

[The following summarized minutes were conducted in public session. There were no portions of the minutes that were in Executive Session.]

A regular meeting of the Board of Trustees of the Fire and Police Disability and Retirement Fund was called to order on the 24<sup>th</sup> day of September 2019 at 1:03 p.m.

Board Members Present Included:

Josh Harwood, Chairperson  
Jason Lehman, Fire Trustee  
Catherine MacLeod, Citizen Trustee  
Brian Hunzeker, Police Trustee  
Elizabeth Fouts, Citizen Trustee

Also present were:

Samuel Hutchison, FPDR Director  
Kimberly Mitchell, FPDR Claims Manager  
Stacy Jones, FPDR Finance Manager  
• Sheri Miller, FPDR Business Systems Analyst  
Julie Barber, FPDR Sr. Claims Analyst  
Kimberly McLean, FPDR Sr. Claims Analyst  
Fire Chief Sara Boone, Portland Fire & Rescue  
Frank Del Carlo, FPDR Fire Liaison  
Crystal Viuhkola, FPDR Police Liaison  
Lorne Dauenhauer, FPDR Outside Legal Counsel  
Franco Lucchin, Sr. Deputy City Attorney  
Joe Gymkowski, Retired Fire Member  
Dave Short, Retired Fire Member  
Del Stevens, President, Portland Retired Firefighters and Widows Association  
Henry Groepper, Retired Police Member  
Robert King, Retired Police Member; Public Safety Advisor to Mayor Wheeler  
Janet Woodside, Portland Fire & Rescue  
Alan Ferschweiler, President PFFA

Director Sam Hutchison welcomed and introduced the new Board Chairperson, Josh Harwood. Director Hutchison stated that Josh Harwood was appointed by the Mayor and approved by City Council to be the Mayor's designee on the Board of Trustees. Director Hutchison also explained

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that Trustee Harwood is the Portland City Economist and does a lot of financial forecasts for the City and City Council and has an extensive understanding of the property tax system.

***Trustee Lehman made a motion that was seconded by Trustee Hunzeker and unanimously passed by a roll call vote of 5-0 to approve the May 28, 2019 minutes.***

<i>Aye</i>	<i>Trustee Lehman, Trustee MacLeod, Trustee Harwood, Trustee Fouts, Trustee Hunzeker,</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>None</i>

Introductions of those present at the meeting were then made.

General Public Comments:

There were no general public comments.

**Action Item No. 1 – Resolution No. 525 – Administrative Rule Amendment to Section 5.7**

This Action Item was presented after the Legislative Updates under Information Item No. 3

**Information Item No. 1 – Request of Joseph Gymkowski to Address the Board of Trustees**

Fire Retiree Joseph Gymkowski (“Joe”) addressed the board and explained that the request to address the board was to answer two questions that were asked by the board at the November 27, 2018 board meeting: 1) Trustee MacLeod asked a question about the Equal to or Better Than testing, the three tier testing; and 2) Trustee Hunzeker asked about bullet points. Joe stated that there were some bullet points in the binder that was provided to the board at a prior meeting. However, Joe had additional ones for the board about FPDR and PERS and had handouts for the board. Joe went through the table of contents provided with the handouts and explained each handout:

- Brief History of the Fire & Police Disability & Retirement Fund
- History of Key PERS Benefit Enhancements
- Equal to or Better Than Testing (ETOB) – Preliminary Report dated May 2005. Joe stated that the ETOB test compared FPDR Two to PERS Tier Three and refers to disability

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retirement in the test. Joe added that one of the questions raised by Trustee MacLeod to Actuary Matt Larrabee at the January 2019 board meeting was how they get 80 percent of the benefit when there is no benefit there. Joe stated that FPDR had a disability retirement, in name only, but by Resolution No. 501 all references to disability retirement were removed from the Charter. Joe added that the law states that you have to have disability retirement and that PERS members do. Joe reiterated that at a prior board meeting Joe questioned how FPDR was actually paying for the PERS members' post medical benefits yet not one FPDR member had access to those benefits or was given those benefits so there's inequity there, but the May 2005 test verified that FPDR passed and that they have a disability retirement and a service pension.

- September 24, 2010, Equal to or Better Than Test. Joe stated this was a final report of the 2000 legislation which was in the board's packet last time. It was House Bill 2280 which said you have to have a service pension, post medical benefits, disability pension and included active and retired. Joe asked the board to look at what is at page 5, it shows Tier One, Two and Three testing was done but the City of Portland was omitted. Joe asked how that test could be done when there's no disability retirement. So, under House Bill 2280 Joe says they are missing three out of the four aspects, yet the document here says Portland passed with flying colors to a high percentage and they're using actuarial assumptions. But Joe added that no matter what assumption they use, if zero is in that equation, it's going to be zero at the end.
- Joe stated the last handout was a reiteration that the City Council has the power to fix this issue, study it, look at it and there's a solution here. Joe believes a solution is workable with both unions. Joe added that PERS had a similar situation and worked it out. Joe felt a compromise can be done in-house without a big expense to the taxpayer. Joe stated that Trustee Hunzeker talked about having a committee get together with the retiree associations to try to work out some solutions and at least discuss it and get it on the record. The question Joe wanted to leave the board with was if the FPDR passed the ETOB test in 2005, why did they go to PERS? And then the next question is how they passed the requirements without disability retirement. In Joe's mind it is not a valid test because Tier One wasn't tested.

Trustee MacLeod wanted to confirm that Joe was saying that the test itself is supposed to separately test actives and retirees and service and disability benefits. Joe stated "right, by tier" and stated that House Bill 2280 changed the test for all three tiers and that is the 2010 document.

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Trustee Hunzeker stated the they have asked several times for what Joe exactly is requesting in writing, but they have not yet received that. Joe wanted to answer the two questions first and he will put a request in writing next and will go through Director Hutchison to get it to the board.

Public Comment:

Del Stevens, President of the Portland Retired Fire Fighters Association (“Del”) addressed the board. Del was at the meeting to support Joe Gymkowski and to state that Joe has done a lot of research and has some very apparent facts of the differences between the FPDR pension and the PERS pension. Del stated that it was intended that the FPDR 2 benefits be upgraded every time PERS benefits were upgraded and there were a number of people not enjoying the benefits that are under PERS retirement benefits and they deserve to be treated equally for doing the same type of work. Del explained that he sat on the FPDR Board and they were always responsive to the issues of fairness and equity for their members. Del stated that Trustee Hunzeker previously suggested a study committee could be established to look at their benefits and felt the idea was very appropriate but that there has to be an action element that goes with it to create it. Del also stated if the board creates it, he’s sure the unions and retirees would want to be a part of that. Del went on to bring up a statement that Stacy Jones, FPDR Finance Manager, made at a prior meeting that Portland had never failed and probably would never fail an Equal to or Better Than Test, but Del stated that Portland did fail in 1990, but there was an exemption given to allow Portland to not be compelled to join PERS and that exemption stated that any future benefits that PERS granted would be passed on to FPDR members and it was not done.

**Information Item No. 2 – State of FPDR Presentation**

Director Sam Hutchison began the State of FPDR presentation and provided an overview of what happened last year, how various activities impacted the FPDR, and what was happening at FPDR this year. Director Hutchison also went over some of the key performance measures. He pointed out that prior to the reform there were a lot of people that were on long term disability that were filing a lot of claims, but with the reform they started to manage the claims using workers’ compensation best practices and added that staff focuses hard on making sure that claims are approved, that members have access to the right kind of medical for treatment, and opportunities to get them back to work. Director Hutchison added that Disability Manager, Kim Mitchell and her staff are very good at managing claims and working with members to get them back to work.

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Stacy Jones, Finance Manager went over the number of retirements in each fiscal year for the last ten years. Stacy pointed out that FPDR had 64 retirements last year, which ties fiscal year 2011/2012 as the most retirements they have had at any point in this decade. Stacy added that they did have two 27 pay date look back periods last year and that may have had something to do with it. Stacy also stated that they have had more retirements in the last five fiscal years than in the previous five fiscal years. Trustee Harwood asked whether based on the workforce if Stacy expected that to continue and for how long. Stacy replied that would be getting into a demographic analysis of the workforce which they have not done but can do. Stacy also stated that she did do a demographic analysis in the past when they were trying to do retirement projections and probabilities with Milliman and demographic characteristics are not as predictive and they have a lot of limitations, but they can still do one.

Stacy then went over the Police versus Fire retirements and stated that Police retirements are about 55 percent of the sworn workforce and Fire was 45 percent so all things being equal you would expect 55 percent of the retirements to be police every year and that has definitely not been the case for the last three years; 75 percent of the retirements last year were police, 61 percent the year before that and 67 percent before that. So, whether that's due to underlying demographics and the current pool for retirement eligible folks Stacy did not know.

Stacy also went over the FPDR tax levies and real market value rate on slide 6. Stacy added that the slide incorporates the most recent levy analysis that Milliman presented in January and likes it for two reasons: 1) it pushes FPDR out past what they think are their peak expense years so for the first time when you look at fiscal year 2034/2035 you see those lines bending down, making them feel more confident that they're going to make it through the peak expense years without coming too close to the rate cap; 2) the second thing is that the median probability, the RMV rate, isn't projected to be any higher than it already has been. However, Stacy pointed out that this has nothing to do with what taxpayers actually pay in terms of their property tax bills. Property owners, commercial and residential, pay based on assessed value rate which in Oregon is completely different from the real market value rate so right now taxpayers are paying \$2.70 per \$1,000 of assessed value for the FPDR plan. Stacy stated they predict that will go up to about \$3.26 in five years and it's going to keep going up from there until they get through those peak expense years.

Stacy continued with administrative spending as a percent of total plan spending and administrative spending per plan participant. Stacy explained that they decided to look at both



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because as they are funding two generations of pensions simultaneously, plan spending is going to grow.

Trustee Fouts asked if staff had a target per participant cost that they aim towards each year. Stacy added that they do not, but that they have sort of set an informal goal of making sure it stays under 2 percent.

Stacy then went over the number of people who received a pension benefit. Stacy explained that the pension population is growing and that they have had more retirements and fewer deaths over the last five years and that jives with what the actuaries have been telling staff which is, people are living longer, participant longevity is increasing, and they also have more retirees. Stacy also added that the other trend staff is seeing is that FPDR Two is a growing percent of the pension population and almost all new retirees are FPDR Two. Stacy also provided some information about the active population that the total sworn workforce is on average about 100 employees smaller than it was a decade ago. Stacy added that more and more of the workforce are FPDR Three. They are up to 43 percent of the sworn workforce now and clearly that translates to growing PERS contribution expenses as more FPDR Three employees are hired but also as they promote and increase their pay and spread through the ranks as they become more senior employees. Stacy also went over pension benefits for FPDR One and Two members and the steady growth, about 5 percent a year. Stacy stated that even if they weren't phasing in a prefunded pension plan, this is supposed to happen because they have a plan with pension cost of living adjustments and on top of that almost everything that contributes to costs in both PERS contributions and direct pension benefits have been trending in a more expensive direction over the last couple of years. The one thing that is moving in the opposite direction is the size of the sworn workforce that declined, and the size of the sworn workforce is the one thing that is not pushing costs up.

Stacy also wanted to make the board aware of retroactive pension and disability payments and the impact to members and staff.

Disability Manager, Kim Mitchell then walked the board through the disability program. She provided the board with highlights of staffing, the injured worker packets, medical management, protest preparations, and the new PTSD/ASD benefit.

Kim then went over the number of claims filed and stated that a total of 298 claims were filed this year and that the numbers were down from last year. Trustee Fouts asked what was driving the

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lower numbers. Kim stated that there were a few but one was the number of retirements and also that they also have about 100 fewer active members than they did ten years ago.

Kim went over the approve/deny rates and stated that this year 84 percent of claims were approved, 4 percent were denied, and the remaining 12 percent were divided between claims that were pended so they were not decided at the time the data was pulled and/or the claims were incomplete or withdrawn after filing.

Kim also went over the number of days to claim decision by fiscal year. Trustee Lehman wanted to point out that with the addition of interim benefits, if a member's claim is denied they have to pay those benefits back and some members who are on non-paid status because of an injury that was denied, the farther out those claims get decided, the more money the member owes back. Kim stated that staff is aware of the challenges that come with repaying the interim benefit and they try to administer those claims as quickly as possible.

Kim then went over total disability costs by fiscal year and stated that while the numbers have somewhat stabilized over the last five years, staff knows that there is an increase in the cost of medical care and medical treatment is expensive. Kim also went over disability costs and time loss costs and medical savings. Kim then went over the body part charts and breakdown of the types of injuries.

Director Hutchison then wrapped up the presentation with the modernization and efficiency achievements and customer service highlights.

Labor Comments:

Alan Ferschweiler, President of the Portland Fire Fighters Association ("Alan") first acknowledged the support of Fire Chief Sara Boone. Alan then provided labor comments and listed the following:

- Independent Medical Examiners – Alan stated that one of the things that causes dismay with the membership is the sense that going to an IME is a rubber stamp of a claim denial.
- 30-Day rule for filing a claim – Alan felt it was time to have a discussion on the 30-day rule again. Alan explained that they had a member who essentially tried to work through an injury and did not file a claim for 60 or 90 days and the claim was denied based on timeliness.

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- Interim Benefits – Alan stated that they have members who have applied for benefits and only have a limited amount of sick leave and vacation and if the claim denial took a long time, they have to find a way to pay back the interim benefit and it is a time when they are already financially strapped. Alan encouraged staff to soften the language on the form.
- Holistic Mental Health and Wellness – Alan stated that there is a lot of work they need to do in the mental health field and now that they have SB 507 in front of them the Fire Bureau, the union, the City needs to take care of our members in a way that they haven't in the past. Also, if there are preventive programs that they can do before the injuries occur.

Trustee Hunzeker asked that some research be done on the 30-day rule as it was Trustee Hunzeker's understanding that there was an agreement on the prior board that a claim would not be denied solely on the basis of timeliness. With regards to interim benefits, Trustee Hunzeker understood how the money needs to be recouped but would like to see how quickly it is required to be recouped. Trustee Hunzeker added that someone just saying they don't want to repay the benefit is different than someone who has no financial ability to make the repayment and those cases should be taken on a case by case basis.

Director Hutchison explained that an IME is not a rubber stamp for a denial and as far as interim benefits, the repayment period was expanded by the board to 12 months and staff does work with the member on a repayment plan. However, there have been a couple of members that refuse to talk to staff about repayment and those are the ones that force staff to take legal action. Director Hutchison also added that FPDR has not had any claims in the past year that were denied solely on the basis of timeliness.

Trustee Fouts asked about the repayment options and stated that payment plans that are actually workable for the member needs to be set up. Director Hutchison stated that he would discuss this matter with Kim, get the data on what it is and do an analysis of interim overpayments and provide that information to the board. Director Hutchison asked the board to keep in mind that without the interim benefit the member would be going without any funds during the claim investigation period. Trustee Hunzeker felt they were all in agreement on the repayment but felt revisiting the 12-month rule was appropriate.

Trustee MacLeod asked that they go back to the 30-day rule too because it did seem illogical to deny a claim simply because of the exhaustion of a 30-day period and was interested in more feedback on that. Director Hutchison stated that about two years ago two presentations were done



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for the board and will send the board the links to those presentations which has a lot of data and discussion points. Trustee MacLeod stated that would be helpful. Trustee Lehman stated that he was on the board during those discussions and while it is helpful to bring that information back, they are a new board and a lot of things have happened since and felt this issue needs to be looked at again. Director Hutchison stated that he will provide the materials and then they can have that discussion.

### **Information Item No. 3 – Legislative Updates**

- PERS Reform - Stacy provided updates for SB 1049 and explained that the most significant reform from a cost savings perspective is that it lengthened the amortization period for retiring the unfunded actuarial liability. Stacy added that it is complex and the schedules were different for different tiers. But the most significant reform for employees including FPDR Three members is a pension reduction. In its most recent iteration, the PERS plan is a hybrid plan, it has a defined benefit component and a defined contribution component. The defined contribution component is where a percent of pay goes into something called the Individual Account Program (IAP) and that's essentially a state run 401(k) or a state-run IRA and for sworn employees that is 9 percent of pay. When the reforms take effect which is July 1, 2020, that will be reduced to 8.25 percent for FPDR 3 members and the difference will be redirected to paying down the liability. That particular provision goes away when PERS achieves a 90 percent funding status but that's not projected to be for quite some time. Other smaller changes are a cap on the final average salary used to calculate the defined benefit portion of the PERS portion at \$195,000 a year. The City Budget office is giving guidance to bureaus not to change their budgets for next year and that's for three reasons: 1) this has been challenged in court. 2) it's very hard to guess what these savings will do actually for PERS contribution rates until we see 2019 PERS investment returns which will have an impact on PERS contribution rates in the future. 3) we also need a little more guidance from Milliman and PERS around how this is going to impact contribution rates on pool specific and on employer specific level.
- Senate Bill 507 – Director Hutchison went over the Post Traumatic Stress Syndrome and Acute Stress Disorder presumption and stated that ORS 656.802(7) is the new portion of the statute that was added under SB 507. The effective date is September 29, 2019 so the claim has to be filed on September 29<sup>th</sup> or later to fall under this bill. Only an Oregon licensed psychiatrist or psychologist can diagnose the two conditions. The opinions of other medical professionals do not trigger the presumption. This is a significant change because

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general practitioners used to diagnose these conditions. Director Hutchison went over when the presumptions apply and also that the employee must establish through a preponderance of persuasive medical evidence from a psychiatrist or psychologist that they have more likely than not satisfied the diagnostic criteria in the DSM-5 for PTSD or ASD. The diagnosis is not presumed. FPDR can challenge the diagnosis but if it refutes the diagnosis, they must evaluate the claim under Section 5-306.

Trustee Lehman asked about FPDR evaluating the claim under Section 5-306 as SB 507 says that “An insured/self-insurer may deny the claim under paragraph (c) only on the basis of clear and convincing medical evidence”. Director Hutchison clarified when Section 5-306 of the Charter would be used and explained the interpretation of SB 507. Director Hutchison also explained that if you have a disciplinary action, you can’t have a PTSD diagnosis because discipline is not a life-threatening situation and that PTSD is very specifically narrowly defined.

After further discussion between Director Hutchison, Trustee Lehman and Trustee Hunzeker, Senior Deputy City Attorney Franco Lucchin said to the extent there are legal questions about this matter, the board could do that in the future in executive session, but Attorney Lucchin just wanted to remind the board that the Charter does vest the disability decision to the director in the FPDR and prohibits the board from being involved in these decisions. So, hypotheticals might be appropriate in a closed setting but Attorney Lucchin was not sure it was going to be helpful to the board.

Kim explained that ORS 656.802(7)(a)-(e) only applies to the conditions of PTSD and ASD. Section 5-306(c) of the Charter is going to apply for any other mental health diagnoses like adjustment disorder or any other type of mental health condition that a member might file a claim for.

#### **Action Item No. 1 – Resolution No. 525 – Administrative Rule Amendment to Section 5.7**

Director Hutchison explained the change to the Administrative Rules and also the proposed rule language by Attorney Nelson Hall. Director Hutchison and Attorney Lucchin had no issue with Attorney Hall’s amendment.

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*Trustee Lehman made a motion that was seconded by Trustee Fouts and unanimously passed to adopt Resolution No. 525 with the proposed amendment that includes the term “and process”.*

<i>Aye</i>	<i>Trustee MacLeod, Trustee Harwood, Trustee Fouts, Trustee Hunzeker, Trustee Lehman</i>
<i>Nay</i>	<i>None</i>
<i>Abstain</i>	<i>None</i>
<i>Absent</i>	<i>None</i>

Director Hutchison also explained that under Section 5-403(a), City Council can amend the Charter by ordinance whenever there's a law saying there needs to be an additional benefit. Director Hutchison stated that an ordinance to comply with SB 507 will be sent to City Council. The board had no issues with the ordinance and Director Hutchison will notify Commissioner Hardesty to have the ordinance placed on the Council agenda.

#### **Information Item No. 4 – Board Handbook Updates**

This Information Item was deferred to the November board meeting

#### **Information Item No. 5 – FPDR Expenditures**

The board had no issues or comments on the Summary of Expenditures.

#### **Information Item No. 6 – FPDR Updates**

The next board meeting is scheduled for November 19, 2019. It is one week earlier because of Thanksgiving.

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Minutes – Summary


**PUBLIC SESSION**

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**Information Item No. 7 – Future Meeting Agenda Items**

At the January 28, 2020 board meeting the budget will be presented.

There being no further business, the meeting was adjourned at 3:37 pm.



Samuel Hutchison  
Director

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