

By Ordinance No. \_\_\_\_

(\_\_\_\_\_, 2016)

**AMENDMENT**

**TO**

**FIRE AND POLICE DISABILITY, RETIREMENT AND DEATH BENEFIT PLAN**

Pursuant to authority granted to the City Council of Portland under Chapter 5 of the Charter of the City of Portland, as amended (the "Plan"), the Plan is hereby amended by ordinance of the City Council to:

- A. Comply with ORS 237.600, Payment to alternate payee; provisions of judgment, order or settlement; administrative expenses, and ORS 237.620, Membership of police officers and firefighters in Public Employees Retirement System, of the Oregon Revised Statutes; and
- B. Provide additional benefits required by law to Members of the Portland Fire Fighters Association, Portland Police Association and Portland Police Commanding Officers Association ("Associations") for good faith compliance with the requirements of the arbitrators' opinions and awards regarding the Associations' alternate payee grievances.

This amendment is retroactively effective for Domestic Relations Orders accepted after December 13, 1994 except as noted below and shall be made part of Article 4 of Chapter 5 of the Charter of the City of Portland.

- 1. The following definitions apply to benefits provided under Chapter 5, Article 3, FPDR Two and Three Benefits, and Article 5, FPDR One Benefits.
  - a. "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 the Fund to provide the benefit) remains equal regardless of the form of benefit or commencement date. The actuarial present value of the retirement benefits to be paid from the Fund to a Member and an Alternate Payee may not exceed the present value of the benefits that would be paid to the Member in the absence of the DRO, except in the case of reversion of the alternate payee's benefit when an alternate payee predeceases the Member. This means that the DRO may not require retirement benefit payments payable to the Member and Alternate Payee(s) which have a present value in excess of the maximum benefit payable to the Member for the rest of his or her life, with no benefit continuation to survivors.
  - b. "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 and/or all or a portion of the death benefits due a Member's Surviving Spouse.

- c. "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 Fund Administrator. A DRO accepted after June 19, 2015, may require that an Alternate Payee be treated as the Surviving Spouse for FPDR preretirement death benefits if the Alternate Payee is not already in pay status, except that any Dependent Minor Children of the Member who are not supported by the Alternate Payee shall share in the benefit. A DRO may divide a Member's FPDR retirement benefits using one of two different approaches:
    - i. 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.
    - ii. 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 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.
2. Payment of any retirement benefit, disability benefit, death benefit, or other benefit under the provisions of Chapter 5 that would otherwise be made to a person entitled to benefits under the plan shall be paid, in whole or in part, to an Alternate payee if and to the extent expressly provided for in the terms of any judgment of annulment or dissolution of marriage or of separation, or the terms of any court order or court-approved property settlement agreement incident to any judgment of annulment or dissolution of marriage or of separation. Notwithstanding any other provisions of this

section, except in the case of reversion of the alternate payee's benefit when an alternate payee predeceases the Member, the total actuarial value of benefits payable to a Member and to an Alternate Payee may not be greater than the value of the benefits the Member would otherwise be eligible to receive if the annulment or dissolution of marriage or separation had not occurred.

A judgment, order or settlement providing for payment to an Alternate Payee may also provide:

- a. That payments to the Alternate Payee may commence, at the election of the Alternate Payee, at any time after the earliest date the member is eligible to receive retirement benefits, so long as the alternate payee commences benefits no later than the date the member actually retires.
- b. In the event a DRO accepted after June 19, 2015 requires that the Alternate Payee be treated as the Surviving Spouse for FPDR preretirement death benefits and the Member dies before commencing retirement benefits, payment to the alternate payee will commence the day following the Member's preretirement death if the Alternate Payee is not already in pay status.
- c. That the Alternate Payee may elect to receive payment in any form of pension, annuity, retirement allowance, disability benefit, death benefit, refund benefit or other benefit, except a benefit in the form of a joint and survivor annuity, available to the Member, or that would be available to the Member if the Member retired or separated from service at the time of election by the Alternate Payee, without regard to the form of benefit elected by the Member.
- d. That the Alternate Payee's life is the measuring life for the purposes of measuring payments to the Alternate Payee under the form of benefit selected by the Alternate Payee.
- e. A judgment, order or agreement providing for payment to an Alternate Payee may not provide for payment to an Alternate Payee of:
  - i. Any disability payments provided to a member of a public employer retirement plan in lieu of workers' compensation benefits pursuant to ORS 656.027(6), to the extent those payments are to be made before the member attains 55 years of age; or
  - ii. Any medical or hospital benefits payable to a member as part of a disability benefit provided to a member of a public employer retirement plan in lieu of workers' compensation benefits pursuant to ORS 656.027(6), regardless of the member's age.



- iii. The Fund shall charge and collect out of the benefits payable to the Member and the other person actual and reasonable administrative expenses and related costs incurred by the public employer or public employer retirement plan in obtaining data and making calculations that are necessary by reason of the provisions of this section. The Fund may not charge more than \$300 for total administrative expenses and related costs incurred in obtaining data or making calculations that are necessary by reason of the provisions of this section. If the Fund charges and collects administrative expenses and related costs, it shall allocate those expenses between the Member of the retirement plan and any other person receiving a benefit from the plan based on the fraction of the benefit received by the member or person.
3. The following paragraphs provide for the administration of Alternate Payee benefits by the Bureau of Fire and Police Disability and Retirement.
- a. **Alternate Payee Eligibility:** The Alternate Payee shall be eligible to commence benefits on the later of the first of the month following the Fund Administrator's acceptance of the DRO or Member's earliest retirement date or, in the event a DRO accepted after June 19, 2015 requires that the Alternate Payee be treated as the Surviving Spouse for FPDR preretirement death benefits and the Member dies before commencing retirement benefits, the day following the Member's preretirement death if the Alternate Payee is not already in pay status. Except in the case of the Member's preretirement death, the Alternate Payee must commence benefits no later than the day the Member commences retirement benefits or, in the event the Member is already retired when the DRO is accepted, the first of the month following the month in which the DRO is accepted.
  - b. **Amount of Alternate Payee Benefit:** Unless the Alternate Payee's benefit amount is specified in the DRO, the Fund's staff or actuaries determine the Alternate Payee's benefit amount using the division percentage defined in the DRO and the discount rate, Member and Alternate Payee mortality and cost of living increase assumptions used in the most recent actuarial valuation of the FPDR pension plan that has been presented to the FPDR Board of Trustees at the time the Director accepts the DRO. If the Alternate Payee's benefit amount is specified, the reduction from the Member's current or future retirement benefit required by the DRO to fund the Alternate Payee's benefit is calculated in the same manner.
  - c. **Alternate Payee Form of Benefit:** For a separate interest DRO, the Alternate Payee's benefit is a monthly amount paid for the life of the Alternate Payee following commencement. For a shared interest DRO, the Alternate Payee's benefit is a monthly amount paid for the life of the Member. The benefit shall be adjusted as provided in Section 5-312 for an FPDR Two and Three Alternate Payee, or annually as the salary for a First Class Fire Fighter or First Class Police Officer, as appropriate, varies for an FPDR One Alternate Payee. The DRO may provide for

the Alternate Payee to receive no adjustment or for any adjustment calculated for the Alternate Payee's benefit to be added to the Member's retirement benefit.

- d. Reversion of the Alternate Payee Benefit to the Member:
- i. In the case of a shared interest DRO, if the Alternate Payee predeceases the Member the amount that previously was being paid to the Alternate Payee shall then instead be prospectively paid to the Member for the rest of the Member's life.
  - ii. In the case of a separate interest DRO that does not contain instructions to the contrary, if the Alternate Payee dies prior to commencing retirement benefits the Member's benefit shall then be determined and paid without regard to the DRO.
  - iii. For Members who were members of the Portland Fire Fighters Association, the Portland Police Association or the Portland Police Commanding Officers Association, or had retired as members of those Associations, at the time of the Alternate Payee's death: In the case of a separate interest DRO that does not contain instructions to the contrary, if the Alternate Payee dies after commencing retirement benefits and before the Member dies, the Member's monthly benefit payable from the Fund will be increased by the amount of the monthly benefit the Alternate Payee was receiving, payable prospectively to the Member for the rest of the Member's life. Upon Member's subsequent death, any death benefit payable to the Member's Surviving Spouse or Dependent Minor Child shall be based on the Member's monthly benefit without taking into account the additional monthly benefit that was previously being paid to the Member as a result of the Alternate Payee's death.
  - iv. In the event the reversion of alternate payee benefits as provided in FPDR Resolution 271 (1994) is disavowed as a condition of employment of any collective bargaining agreement and such disavowal becomes part of any collective bargaining agreement to which the Member is subject, or was subject at retirement, then in the case of a separate interest DRO where the Alternate Payee dies after the effective date of the disavowal and after commencing retirement benefits, and before the Member dies, the Alternate Payee's benefit shall cease.