMAN: Okay.

MR. BROWN: Yes.

DIRECTOR JOHNSON: All right, Bob. You got that?

MR. SUGARMAN: I got it.

DIRECTOR JOHNSON: All right.

MR. SUGARMAN: Now we get to the big issue here, and that is there's the 2015 Pension Reform Agreement and Consent Degree that reads differently than this 2017 arrangement.

And I understand our opinion is that this is an asset of the plan. We understand and respect the OGC's opinion that these are optional payments that have -- but there are consequences for not making the payments, and even those consequences could be served as an asset of the plan.

So if we're -- I just don't think we can ignore it. I think they need to be -- and we have to report annually to the federal court. I just don't think we can say to the federal court annually, well, we didn't get this money because they promised us something else and, okay, court, that's okay with us without saying this is okay with you.

And the same thing with our agreement. I think they need to be amended, and they need to be amended to reflect the new pension reform arrangement. And with some, again, consequence, which is that if these payments wind up being optional and the payments are not going to be made, that there's a consequence.

And the consequence would go back to the 2015 agreement, because at least there the optional payments gave us something if the city didn't make the payment.

Here, if those words "subject to appropriations" stay in, we don't get anything. So my opinion is that the -- whatever the parties agree to in collective bargaining, they cannot trump our entire 2015 Pension Reform Agreement or out Consent Degree, because those were big-package deals, they had a lot of things involved, and that they should be amended to include nothing more than what the city is proposing here, by the way.

I'm not looking for any advantage or any more money. I'm just looking to try to make these vital parts of our package less optional. One is by putting them in a contract, and two is by putting them in a consent degree.

MR. BROWN: So it sounds like what you want to do is take the intent of the city and put it into writing so that in the future, when there are different administrations, that our intent is clearly known.

Is that what you're trying to do, Bob?

MR. SUGARMAN: Yes. I want promises rather than aspirations, because we are giving something up. We do have some rights under the consent degree and the 2015 agreement, maybe not to the full 350 million that we anticipated. But we do have some rights that we're giving up if we're trading that for the new proposal.

MR. SCHEU: I don't think there's any -- any chance at all that paragraph two would go anywhere. That's sort of like tilting at windmills because that's -- but I do think it would be appropriate to recommend that the agreements and the decree be amended, because that puts it in the form of an agreement and tells the judge what has happened.

But I don't see number two as a fail-safe. I don't see that happening in a million years. So I think --

DIRECTOR JOHNSON: Which number two are you talking about, Bill? I want to make sure I'm clear.

MR. SCHEU: Page 6.

DIRECTOR JOHNSON: Page 6, paragraph 2.

MR. SUGARMAN: That's where I proposed that if the city -- all right. If the city doesn't make the payments, that we go back to the 2015 agreement.

MR. SCHEU: I don't think that's -- isn't that something that would be collective bargaining?

MR. SUGARMAN: No. There's other things in there that deal with the unfunded liability accounts and things of that sort. And I understand the opinion of Jim Linn saying that they are inextricably tied to benefits.

I believe that they were inextricably tied to reducing our unfunded liability, and that's something -- the unfunded liability is the Board's concern and how quickly we get that paid off.

MR. BROWN: But those unfunded liability accounts, all of that was our part of the terms of collective bargaining.

And what gets messy, Bob, is that, of course, even though this agreement took place in 2015, it was recognized then and has since been, you know, recognized multiple times, that this Board should have had no role in collective bargaining at all, you know, negotiating benefits and all that. That's where I think you're going to have an issue getting this adopted. We can certainly --

MR. SUGARMAN: Well, it doesn't really state it. It just gives us --

MR. PATSY: I don't see any reason in doing this.

MR. SCHEU: I think one was okay.

MR. SUGARMAN: -- and I don't mind if you leave number two out, as long we get number one in there. There should be a consequence. I guess we could worry about what the consequence is if they don't pay when we get there.

MR. SCHEU: Well, we've already acceded to the notion that it's ultimately aspirational.

CHAIRMAN TUTEN: Well, Bob, we've got to go back to the original problem, though. It's been touched on, but they sent Jason over here with the company line.

We had it -- I'm still -- get me around the whole idea of a contract between two parties being voided by another contract with one of the parties.

Because essentially the 2015 agreement was a contract between the council, the city, the board. And now all of a sudden the city says, no, we don't need your -- because we're substituting that with the 2017 agreement.

Okay. Well, that contract still had financial clauses in it, the extra 35 million, yadda, yadda. Well, they're not doing any of that. If they would have said, look, we're going to replace this but we're going to keep this part of the deal to keep you guys happy, that's one thing.

But they haven't -- they basically replaced the entire agreement. I mean, we're sort of saying, well, as long as you guys will put this in the new one, we'll go ahead and let you get away with it. But I think it's a bad precedent when you let someone break a contract.

Now, if they go back before the judge and he says, look, they're entitled to do this, just like Jason and everybody said, that's just the way the law works. But I don't believe that.

I believe that somebody besides the city needs to tell me that the deal is or is not valid. I mean --

MR. SCHEU: Well, Jason's opinion wasn't that it was a contract. Jason's opinion was that those were -- those dollars were inextricably connected to benefits, and for that reason, we have no role to play. It's collective bargaining. And Jim Linn agrees with that.

Now, Bob says he disagrees, but we relied on the opinion of the general counsel with Bob's advice that that would limit our liability. So I think we're sort of stuck with that.

CHAIRMAN TUTEN: I know, Bill. But I'm not worried about liability, trust me. They can have whatever I've got. I don't give a crap.

What I'm worried about is the pension fund and fiduciary and solvency and bankruptcy and keeping your damn word when you make a contract with somebody, and they won't keep it.

And all I'm simply asking Tim and Bob, just do me a favor. Run it by a third-party lawyer or maybe run it by the actual judge that signed off on the thing and say, look, man, all we want you to do is comment. Is this legal what's going on here?

Because I don't want to have to explain it to all the members, et cetera, et cetera, why we let the city do something that was illegal, because we haven't even challenged them. And I don't care what the general counsel says --

MR. PATSY: Well, Rich, correct me if I'm wrong. We negotiated the 2015 agreement --

CHAIRMAN TUTEN: Right.

MR. PATSY: -- on their behalf.

CHAIRMAN TUTEN: On whose behalf?

MR. PATSY: When this agreement was codified and put into law, that all subsequent responsibility for negotiating those benefits were taken away from us or given away by us or whatever you want to call it --

MR. SCHEU: Well, actually, the unions

negotiated that.

MR. PATSY: -- is that correct?

MR. BROWN: Right. You can't say -- you can't tell the unions now that, hey, it's your responsibility, but you're bound by collective bargaining that was --

CHAIRMAN TUTEN: Because that contract wasn't about collective bargaining. It was about pension reform, gentlemen. It was about solving the pension crisis. They put in extra money. They formed a committee, the Financial Advisory Committee, et cetera, et cetera. It's not just about who gets to bargain benefits.

MR. SCHEU: Just to move us along, because I think we've now gotten into philosophical issues, I'd like to move that we accept Recommendation 1, but not accept Recommendation 2.

MR. SUGARMAN: And that answers your question, Mr. Chairman, of how you get around this. And that is that I agree that the collective bargaining agreement, to the extent that it involved the use of the 175 and 185 money and moving that into an account in which the benefit will be designed by the union, and taking us out of the plan design business that happened in 2015, that the unions decided that is -- that that is proper, that that should not be challenged. That's the way collective bargaining on 175 and 185 money is supposed to work.

But I agree with you also that the 2015 package had a lot of other things in it, and that we should not get involved in collective bargaining. We do need to get involved in funding.

So the way -- and I also agree with you, and I'm still puzzled as to how a federal court consent decree -- oh, I just lost you.

Can you still hear me? Oh, there we go.

CHAIRMAN TUTEN: Yeah.

MR. SUGARMAN: That the federal court consent decree can somehow be altered by only one of those parties to that agreement making an agreement with another.

And I understand there's the idea that we were somehow at one point an agent or representative of the union, but that still -- I don't think we can explain that.

So I concur with what Bill says. And that, Mr. Chairman, tells us how we get around that. We go to the federal judge. And the city says, this is the ordinance that we passed to replace the 2015 -- the funding provisions and benefit provisions of the 2015 agreement, and explains -- and asks that the consent decree be amended accordingly, not the entire consent decree, because the things dealing with the advisory committee and the Board not being involved in collective bargaining and all that should still be in effect.

MR. SCHEU: And they say they do remain in effect.

CHAIRMAN TUTEN: But how are they still in effect, though? Is that the new ordinance?

MR. SCHEU: The governance stuff, they've -- I haven't checked it in the ordinance, but they've assured us numerous times that none of that is affected by us.

Steve, that's right, is it not?

CHAIRMAN TUTEN: Is it written in the ordinance, Steve?

MR. SUGARMAN: Yeah. Governance is in the ordinance and the consent decree. We're going to stick with that. We're just talking about funding issues here, not benefits, funding.

As the mayor said, we now have a new source of funding. It's not going to be those payments, the 13 years of payments. It's going to be -- the 350 billion, it's going to be the surtax.

So the city makes a proposal to amend the consent decree. You're also a party to that lawsuit. At that lawsuit you had an adverse position to the city. So then you'll decide whether or not you want to say, okay, remain silent, whether you want to agree with the city, or whether you want to take issue with the city.

A lot of that, I think, will depend on what the final ordinance looks like that's going to be taken. And I'm not advising you one way or the other on that right now. I don't think you need to decide that right now.

But I think what you need to decide is that you should recommend to the City Council that you can't have a consent degree and a contract that say one thing and an ordinance that says another.

They need to be brought into compliance, and the first step is for them to pass an ordinance, and the second step is to amend the agreements and the consent decree.

And if the Office of General Counsel wants to flip the order of those around, that's fine with me. But they all need to be brought into conformance so they all say the same thing, the way they do right now before this amendment.

And I'm fine with leaving out number two.

MR. SCHEU: But the governance stuff, that's not affected.

MR. DURDEN: No. It's in the ordinance code. If there were a proposal to change, it would be out, but my understanding is Mr. Gabriel's opinion suggested that that remain in the agreement.

CHAIRMAN TUTEN: Is part of the 2015 agreement --

MR. SCHEU: They're not amending the whole 2015 agreement.

CHAIRMAN TUTEN: And so it's all gone.

MR. SCHEU: No, it's not all gone. They've said the governance parts are not gone.

CHAIRMAN TUTEN: Where -- is that written in the ordinance?

MR. SCHEU: Yes. That's what Steve said.

MR. DURDEN: No, no, no, no. It's in the ordinance code now. There's no statement that it hasn't changed. There's nothing in the ordinance code that says nothing's changed.

But by implication, it's in the ordinance code --

MR. SCHEU: And it's not changed --

MR. DURDEN: -- it's not changed in the ordinance code. Therefore, it continues in existence.

MR. SCHEU: Right, it's not changed. There's not a blanket statement that says it's over --

CHAIRMAN TUTEN: What part of the 2015 agreement has been replaced in the ordinance that's before the council, just the finding, correct? Just the numbers?

MR. SUGARMAN: The funding.

MR. DURDEN: Well, the funding and the benefits. Yes, both. The 2015 agreement had funding and benefits. So obviously the benefits have changed, the funding has changed. Those things are different.

MR. SCHEU: All right. And we've been assured the governance -- Bob, has a practical matter, wouldn't the city general counsel go over on behalf of the city and the fund and say, we're advising the court that here's what happened, and the decree should be modified to reflect these changes? Is that really what's going to happen?

MR. DURDEN: Well, to be honest, we have not gotten to that point. I think we're going to -- we do have an annual -- an annual report to the judge and we would make that annual report.

And, clearly, Mr. Sugarman and our office disagree on some of these, but one of the things that I think does get a little lost in this, while our agreement did mention you're out of the benefit business, the agreement also, with very clear language, says, the agreement shall never be construed to -- maybe not never -- shall not be construed to interfere with collective bargaining.

It's broader than not doing benefit changes. It says it will not be used to interfere with collective bargaining.

So the only way that we would not be in compliance with this agreement, 2015 agreement, is if what's in these agreements was not proper collective bargaining, all of it.

In other words, if it's part of collective bargaining, if it's -- if it's lawful under collective bargaining, then it's consistent with the agreement which says the unions can now collective bargaining -- bargain, and that would be everything, besides the other things that have been mentioned to you about that agreement, among a number of other things.

MR. SUGARMAN: Bill, my answer to your question is that I got a -- it hasn't come before the Board yet. I've got a substitution of counsel form from the Klausner firm who had represented you in the consent decree case.

In the consent decree case, the city and the pension board were opposing parties.

MR. SCHEU: Okay.

MR. SUGARMAN: And so the question is, would now the Office of General Counsel be representing previously opposing parties, or would we enter an appearance and follow your -- in this one particular case and follow your direction as to what to tell the Court, which could very well be in agreement with the general counsel, amend the pension -- amend the consent decree to conform with the new ordinance.

MR. SCHEU: Sure. We just leave that to another day.

MR. SUGARMAN: We have to leave that to another day because we don't know what the new ordinance is going to look like.

MR. SCHEU: Right. Okay. Thank you.

MR. SUGARMAN: But I believe our advice is not to have -- my advice is not to have a contract and a consent decree and an ordinance that differ from each other, and not have to explain to the court that we've interpreted the collective bargaining agreements to nullify part of the consent decree, rather to just change the consent decree to what the new ordinance says.

And then we can report every year to the judge that there's been, hopefully, compliance with the consent decree, or maybe -- you know, limit the reporting requirement for a certain number of years.

Steve and I talked about this. We don't anticipate 43 years of reporting to the Court. I'm sure we'll come up with a number.

So, anyway, that's where I left it. So we'll leave out number two and just leave number one, if that's the will of the Board.

And unless there's anything more you want to conclude, it's just a conclusion, essentially repeating what we said before.

We need the money to administer our plan because you've pushed our full funding out for a quarter of a century. And the final sentence is, with our six recommendations above, we seek only assurances from the council that they are committed to providing us with the contributions we need to keep things going until the surtax revenue begins to flow, which is when our progress towards full funding will resume.

CHAIRMAN TUTEN: All righty then.

MR. BROWN: Do we need a motion to --

MR. SCHEU: We should. As amended, yeah.

MR. BROWN: I make a motion to adopt this letter with the amendments that we have obviously outlined today.

MR. PATSY: Second.

CHAIRMAN TUTEN: All right. We have a motion and a second to accept the recommendation from Bob and its language and the amendments therein. Any comments, questions?

(No responses.)

CHAIRMAN TUTEN: All in favor?

(Responses of "aye.")

CHAIRMAN TUTEN: Any opposed?

(No responses.)

CHAIRMAN TUTEN: No.

MR. SCHEU: I just have one little maybe addition to say.

We have spent two and a half hours on this. We spent however long we spent, five hours on Monday, and that we would urge the council to consider these carefully and not rush to judgment on the proposal.

MR. BROWN: So you want that --

MR. SCHEU: Sort of as part of the conclusion. Would you-all be comfortable with that? I don't want to throw sticks at anybody, but I do think it is important and, in fact, needs to be said, you know, that this requires careful consideration. As the mayor himself has said, this is the most important decision for the city since consolidation.

Well, I don't know if I agree with that or not, but that's what he said. So I do think that it's important for us to call to the attention of the council that these are very important considerations and that we hope that they will spend sufficient time to fully articulate them and deliberate them before making their decision.

And I say that, really, as a citizen of the community, that I hope you-all don't rush -- and

I know several of you don't want to rush to judgment, but some people do.

Bob, is that okay with you?

MR. SUGARMAN: Yes, yes. You said it was over six hours of meeting time or did we hit seven yet?

MR. BROWN: Oh, we've hit seven.

MR. SCHEU: We've hit seven. Five and a half and two and a half.

MR. SUGARMAN: Got it. Yeah, well, I have what you need.

MR. SCHEU: Thank you-all for consenting to that.

CHAIRMAN TUTEN: Meeting adjourned.

(The special meeting concluded at 4:00 p.m.)

- - -

CERTIFICATE OF REPORTER

I, Denice C. Taylor, Florida Professional Reporter, Notary Public, State of Florida at Large, the undersigned authority, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings, pages 3 through 130, and that the transcript is a true and correct computer-aided transcription of my stenographic notes taken at the time and place indicated herein.

DATED this 17th day of May, 2017.

____
Denice C. Taylor, FPR
Notary Public in and for the
State of Florida at Large

My Commission No. FF 184340
Expires: December 23, 2018