

RESOLUTION NO. 541

WHEREAS, the Board of Trustees (Board) of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that changes were necessary to the FPDR Administrative Rules; and

WHEREAS, staff recommends housekeeping amendments to Sections 5.4 and 5.5 of the FPDR Administrative Rules to comply with Ordinance No. 190092 regarding Final Pay which was passed by City Council on August 12, 2020; and

WHEREAS, the amendments were posted on the FPDR website; and

WHEREAS, a public Question and Answer Session on the amendments was also held on October 19, 2021 and there were no objections to the proposed amendments; and

WHEREAS, the Board has considered and recommends the amendments to Sections 5.4 and 5.5 of the FPDR Administrative Rules as shown on Exhibit "A", attached hereto and by this reference made a part hereof; and

WHEREAS, it is appropriate and in the public interest that the FPDR Administrative Rules be changed in accordance with the recommendation of the Board; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that Sections 5.4 and 5.5 of the FPDR Administrative Rules be amended as shown on Exhibit "A".

ADOPTED by the Board of Trustees on the 16th day of November 2021.



Samuel Hutchison
FPDR Director

EXHIBIT "A"



FIRE AND POLICE DISABILITY AND RETIREMENT City of Portland, Oregon



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Retirement Benefits: Final Pay – Proposed Rule Amendments November 16, 2021

5.4.01 – DEFINITIONS

“Accrued Benefit.” The term “Accrued Benefit” shall mean the amount of FPDR pension benefits a Member has earned under the Plan, generally based on the Member’s Years of Service and Final Pay and the 2.8 percent accrual rate. An Accrued Benefit is only calculated for a Member who has completed the service requirement for vesting under Chapter 5 of the City Charter.

“Actuarial Equivalent.” The term “Actuarial Equivalent” shall mean the adjustment necessary to convert a Member’s FPDR pension benefit into different payment forms or payment periods so that the total value of the Member’s benefit (and the cost to FPDR to provide the benefit) remains equal regardless of the form of benefit or commencement date the Member may elect.

“Alternate Payee.” The term “Alternate Payee” shall mean any spouse, former spouse, legally recognized domestic partner, former legally recognized domestic partner, child or other dependent of a Member who is recognized by a Domestic Relations Order as having a right to receive all or a portion of a Member’s retirement benefits.

“Annuity.” The term “Annuity” shall mean a contract or promise that provides an income for a specified period of time such as a certain number of years or a lifetime.

- A Joint and Survivor Annuity is the form of a Member’s FPDR retirement benefit in which benefit payments continue after the Member’s death to the Member’s Surviving Spouse or, if none, the Member’s Dependent Minor Children. The amount of benefit that continues to the beneficiary of an FPDR Two Member is 25%, 50%, 75% or 100% of the benefit the Member was receiving before death, depending on the Member’s irrevocable election at retirement, and of an FPDR One Member as shown in the Survivor Annuity Table in Charter Section 5-118. Death benefits payable to a Surviving Spouse are paid for the Surviving Spouse’s life. Death benefits payable to a Dependent Minor Child are payable until the date the child reaches 18 or marries, whichever occurs first.
- A Single Life Annuity is the form of benefit payment that provides a monthly income which is paid for the life of one person, the Alternate Payee.

“Beneficiary.” The term “Beneficiary” shall mean a person, other than a Member, who receives benefits under this program.

“Base Pay.” The term “Base Pay” shall mean the pay of the FPDR Two or FPDR Three Member’s position in the Bureau of Fire or Police, including premium pay but excluding overtime and payments for unused vacation, sick or other leave. When a Member is paid overtime for part of their regular work schedule as required by Fair Labor Standards Act provisions, the straight-time portion of the overtime hours in the Member’s regular work schedule shall be included in Base Pay.

“Claim.” The term “Claim” means, for the purposes of this section of the Administrative Rules, a dispute by a Member or Beneficiary of a decision by the FPDR staff with regard to a retirement or death benefit under Chapter 5 of the City Charter. A Claim may also be filed by an authorized representative of the Member or Beneficiary who is the claimant.

“Claimant.” The term “Claimant” means, for the purposes of this section of the Administrative Rules, a Member or Beneficiary with a Claim or an authorized representative of the Member or Beneficiary with a Claim.

“Discovery.” The term “Discovery” means Claim documents, including chart notes, medical records, medical and vocational reports, correspondence between the Member and the Fund, recorded statement of the Member and any witness, and correspondence related to the Member’s Claim(s) to and from the Office of Administrative Hearings. Discovery does not include Claim documents that are 1) materials protected under the lawyer-client privilege as defined in Oregon Rules of Evidence 40.225 Rule 503; 2) attorney work products; and 3) material reflecting the mental impressions, case values or merits, plans or thought processes of the Member, Member’s attorney or Member’s representative or the Fund, Fund’s attorney or Fund’s representative.

“Domestic Relations Order.” A "Domestic Relations Order," or “DRO,” is any judgment, decree or order (including approval of a property settlement agreement) which is made pursuant to a state domestic relations law (including a community property law) and which relates to the payment of marital property rights to an Alternate Payee and which has been entered by a court of competent jurisdiction and has been accepted by the Director. A DRO may divide a Member’s FPDR retirement benefits using one of two different approaches:

- A “separate interest” DRO takes a portion of the financial value of the Member’s retirement benefit as of a particular division date and assigns it to the Alternate Payee as a separate legal interest, with the Alternate Payee’s portion of the benefit being paid to the Alternate Payee based on the Alternate Payee’s life expectancy. In all cases, the financial value of benefits divided under a separate interest DRO is determined using the Plan’s definition of Actuarial Equivalent. This is the most common type of DRO and generally applies where the DRO is entered prior to the date the Member’s benefits are in pay status.

- A “shared interest” DRO is a division of the Member’s annuity payment in a specific amount or percentage between the Member and the Alternate Payee. The Member’s benefit is “shared” with the Alternate Payee; no legal separate interest is created for the Alternate Payee. The sum of total monthly benefits paid to both the Member and the Alternate Payee under a shared interest DRO is equal to the sum of monthly benefits that would have been paid to the Member in the absence of the DRO. If the Alternate Payee predeceases the Member, then the Alternate Payee’s share of the monthly benefit reverts prospectively to the Member. If the Member dies before the Alternate Payee, the Alternate Payee could be treated as a Surviving Spouse in the event the Member has a Surviving Spouse for purposes of death benefits and the DRO treats the Alternate Payee as the Surviving Spouse. Typically, this type of DRO is only used when a Member’s pension payments have commenced prior to issuance of the DRO.

“Final Pay.” The term “Final Pay” **is defined in Ordinance No. 190092 as passed by the Portland City Council on August 12, 2020.** (Ordinance No. 190092 can be found on the City of Portland website at: https://efiles.portlandoregon.gov/record/13932015/file/document?_ga=2.266492750.1993673285.1634833549-1156123889.1631197007).

~~shall mean the highest Base Pay received by the FPDR Two or FPDR Three Member for any of the three consecutive 365-day or, in a leap year, 366-day periods where the most recent day is the last day for which pay was received in the calendar month preceding the calendar month in which the Member retires, dies, or otherwise terminates employment with the Bureau of Fire or Police. Final Pay for any such period does not include any retroactive payments received by the Member for days preceding such 365-day or 366-day period but does include adjustments to the Base Pay of the Member’s position in the Bureau of Fire or Police that would have been received had the Member’s applicable collective bargaining agreement been in effect during such 365-day or 366-day period.~~

~~Final Pay for any FPDR Two or FPDR Three Member who retires, dies or otherwise terminates employment with the Bureau of Fire or Police and has either received FPDR disability benefits or who was employed in a part-time status by the Bureau of Fire or Police during any such 365-day or 366-day period shall be based on the Base Pay for a full-time employee in the Member’s position in the Bureau of Fire or Police at the time of retirement, death or termination from employment.~~

“Office of Administrative Hearings.” The term “Office of Administrative Hearings” or “OAH” shall mean an independent body that has been authorized by the Board of Trustees to review the decision of the Director that is concerning retirement or death benefits. The review may take into account all comments, documents, records, and other information the Member or Beneficiary submits, without regard to whether that information was submitted or considered in the initial benefit determination.

“Surviving Spouse.” The term “Surviving Spouse” means the individual who, at the time of the Member’s death, was the Spouse of the Member, had been the Member’s Spouse throughout the 12-month period immediately preceding the Member’s death and had not been judicially separated or divorced by interlocutory or final court decree at the time of death, unless otherwise provided in a domestic relations order that is enforceable with respect to the Member’s Plan benefit. The term “Spouse” shall, on and after June 26, 2013, mean an individual

to whom a Member is lawfully married under state law, and shall be defined consistent with Rev. Rul. 2013-17 and Notice 2014-19, under which the terms “Spouse,” “husband and wife,” “husband,” and “wife” include an individual married to another individual of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex, provided that the marriage was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. A same-sex domestic partner of a Member who filed an affidavit of domestic partner status form in accordance with Ordinance No. 176258 or a registered domestic partnership certificate with FPDR prior to June 26, 2013, is also considered a Surviving Spouse.

“Years of Service.” The term “Years of Service” of a FPDR Two or FPDR Three Member shall mean the service credit for FPDR Two retirement benefits as defined in Charter Section 5-302 and these Administrative Rules.

5.4.12 – CALCULATION METHOD FOR FPDR TWO FINAL PAY

~~(A) For retirements, deaths prior to retirement or terminations on or after January 1, 2013, Final Pay for an FPDR Two Member shall be calculated as the highest sum of Base Pay in three lookback periods including pay for 365 or 366 (in a leap year) days as described below.~~

~~(B) The sum of Base Pay in the most recent lookback period consists of the Base Pay paid during the most recent 26 pay dates prior to the calendar month in which the Member retires, dies or otherwise terminates employment with the Bureau of Fire or Police, plus 1/14th of the Base Pay paid on the most recent pay date preceding those 26 pay dates (2/14ths if there is a February 29 included in the dates from the most recent pay date back to the pay date preceding those 26 pay dates).~~

~~(C) The sum of Base Pay paid in the middle and oldest lookback periods consists of the Base Pay paid for the 365 or 366 days (if there is a February 29 in the period) preceding the oldest day used in the more recent lookback period.~~

FPDR Two Final Pay will be calculated in accordance with Ordinance No. 190092 as passed by the Portland City Council on August 12, 2020. (Ordinance No. 190092 can be found on the City of Portland website at:

https://efiles.portlandoregon.gov/record/13932015/file/document?_ga=2.266492750.1993673285.1634833549-1156123889.1631197007).