



# Legacy Cost Recommendations and Discussion

SEPTEMBER 12, 2019

# AGENDA

- ▶ Introductions – Mayor Behnke and City Manager Fleury
- ▶ Direction needed from Commission on both Recommendations (Y or N) and Points of Discussion (Y, N, or more information needed)
- ▶ Pension Recommendations and Points of Discussions – City Manager Rebecca Fleury & Revenue Services Director Linda Morrison
- ▶ Other Post Employment Benefits (Retiree Health) Recommendations and Points of Discussions – Brandon Fournier, Shifman Fournier Law
- ▶ Public Comment

# Pensions

- ▶ MERS Pension Recommendations
- ▶ MERS Pension Points of Discussion
- ▶ Police & Fire Pension Recommendations
- ▶ Police & Fire Pension Points of Discussion

# MERS Pension Recommendations from Legacy Cost Committee

- ▶ Continue the trend of increasing employee contributions to the pension plan (subject to collective bargaining) in accordance with Public Act 202 Correction Action Plan.
- ▶ Enact auto-enrollment for new hires in the City's 457 (ICMA-RC) defined contribution plan. Subject to collective bargaining and mandatory for non-represented employees.

# MERS Pension Recommendations from Legacy Cost Committee

- ▶ Eliminate the option to purchase service credit until the employee is within three years of retirement.
- ▶ Implement Final Average Compensation (FAC) standards for non-represented employees that does not include longevity and education allowances in the calculation for anyone retiring after July 1, 2020.

# MERS Pension Points of Discussion

- ▶ Consider moving from the current defined benefit plan for non-represented employees to a hybrid for new hires. There may be an option, depending on the funding requirements, to allow active non-represented employees to be given a one-time option to convert to this hybrid plan.
- ▶ Alternately, consider a bridged benefit using a frozen final average compensation (FAC) for non-represented employees. Bridging benefits reduces the benefit multiplier for existing employees on a going-forward basis while leaving earned benefits unchanged. The multiplier for non-represented employees currently is 2.5%, and the recommended multiplier could range between 1.5% and 2.25%. Consider 2% as a mid-ground alternative with a frozen FAC date of 7/1/20.

# MERS Pension Points of Discussion

- ▶ Consider a sunset of the service credit purchase option. (Recommendation was to limit to last three years)
- ▶ Consider replacing the defined benefit pension plan for current and future employees with a defined contribution plan (subject to collective bargaining).
- ▶ Consider elimination of the defined benefit pension plan for current and future employees (subject to collective bargaining).

# Police & Fire Pension Recommendations

- ▶ Continue the trend of increasing employee contributions to the pension plan (subject to collective bargaining) and in accordance with Public Act 202 Corrective Action Plan.
- ▶ Presently the Collective Bargaining Agreement with the firefighters provides for the inclusion of various special pays in order to calculate an employees' Final Average Compensation. It is our recommendation that these be eliminated or reduced in scope moving forward. This would have to be negotiated with both of the fire bargaining units.



# Police & Fire Pension Recommendations

- ▶ When Act345 participants are approved by the City Commission to purchase service credit, it is recommended the employer's portion be paid at the same time as the employee's portion. Currently the practice is to roll the employer portion into the actuarially calculated amortization payment, which increases the current liability and future required payments. This recommendation would be accomplished by including prior year military purchase employer costs in the new year millage rate calculation beginning with the rate effective July 1, 2020.
- ▶ Enact auto-enrollment for new hires in the City's 457 (ICMA-RC) defined contribution plan. Subject to collective bargaining.

# Police & Fire Pension Points of Discussion

- ▶ The City should consider in engaging in negotiations with the respective labor unions to reduce the pension benefit multiplier from the current 3.0% to 2.75%, or another reduced amount. This can be accomplished through the utilization of a “bridge” multiplier. This could occur prior to the attainment of the twenty-fifth year of service. Under such a system, a pension is calculated under the old pension multiplier for the years of service that was in effect prior to the change and the reduced multiplier takes affect from the negotiated date.

# Police & Fire Pension Points of Discussion

- ▶ The City has in place an 80%-75% maximum benefit of FAC. However, under this system as wages grow, the maximum also grows. The City could benefit from fixed dollar pension limitations which is generally referred to as a Hard Cap and example of \$40,000 per year. This will allow the City greater control over the retirement system and improve the funding levels over time, while also allowing for wage growth (subject to collective bargaining).

# Police & Fire Pension Points of Discussion

- ▶ Consider replacing the defined benefit pension plan for current and future employees with a defined contribution plan (subject to collective bargaining).
- ▶ Consider elimination of the defined benefit pension plan for current and future employees (subject to collective bargaining).

# Other Post Employment Benefits (Retiree Health)

- ▶ Can a public sector employer modify retiree health care benefits?
- ▶ M & G Polymers USA, LLC v. Tackett
- ▶ County of Macomb v. Kendzierski
- ▶ OPEB(Retiree Health) Recommendations
- ▶ OPEB (Retiree Health) Points of Discussion

# Other Post Employment Benefits (Retiree Health)

## Can a public sector employer modify retiree health care benefit's?

- ▶ A question of contract law:
- ▶ In *Studier v Michigan Public School Employees' Retirement Bd*, 472 Mich 642, 653-659; 698 NW2d 350 (2005), the Michigan Supreme Court held that health and welfare benefits are not "accrued financial benefits" within the meaning of Article 9 §24 of the Michigan Constitution of 1963.
- ▶ The extent to which that benefit (or the mechanism for providing it) may be modified from time to time, depends upon the specific language used by the parties.

# Other Post Employment Benefits (Retiree Health)

## M & G Polymers USA, LLC v. Tackett

- ▶ Addressing the length of time to which specific health insurance benefits were intended to be provided to retired employees.
- ▶ The Court held in a unanimous opinion that “a collective bargaining agreement may provide in explicit terms that certain benefits continue after expiration.” But when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intend those benefits to vest for life.”
- ▶ Overturned a generation of previous 6th Circuit precedent which had established a presumption of lifetime vested health insurance benefits. In Tackett, the Court rejected that presumption holding “when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life.” 135 S Ct at 935.

# Other Post Employment Benefits (Retiree Health)

## County of Macomb v. Kendzierski

- ▶ The CBAs contain a general three-year durational clause, and no provision specifics that the benefits in dispute are subject to any different duration. If the parties meant to vest healthcare benefits for life, they easily could have said so in the CBAs, but they did not.”
- ▶ The Court further reasoned that this decision is also consistent with Tackett, which held that “contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement” (Tackett), holding that “Because the CBAS at issue here do not indicate that the provided benefits are to continue after the agreement’s expiration, this Court will not infer that the parties intended those benefits to vest for life. Instead, we hold that the contractual obligations provided therein expired with the CBA’s expired.



# Other Post Employment Benefits (Retiree Health) Recommendations

- ▶ Establish a qualified medical trust for funding the non-police & fire pay-as-you-go stipends (Police and Fire currently have trusts created and held at MERS). This trust would be designated for non-police & fire retirement health system funding.
- ▶ Require retirees to use health plans of current employers if available, and spouses to utilize benefits from their employer, if available. Require an annual statement from City-plan participants that they do not have those plans/benefits available. This would be effective with the open enrollment for calendar year 2020.

# Other Post Employment Benefits (Retiree Health) Recommendations

- ▶ Examine the opportunity of the MERS Exchange (or other health care exchange) for retiree health care offerings to facilitate the elimination of the ability for retirees to purchase health insurance from the City.
- ▶ The only group for which new hires are eligible for a stipend towards retiree health insurance is the non-represented group. Eliminate this benefit for new hires on or after 1/1/20.
- ▶ Under the present Collective Bargaining Agreements, members of the fire union who were hired prior to May 14, 2007 and retire after July 1, 2004 are eligible for full retirement health care. The recommendation is for further conversations to address the plans that are offered to this group in retirement.

# Other Post Employment Benefits (Retiree Health) Recommendations

- ▶ Presently, there is a single group of firefighter retirees who are eligible to receive fully paid medical benefits. Under the terms of the Collective Bargaining Agreement with the firefighters Union, employees hired “on or before the date of the 2007 Act 312 Award (May 14, 2007) and who retired on or after July 1, 2004, with a pension benefit immediately payable, shall receive the same health insurance benefits as set forth in the collective bargaining agreement for current, active employees”. This clause provides for the right of the City to provide the retirees with benefits equal to the active work force. As a result, the City should eliminate the CB PPO 2 plan based upon the high level of cost.

# Other Post Employment Benefits (Retiree Health) Points of Discussion

- ▶ The City should consider a phase out of health insurance stipends for all non-police & fire retirees. Effective January 1, 2020, consider reducing the \$200 stipend to \$150; effective January 1, 2021 reducing to \$100; effective January 1, 2022 reducing to \$50, with \$0 stipend effective January 1, 2023.
- ▶ Under the terms of the 401(h) program, police and fire retirees receive a subsidy for benefits received which are based upon age and retirement income eligibility. This program again offers employees the opportunity to purchase insurance through the City causing an unnecessary underwriting cost and increase in the City's OPEB liability. The City could offer to continue the subsidy program but direct retirees to purchase Medicare supplemental insurance in the market place.

# Other Post Employment Benefits (Retiree Health) Points of Discussion

- ▶ Consider a buy-out program for participants in the 401(h) system by offering retirees a one-time payment for the value of their present and future healthcare benefit. This program may be considered an allowable expenditure for the use of ACT 345 revenue in this manner; however, the City should discuss this issue with the retirement system's attorney.
- ▶ The City could also consider buying out non-Act-345 retirees who receive a subsidy from the City of Battle Creek, who are greater than age 65.

# Other Post Employment Benefits (Retiree Health) Points of Discussion

- ▶ It is strongly recommended that the City consider the advantage of no longer offering employees the ability to buy insurance from the City and merely offer the contribution amounts. In addition to this consideration, the City could offer a cash buy-out program as to the continuing liability for providing defined amounts of retiree health care subsidy. A program such as this can be established in multiple ways and can include both retirees and active employees.

## ▶ Questions & Comments