


OFFICE OF GENERAL COUNSEL  
CITY OF JACKSONVILLE  
117 WEST DUVAL STREET  
SUITE 480  
JACKSONVILLE, FL 32202  
PHONE: (904) 630-1726



**MEMORANDUM**

**TO:** The Honorable Finance Committee Members  
Honorable Council Member Richard Clark, Chair  
Honorable Council Member Matt Schellenberg, Vice Chair  
Honorable Council Member Lori Boyer  
Honorable Council Member Reginald Brown  
Honorable Council Member Doyle Carter  
Honorable Council Member John Crescimbeni  
Honorable Council Member Kimberly Daniels  
Honorable Council Member Bill Gulliford  
Honorable Council Member Ray Holt

**CC:** Kirk Sherman, Council Auditor  
Ronnie Belton, Director of Finance  
Jason Gabriel, General Counsel  
Margaret M. Sidman, Deputy Legislative Affairs and Managing Deputy  
Stephen M. Durden, Assistant General Counsel

**FROM:** Lawsikia J. Hodges, Assistant General Counsel 

**RE:** **Pension Contributions**

**DATE:** August 28, 2014

---

**I. Question Asked.**

You have asked whether the City's contribution in the annual budget ordinance to the Jacksonville Police and Fire Pension Fund, as created by chapter 18615, Laws of Florida, 1937, as amended (the "Pension Fund") is required by law to be the greater of: (i) the required contribution amount for the prior fiscal year as stated in the most recent actuarial valuation<sup>1</sup> and certified to the City Council by the Jacksonville Police and Fire Pension Board of Trustees (the "Required Contribution Amount") or (ii) the percentage

---

<sup>1</sup> The most recent actuarial valuation information is based on the Jacksonville Police and Fire Pension Fund Actuarial Valuation Report as of October 1, 2013 prepared by Pension Board Consultants, Inc. (the "Actuarial Report").

contribution of covered payroll<sup>2</sup>, as stated in the most recent actuarial valuation, for the budget year (the "Percentage Contribution")?

## II. Short Answer.

No. The City's annual contribution to the Pension Fund is not required by law to be the greater of the Required Contribution Amount or the Percentage Contribution. The City Council is required by the Florida constitution and statutes to fund the Pension Fund on a sound actuarial basis. Further, the provisions of the Pension Fund and Section 121.113, City Ordinance Code (the "Ordinance Code"), expressly require the City Council to contribute at a minimum the Required Contribution Amount in the annual budget. The City Council may in its discretion contribute more than the Required Contribution Amount in the annual budget to assist the City in reducing the unfunded actuarial accrued liability ("UAAL") of the Pension Fund, but is not required to by law.<sup>3</sup>

## III. Background

The language regarding the City's contribution to the Pension Fund as expressed in the City's annual budget ordinance has changed over the years and is relevant to the discussion below. The annual budget ordinances for Fiscal Years 2013 and 2014 contained language that the City's contribution towards the UAAL of the Pension Fund be the greater of the Required Contribution Amount or the Percentage Contribution of covered payroll. For example, the language below was included in Ordinance 2013-464-E, the annual budget ordinance for Fiscal Year 2013-2014:

### Section 8.4. Pension Contributions.

\*\*\*

(c) The October 1, 2012 Actuarial Valuation Report for the 1937 Jacksonville Police and Fire Pension Fund (using the active payroll as of October 2012) computes the contribution to be \$148,108,302 based on a City contribution percentage of 110.85% of covered payroll. To assist in reducing the Unfunded Actuarial Accrued Liability of the Police and Fire Pension Fund, the City will contribute the greater of \$148,108,302 or 110.85% of the covered payroll.

---

<sup>2</sup> The Percentage Contribution for Fiscal Year 2015 as stated in the Actuarial Valuation Report is 116.83% and based on participant data provided by the City to the actuary as of July 1, 2013. The participant data includes the number of employees at the time of the report. The Required Contribution Amount and the Percentage Contribution are based on the same "snapshot" number of employees. If the number of employees changes from the "snapshot" shown on July 1, 2013, then the Percentage Contribution and Required Contribution Amount would also change and be outside of the assumptions presented in the Actuarial Valuation Report.

<sup>3</sup> The City's special counsel on pension matters agrees with the conclusions reached in this memorandum.

Prior to Fiscal Year 2013, the annual budget ordinances dating back to at least Fiscal Year 2005<sup>4</sup> contained language that the City contribute a percentage of covered payroll; thus, the City's contribution was expressed as a percentage rather than a stated dollar amount. To illustrate, the language below was included in Ordinance 2011-405-E, the annual budget ordinance for Fiscal Year 2011-2012.

#### **Section 8.4 Pension Contributions.**

The employer's contribution to the pension funds as a percentage of covered payroll is hereby set as follows:

- (a) for the 1937 City Employees Pension Fund, the percentage shall be 17.52%, which includes 0.3% for Disability.
- (b) for the 1937 Police and Fire Pension Fund, the percentage shall be 49.60%.
- (c) for the Corrections Officer's Pension Fund, the percentage shall be 31.78%.

Ordinance 2014-466, the Mayor's proposed City budget for Fiscal Year 2015, as set forth below, varies from the two past immediate budget ordinances and beyond in that the City's required contribution to the Pension Fund is only expressed as a stated dollar amount, i.e., the Required Contribution Amount.

#### **Section 8.4. Pension Contributions.**

\*\*\*

(c) The October 1, 2012 Actuarial Valuation Report for the 1937 Jacksonville Police and Fire Pension Fund (using the active payroll as of October 2013) computes the contribution to be \$153,014,791 based on a City contribution percentage of 116.83% of covered payroll. To assist in reducing the Unfunded Actuarial Accrued Liability of the Police and Fire Pension Fund, the City will contribute \$153,014,791.

Accordingly, since 2005 the City in its annual budget ordinance has used three variations of language regarding the City's contribution to the Pension Fund: 1) the stated dollar amount (FY 2015 budget); 2) the greater of the stated dollar amount or the percentage of covered payroll (FY 2014 and 2013); and 3) percentage of covered payroll only (FY 2012-2005).

#### **IV. Discussion.**

The Florida constitution requires local governments to fund retirement plans or systems on a sound actuarial basis.<sup>5</sup> Pursuant to Section 22.04(n) of the City Charter, the

---

<sup>4</sup> Our office did not research beyond Fiscal Year 2005 in ascertaining the City's pension contribution language contained in the annual budget ordinances.

<sup>5</sup> Art. X, Sec. 14, Fla. Const.

Jacksonville Police and Fire Pension Board of Trustees (the "Board") is also required to maintain the Pension Fund on a sound actuarial basis. Additionally, Section 112.64, Florida Statutes, also provides that the "total contributions to the retirement system or plan shall be sufficient to meet the normal cost of the retirement system or plan and to amortize the unfunded liability ...". Neither the Florida constitution nor Florida statutes prescribe how the City's contribution must be stated in the City's annual budget ordinance (i.e., stated amount vs. percentage of covered payroll). Therefore, to the extent the Ordinance Code prescribed the manner in which the City's contribution must be stated in the annual budget ordinance, the Ordinance Code provisions would be applicable. Of course the City Council may adopt a budget ordinance which waives budget Ordinance Code provisions so long as the budget ordinance is consistent with state law. Note that neither the "greater of" or "stated amount" language would require an ordinance code waiver as both contribution methods meet the ordinance requirement, and all three contribution methods (i.e., greater of vs. stated amount vs. percentage contribution) would meet the state law requirement that the Pension Fund be funded on a sound actuarial basis.

The Ordinance Code and Pension Fund provisions also provide for the City's contribution amount and the City Council's obligation to place such amount in the annual budget. Section 121.113 of the Ordinance Code provides as follows:

The Pension Fund created by Laws of Fla. Ch. 18615 (1937), as amended, shall consist of moneys derived as follows:

- (a) A deduction of seven percent per annum from all salaries (base salary, longevity, City college incentive, enhanced certification pay, emergency operation and hazardous duty pay; shift differential, and "upgrade" pay; and excluding all overtime, state incentive pay, reimbursed expenses and allowances such as cleaning/clothes allowances, and payments for unused accrued time), of all members of the Police and Fire Departments participating in this fund, or who will become members hereafter, to be deducted in installments from each periodical paycheck of each of these members, together with a sum equal to not less than the minimum recommended contribution in the most recent actuarial valuation of the fund expressed as a percent per annum of all salaries (as defined above) of all members of the Police and Fire Departments participating in this fund according to the amount thereof as set up in the current budget in each year hereafter, together with such additional sums as may be necessary to administer this fund, which two latter amounts shall be designated by the Board and certified to the Council for each fiscal year, and the

Council shall thereupon place the amount so designated in the budget for the succeeding year and levy a tax therefor, if necessary; except that the City may in good faith challenge the City contribution designated by the Board. In the event of such a challenge, the Board's actuary and City's actuary shall agree on an impartial third actuary who shall resolve all disputes between the actuaries and whose decision shall be binding and final as between the Board and the City.

Section 121.113 requires, at a minimum, that the City Council place the "amount so designated" in the annual budget. The "amount so designated" consists of two amounts designated by the Board and certified to the City Council each fiscal year: 1) the Required Contribution Amount; and 2) the sums necessary to administer the Pension Fund.

The Mayor's proposed budget contains a Required Contribution Amount of \$153,014,791. Provided that the Required Contribution Amount of \$153,014,791 is the amount designated by the Board and certified to the Council for the current fiscal year, the City Council is required by Ordinance Code to place such amount in the annual budget for Fiscal Year 2015. Section 121.113 does not require the greater of the Required Contribution Amount or the Percentage Contribution, but would not prohibit use of such language in the annual budget either (e.g., See Ordinance 2013-464-E and Section 8.4).

The City Council may in its discretion contribute more than the Required Contribution Amount in the annual budget, but is not required to under Section 121.113. The Required Contribution Amount represents the City's minimum required contribution by Ordinance Code towards the UAAL, which meets the constitutional and statutory requirement that the Pension Fund be funded on a sound actuarial basis.

#### **V. Conclusion.**

I trust that this opinion provides the guidance you seek. I am available to discuss this with you at your convenience.