



CITY OF ATLANTA

GENERAL EMPLOYEES' PENSION FUND

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November 7, 2017

Atlanta City Council
55 Trinity Avenue SW
Atlanta, GA 30303
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atlantacouncil@atlantaga.gov

Re: Proposed Ordinance 17-O-1589

Dear Council Members:

On behalf of the General Employees' Pension Fund ("GEPF") and the GEPF Board of Trustees (the "Board"), I am writing to express the Board's view regarding proposed ordinance 17-O-1589 (the "Proposed Ordinance"). As discussed below, the Board cannot support the Proposed Ordinance in its current form because the Proposed Ordinance will take away the right of pension beneficiaries to elect a majority of the trustees who will oversee the beneficiaries' retirement savings. However, the Board is generally in favor of the Proposed Ordinance's goal to improve training and education of pension board trustees. The Board also believes that additional and credible data is necessary to assess whether the Proposed Ordinance will truly result in material cost savings via a consolidation of services. Finally, the Board believes that the Proposed Ordinance should not be implemented unless serious questions regarding the legality of such a city ordinance under Georgia state law are thoroughly addressed.

I. The Proposed Ordinance Will Strip Away the Right of Pension Beneficiaries to Vote for and Elect a Majority of Board Trustees.

As currently drafted, the Proposed Ordinance would materially change the governance of GEPF. In fact, the Proposed Ordinance will give the Mayor of the City of Atlanta the power to appoint a majority of the trustees of a consolidated board that would oversee more than \$3 billion of retiree assets. In contrast, currently a majority of each of the City pension board's trustees are elected by beneficiaries. The Board is strongly against this provision of the Proposed Ordinance as it would take away the voice of the beneficiaries and effectively disenfranchise their right to choose a majority of their own representatives to oversee their retirement money.

The Proposed Ordinance's provision to give the Mayor the power to appoint a majority of the trustees of a consolidated board is particularly troubling as there are significant risks to giving any single individual such an amount of power over billions of dollars of pension assets. While it is the hope and expectation of the Board that all current and future elected officials will act appropriately in the interest of pension beneficiaries, there are abundant examples in other

municipalities of abuses, particularly when individuals have excessive power and influence over public pension assets. In addition, at a basic level, the interest of the City is not always in sync with the interest of public pension beneficiaries. It is thus important that a revised version of the Proposed Ordinance will guarantee that a new consolidated board will not exceed fifteen members and that the governance of such a consolidated board will include incumbent elected trustees from each of the existing boards. Such a consolidated board would then consist of: (1) two active representatives and one retired representative from the City of Atlanta Firefighters' Pension Fund; (2) two active representatives and one retired representative from the City of Atlanta Police Officers' Pension Fund; (3) two active representatives and one retired representative from GEPF; and (4) one active representative and one retired representative from Atlanta Public Schools ("APS"). The remaining four members could be two *ex officio*, *e.g.*, the Mayor and the Chief Financial Officer, and two appointees, *e.g.*, one city council member and one representative from APS.

II. The Board Supports Training and Education of Trustees.

The Board supports the provision of the Proposed Ordinance related to trustee training and education. The Board believes that such a requirement will ensure that new trustees are adequately prepared to execute their fiduciary responsibilities in accordance with industry-wide best practices.

III. Credible Data Is Necessary to Assess Whether There Will Be Material Savings from the Proposed Ordinance.

The Board would like to know what potential savings, if any, are expected to be associated with the Proposed Ordinance. The Proposed Ordinance posits that consolidation will yield better investment returns and will decrease the investments' administrative costs. To date, however, the Board has not seen any concrete data or evidence regarding expected material savings as a result of consolidation of services contemplated by the Proposed Ordinance, which is required before passage.¹ The Board recommends that the City complete a study, among other things, of the difference between investment manager fees with the proposed consolidation compared with the sum of investment manager fees across the three current individual plans. The Board eagerly awaits the results of such a study or other studies that may be in the works.

IV. The Proposed Ordinance May Be Illegal Under Georgia State Law.

The Board must assess the legality of the Proposed Ordinance under relevant Georgia state law. Thus, the Board has requested a legal assessment and analysis of various components of the Proposed Ordinance as part of the Board's comprehensive fiduciary review. To that end, the Board, through its outside counsel, provided the City Attorney with an overview of questions regarding the legality of the Proposed Ordinance. Specifically, there is a risk that the Proposed Ordinance may be illegal because it does not appear to be supported by existing state law. The Department of Law has responded to the Board, stating that the Board's analysis of Georgia law

¹ See Charter and Related Laws of the City of Atlanta § 3-401(i) (requiring investigation and report from an independent actuary, written recommendations provided by the affected pension boards, written recommendations provided by the City Attorney and Chief Financial Officer, and a two-third affirmative vote of the City Council before the Atlanta City Council may modify existing pension laws).

regarding the ability of the City of Atlanta to modify its pension law is contrary to a recent Georgia Supreme Court case *Borders, et al. v. City of Atlanta*.² However, the Department of Law's reliance on *Borders* appears to be based on an aggressive and likely flawed interpretation of the court decision. At a minimum, there are significant risks that the Proposed Ordinance, if passed, will be bogged down in litigation. Worse, any decisions and actions by the consolidated board created by the Proposed Ordinance could be subject to revocation if the ordinance is found to be illegal.

The Board believes that the Proposed Ordinance should not be passed or implemented unless the legal issues regarding the Proposed Ordinance are adequately addressed. GEPPF's outside counsel is providing the City Council with its correspondence with the City Attorney so that the council members can independently assess the legal risks associated with the Proposed Ordinance.

V. Conclusion

The Board takes very seriously its fiduciary duties to serve in the best interest of current and future retirees who are beneficiaries of GEPPF. It is in this spirit that the Board asks the City Council to consider the issues raised in this letter in assessing the Proposed Ordinance.

Sincerely,

Doug I. Strachan
Chair, General Employees' Pension Fund

cc: Trustees, General Employees' Pension Fund

² 779 S.E.2d 279 (Ga. 2015).